

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELO CONSTANTINO, GREGORIO CONSTANTINO, HILARION
CONSTANTINO AND FAUSTO CONSTANTINO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-23558. August 10, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal from a judgment of conviction. The appellants - Marcelo, Gregorio, Fausto and Hilarion, all surnamed Constantino - were charged with murder for the death of one Carlino Perdido. The Court of First Instance of Cagayan, after trial, found all of them guilty as charged and imposed on each life imprisonment and indemnification of the heirs of the deceased in the amount of P6,000.00.

The prosecution's version of the facts, which the lower court upheld, is as follows: One Sabas Constantino was stabbed in Barrio Santor, Sanchez Mira, Cagayan, on June 24, 1963. Sabas is closely related to the appellants, being the brother of Fausto and Gregorio, the nephew of Marcelo, and the cousin of Hilarion. The suspected assailant was Inocencio Romaguera who happened to be the brother-in-law of the decedent, Carlino Perdido. Inocencio Romaguera fled after the stabbing and he still remains at large.

At about 10 o'clock in the evening of June 27, 1963, appellant Marcelo went with a group to the house of the deceased, looking for Inocencio. Encarnacion Perdido, sister of the decedent who was in her house just 12 meters away, heard Marcelo threaten the deceased by saying first, "if you are not going to bring out your brother-in-law, I will pierce you" and then, "if you are going to involve yourself in this case, you will be a victim." When these statements were made, Marcelo was at the foot of the stairs of Encarnacion's house, and was about 2-1/2 meters away from her. Thereafter, she talked with the decedent and confirmed that it was Marcelo who uttered those remarks.

Early the following morning, June 28, 1963, before taking breakfast, the decedent left the house to see his plants and to gather vegetables in the field, despite the admonitions of his wife, Florentina Romaguera, not to go out in view of the incident the night before. When he did not return, Florentina went out to look for the decedent and failing to find him, she reported his absence to Barrio Lieutenant Ignacio de la Cruz. The latter, in turn, sought the aid of Sanchez Mira Police Chief Damaso Dumlao who sent policemen Dominador Valdez and Tito Mangligot to Barrio Santor to investigate.

The two policemen arrived in Barrio Santor late that evening and early the next day, June 29, 1963, they started looking for the decedent, together with the Barrio Lieutenant, Quirino Callo and other barriomates. At around 10 o'clock that morning, they came upon the dead body of the decedent near the creek, south of Barrio Santor. The cadaver bore multiple stab wounds. The post mortem examination (Exhs. M & M-1) conducted by Dr. Herman Asanias that very morning showed the following wounds, to wit:

- "(1) Wound, stab, neck, above medial third of Clavicle left, 1 1/4 inch long, directed downwards.
- "(2) Wound, stab, neck, left, lateral, 2 inches deep and 1 1/2 inch long.
- "(3) Wound, stab, infrascapular region, left 1 1/3 inch long.
- "(4) Wound, stab, infrascapular region, left, below and medial to wound No. 3, 1 1/2 inch long.
- "(5) Wound, stab, about 2 inches below wound No. 4, 1 1/3 inch long.
- "(6) Wound, stab, about 2 inches below the left axilla, 1 1/2 inch long, penetrating.
- "(7) Wound, stab, hypochondriac region, left, along the anterior axillary line, 1 1/2 inch long, penetrating.
- "(8) Wound, stab, lumbar region, left, located along the posterior axillary line, 1 inch long, penetrating.
- "(9) Wound, stab, lumbar region, left, located along the mid-axillary line 1 1/2 inch long, penetrating.
- "(10) Wound, stab, lumbar region, left, along the anterior axillary line, on level with the navel, 1/2 inch long, penetrating.
- "(11) Wound, stab, arm, left, middle third, lateral, 1 inch long.
- "(12) Wound, incised, forearm, left, upper third, lateral, 2 inches long.
- "(13) Wound, incised, forearm, left, upper third, posterior, 3 inches long above wound No. 12.
- "(14) Wound, incised, palm, below left thumb, 1 inch long.
- "(15) Wound, incised, forefinger, left, posterior.
- "(16) Wound, contused, thigh, right, middle third, anterior."

