

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NICASIO CAMINERO, ET AL., DEFENDANTS, MANUEL PAKINGAN,
DEFENDANT-APPELLANT.**

G.R. No. L-8705. May 28, 1958

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PER CURIAM:

In an amended information, Nicasio Caminero alias Nicasio Camerino, Manuel Pakingan, Emilio Martin alias Emiliong Pintong Bato, Antonio Martinez, Aurelio Ilas, Miguel Topacio, Crisanto Saratan, Arsenio Corcillo, Raymundo Advincula, Emilio Silvestre, Bienvenido Osteria and John Doe were charged with the crime of murder before the Court of First Instance of Cavite. Nicasio Carminero alias Nicasio Camerino pleaded guilty upon arraignment, and was accordingly sentenced. Eight of the defendants being still at large, the hearing proceeded as against Manuel Pakingan, Crisanto Saratan and Bienvenido Osteria. After the trial, the lower court acquitted the latter two for insufficiency of evidence against them and for lack of proof of conspiracy, but convicted Manuel Pakingan and sentenced him life imprisonment as well as to indemnify the heirs of the deceased in the sum of P4,000, whereupon Manuel Pakingan appealed claiming that the lower court erred:

- in finding that most of the prosecution witnesses recognized Pakingan and that he was definitely identified by Sabina Torres and Virginia Gawaran-Nario;
- in admitting as evidence Exhibit "I", an affidavit allegedly signed by appellant Pakingan at the national Bureau of Investigation Office in Manila;
- in rejecting the defense of alibi interposed by defendant-appellant;
- in concluding that Manuel Pakingan killed Cesareo Gawaran for some ulterior motives not of his own and may be upon superior orders; and
- in finding Pakingan guilty of the crime of murder beyond reasonable doubt.

It clearly appears from the evidence on record that on the election day of November 10, 1953, between 12:30 and 1:00 o' clock noon, Cesareo Gawaran, a sexagenarian and a diehard Nacionalista partyman, was in bed peacefully reading a newspaper in a room on the ground floor of his two-story house situated near the seashore in the barrio of Digmaan, municipality of Bacoor, province of Cavite. While his family was gathered in the living room on the ground floor, a man armed with a long firearm appeared at the window fronting the sea and inquired if that was the place where Cesareo Gawaran lived. The three adult members of the Gawaran family, namely, his son Augusto, his daughter Virginia Gawaran-Nario, and his niece Sabina Torres, were taken aback and speechless as the gun was pointed at Augusto. Then another man with a scar on the left forehead, also with a long gun, appeared at the door and twice called out angrily and in a harsh tone of voice, "Cesareo, lumabas ka" (come out, Cesareo). The man at the window was Nicasio Caminero who pleaded guilty, and the one at the door was appellant Manuel Pakingan. On second call of Pakingan, the old Gawaran, newspaper in hand, came to the living room; whereupon appellant told him that they would like to talk to him outside the house. To this, Gawaran willingly consented.

Caminero then joined Pakingan at the door and both led the old man outside, each holding him by the arm between them. Sensing that something untoward might happen to her father, Virginia followed them, but no sooner had she gone out of the door than another man, identified as Arsenio Corcillo (still at large) poked his gun at her and prevented her from following her father. She ran towards the back of the house and headed to a neighboring yard, from where she watched through the of the bamboo fence of the neighbor's yard and saw that, while her father was at standstill, Caminero a shot which felled her father, and immediately appellant Pakingan fired four successive shots at the prostrate old man, and thereafter both gunmen left the scene. Another man who was identified as Saratan, (he acquitted) approached and viewed the body. Virginia was just about fifteen meters away, then ran to her father who was already dead, crying "Father is dead," Augusto Gawaran and other members of the Gawaran household came to where the deceased fell. When autopsied on the following day by Dr. Pedro P. Solis of the NBI, five gunshot wounds were found on Gawaran's body, one of which was on the left breast, the bullet lacerating the heart and lungs which caused instantaneous death.

Gawaran's house in the barrio of Digmaan is situated near the seashore, the Manila Bay to its North and fishponds to its South. Just a short distance to the West is Muling Pagsilang street that runs straight from the provincial road towards the seashore, that is to say, from South to North. This street is the only ordinary passage to the barrio of Digmaan from the provincial road, and along the way one has to pass the end of Ocampo, Martinez and Patol streets, in the order stated, which are at right angles with and which end in Muling Pagsilang street, as shown by sketch Exhibit D. One also can just walk along the beach hugging the shoreline from the westerly direction, which is the hard way, or pass along the fishponds from the South to reach the Gawaran residence.

On that election day, the political atmosphere of Bacoor was tense and foreboding, for, earlier that morning, vice-mayor Ocampo of Bacoor who belonged to the Nacionalista Party, together with some companions were massacred by gunmen in the barrio of Kaiñgin, at about 10:30, just about twenty meters from electoral precinct No. 5 of Bacoor. This led Emiliano Gawaran, one of the sons of the deceased, who was then the Nacionalista inspector in that precinct, to go immediately to Manila to report the matter to the Commission on Elections. Upon his return to Bacoor at noon, he found that precinct No. 5 was deserted, so he alighted from the passenger jeepney at a place two "callejones" from the municipal building, went to the seashore and then walked eastward along the beach towards his house. But when he reached Muling Pagsilang street at about four houses distant from his residence, he heard four or five shots which made him run under the house of Mateo Ogalino to seek cover. This house is in the corner of Muling Pagsilang and an unnamed street near the beach which was marked as Exhibit H in the sketch Exhibit D. While thus under the house, he saw eight armed men with buri hats coming from his place and were heading towards Muling Pagsilang, recognizing five of them, namely, Emilio Martin, Corcillo, Caminero, Pakingan and Saratan. He already knew appellant before that, as he knew him to be a boxer and had seen him once or twice in the ring; besides, he also knew him in the rotonda of Imus where appellant was known as 'kikil."

Atty. Delfin Gawaran, another son of the deceased, after casting his vote at a precinct near the municipal building at about 11:00 o'clock, was stopped in his car by two policemen who requested him to take them to the barrio of Kaiñgin where there had been a shooting earlier that morning, but upon their reaching the place of one Mr. Narvaez, they were told not to proceed anymore as there were gunmen in town hunting for Nacionalista leaders. The policemen got off the car and Atty. Gawaran proceeded to the house of ex-governor Trias, another Nacionalista, to warn him and his family of the prevailing danger. This house is about 200 meters from the Gawaran residence. The attorney was then apprehensive as he had seen some three jeeploads of gunmen pass in town after he had learned of the Ocampo massacre. After shuttling in his car some three times from the ex-governor's house to his residence, Atty. Gawaran was prevailed upon by his neighbors to stay and hide in the store of Lorenza Santiago at the corner of Patol and Muling Pagsilang streets, which is just 100 or 150 meters

from the Gawaran residence. It was then about 12:15 noon