Dr. Asanias established the approximate time of death as of the morning of June 28, 1963 and the cause thereof, as severe hemorrhage secondary to multiple stab wounds.

Acting upon information linking the appellants to the death of the decedent, the two policemen went to arrest them that afternoon and brought them to the municipal building for investigation. Returning to Barrio Santor to look for the possible weapons used, Valdez got from Hilarion's mother his blood-stained bolo (Exh. B) and a blood-stained shirt (Exh. C). Mangligot, on the other hand, obtained from the house of Gregorio a blood-stained bolo (Exh. F) and a blood-stained calendar leaf (Exh. G).

Said appellants were pinpointed due to the presence of Quirino Callo and two young boys, Benjamin Balicat, age 12, and Nonito Salmazan, age 13, who were all pasturing their carabaos, in the fields near the scene of the killing. The three gave sworn statements before the Municipal Mayor who conducted a preliminary examination on June 29, 1963 in the absence of the Municipal Judge, and on July 1, 1963, they re-subscribed their affidavits before the Municipal Judge.

Balicat testified that in the early morning of June 28, 1963 he saw the four appellants, all armed with bolos, following and then chasing the decedent towards the creek south of Barrio Santor. Shortly afterwards, he again saw the four coming from the same direction and going home-ward, with Hilarion, Fausto and Gregorio holding blood-drenched bolos. Salmazan and Callo declared that they saw the four appellants that morning coming from the same direction where on June 29, 1963, the dead body of Carlino Perdido was found. Of the four, only Hilarion and Fausto had their bolos unsheathed.

Appellants impute to the trial court, as first error, its having relied upon the prosecution witnesses and in not

upholding their allegedly credible defenses. According to them what really happened was this: Fausto and his brother Gregorio were in Dugo, Cagayan from June 26 to June 28, 1963 together with their father and brother-in-law who brought Sabas Constantino to the Camalaniugan Emergency Hospital for treatment. Marcelo was in his house in Barrio Santor the whole morning of June 28, 1963. Hilarion killed the decedent, but only in self-defense.

The defense of Fausto, Gregorio and Marcelo is, therefore, alibi. But it is too well settled that alibi can not overcome the positive identification of the accused unless the prosecution witnesses are unreliable or unworthy of credence - which is primarily for the trial court to determine[1] - and the accused's presence in some other place is clearly and convincingly established.

Here, the lower court gave much credence to the prosecution witnesses, especially to the youthful Balicat and Salmazan. We see no cogent reason to reverse it. These two immediately gave their sworn declarations[2] to the authorities upon the discovery of the crime on June 29, 1963. It would have been quite hard for them to concoct a falsehood within so short a time. The records disclose that on July 31, 1963, both made written declarations (Exhs. 11 and 12) somewhat at variance with their previous affidavits. However, the lower court rejected these declarations on the finding that they were prepared under suspicious circumstances as evidenced by the fact that Exh. 11 bears thumbmark imprints whereas the affidavits found on pp. 15 and 16 of the Records bear the signature "Benjamin Balicat" (Exh. P[16]). In addition, We also note that Exhs. 11 and 12 were not sworn to and what is more, altho counsel for appellants had them all the while, they were never presented to the two boys for explanation during the trial.[3]

The flaws and defects in the testimonies of the principal prosecution witnesses raised by appellants are too insubstantial to merit serious consideration. The relationship of Balicat, Callo and Encarnacion Perdido to the decedent does not necessarily vitiate their otherwise credible testimonies.[4] Balicat's presence near the scene of the crime on the morning of June 28, 1963 is established not only by his testimony in court but also by his sworn affidavit and the statement (Exh. 11) taken by appellants' counsel. Salmazan's statement that Balicat told him about the chasing of the decedent by the appellants is hearsay to prove the chasing but as Balicat himself testified that he told the former about it, that merely corroborates the fact that the two boys talked about the incident.[5] However, Salmazan is himself an eye-witness to the fact that appellants came from the place where the dead body of the decedent was found. Appellants also cite a portion of the testimony of the decedent's widow showing that it was stormy and rainy in the morning of June 28, 1963 but they have conveniently omitted her succeeding statement denying that it was raining hard that morning.[6] Lastly, we can draw no suspicious inference from the fact that Quirino Callo did not immediately denounce appellants before the authorities on June 28, 1963 since he did not actually see them kill the victim but only saw them 300 meters away from the scene of the crime.

The alibi set up by appellants Fausto and Gregorio is not convincing. Altho they claimed that in the early morning of June 28, 1963 they were still in Dugo, Cagayan, 70 kms. away, they have failed to prove that it was physically impossible for them to have been at the scene of the crime.[7] It was not impossible for them to have gone back to Barrio Santor on the evening of June 27 since they had nothing more to do in Dugo, assuming they really went there. In fact, two witnesses saw them in Barrio Santor that very evening - policeman Mangligot while pat-rolling there, and Fausto's own wife who said on direct examination that he slept at home on the night of June 27, 1963.[8]

The only non-relative who would corroborate the alibi of Fausto and Gregorio is Francisco Salvador who testified that in the morning of June 28, 1963 he saw the two with their father, Ignacio, in the motorboat while crossing the Cagayan River. This cannot overcome the positive identification made by the three prosecution witnesses who had no evil motive against the appellants. Salvador's testimony is comparatively weak since it does

not appear that he conversed at all with Fausto and Gregorio. Moreover, it is highly improbable that Salvador could still remember Ignacio Constantino whom he met two years before, while on a hectic campaign trail, at night, and for a very short time only.

Marcelo's uncorroborated alibi cannot prevail over the positive identification of the prosecution witnesses for stronger reasons since on the morning of June 28, he was at home in Barrio Santor, not more than 2 kms. away from the scene of the crime. He was too near to altogether preclude his guilt.

Hilarion admits having killed the decedent but insists that it was in self-defense only. According to him, while attending a benefit dance in Barrio Santor sometime in June, 1963 but the exact date of which he could not place, he had an altercation with the decedent wherein he knocked down the latter. The decedent then threatened to kill him and in the early morning of June 28, 1963, while he was alone mending the gaps in their rice paddies, the decedent came, stabbed him suddenly, hitting him below the right elbow, and then chased him to the creek. But there, he was able to hold the decedent's hand and then stabbed the latter successively on the left side. This plea of self-defense is belied and negated, however, by a number of reasons. First, is the nature, number and location of the decedent's wounds.[9] Hilarion's version cannot explain the three wounds at the back and the other wound in the neck - directed downwards - of the decedent. The medico legal officer moreover stated that more than one weapon was used. Secondly, the alleged bolo used by the decedent was not presented nor was its non-presentation explained.[10] Third, Hilarion's silence and failure to immediately report to the authorities the alleged attack upon him by the decedent shows that he was not really innocent.[11] Had he done so, he could have easily shown to them the wound allegedly inflicted by the decedent which must still have been fresh by then.[12] He had ample opportunity to do so in the investigation conducted on June 30, 1963. Lastly, the decedent had no motive to assault him. For, contrary to Hilarion's claim, no benefit dance was held in Barrio Santor in the month of June, 1963, as established by Police Chief Damaso Dumlao who keeps a record of all the permits therefor, and Barrio Lieutenant de la Cruz. The supposed altercation between Hilarion and the decedent thus appears to be a mere fabrication.

Appellants next assail the imposition by the lower court of a uniform penalty for all of them in the absence of direct proof of conspiracy. There were however sufficient facts and circumstances which impliedly showed conspiracy.[13] In this connection, We deem it sufficient to quote from the decision of the trial judge:

"As a whole, the circumstances that the accused with bolos chased Carlino Perdido, that afterwards they returned walking with Hilarion Constantino and Fausto Constantino holding their bolos with bloodstains while Marcelo and Gregorio Constantino had their bolos tucked at their waists; that the body of Carlino Perdido was found later on in the place where these accused came from; that the bolos, Exhibits B and F, with bloodstains were found in the homes of Hilarion and Gregorio Constantino, respectively; that Marcelo Constantino made the threats on the night of June 27, 1963 to Carlino Perdido and that the calendar sheet, Exhibit G, with bloodstains, was found in the house of Gregorio Constantino, all these point conclusively, to the participation of the accused in the death of Carlino Perdido and show their guilt beyond reasonable doubt.

"The motive on the part of the accused to kill Carlino Perdido is because they wanted to avenge on Carlino Perdido the death of their kin, Sabas Constantino, who was allegedly killed by Inocencio Romaguera, a brother-in-law of Carlino Perdido. They suspected that the disappearance of Inocencio Romaguera was made so by Carlino Perdido, thus Marcelo Constantino threatened Carlino Perdido to produce the body of Inocencio Romaguera otherwise he would be liquidated."

The last error alleged is the failure of the lower court to appreciate certain mitigating circumstances in favor of appellants. Again, We see no error. Incomplete self-defense and unlawful provocation by the decedent can not be considered in Hilarion's favor since his version of the decedent's aggression is pure fabrication. There is neither

passion and obfuscation nor proximate vindication of a grave offense since the killing of the decedent was four days after the stabbing of appellants' kin.[14] Moreover, it is doubtful if vengeance can be considered as a lawful sentiment.

The trial court correctly sentenced the four appellants to life imprisonment. The penalty for murder[15] is reclusion temporal in its maximum period to death. Superior strength properly qualifies the killing to murder. For want of proof, treachery and evident premeditation must be brushed aside. There being no mitigating nor aggravating circumstances, the penalty should be imposed in the medium period, or life imprisonment.

WHEREFORE, the appealed judgment of conviction is affirmed in toto. No costs.

SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] People v. Villalba, L-17243, Aug. 23, 1966.

[2] See Records, pp. 15-16; Exh. H (3) and Exh. K (5).

[3] See Sec. 16 of Rule 132, Rev. Rules of Court.

[4] People v. Villalba, supra; People v. Bautista, L-17772, Oct. 31, 1962; People v. Valera, L-15662, Aug. 30, 1962; People v. Asmawil, L-18761, Mar. 31, 1965.

[5] People v. Arsi, L-20986, Aug. 14, 1965.

[6] See TSN, Vol. I, p. 122.

[7] See People v. Linde, L-10358, Jan. 28, 1961; People v. Argana, L-19448, Feb. 28, 1964.

[8] TSN, Vol. I, p. 211.

[9] People v. Gonzales, 8 Phil. 442; People v. Gustahan, 47 Phil. 367; People v. Tolentino, 54 Phil. 77; People v. Cabajan, 56 Phil. 83; People v. Somera, 83 Phil. 548; People v. Salatambos, L-11283, May 29, 1959; People v. Santella, L-16665-66, Apr. 23, 1962.

[10] People v. Tolentino, supra; People v. Berio, 59 Phil. 533; People v. Ragsac, 61 Phil. 146; People v. Lahi-sig, L-12122, May 30, 1959.

[11] People v. Lacson, 83 Phil. 374; People v. Pulido, 85 Phil. 695; People v. Aporado, L-11076, May 29, 1959.

[12] People v. Ramirez, 89 Phil. 304.

[13] People v. Mahlon, 92 Phil. 883; People v. Monadi, 97 Phil. 575; People v. Mitra, L-13339, June 30, 1960.

[14] See People v. Aguinaldo, 92 Phil. 583.

[15] Art. 248, Rev. Penal Code.

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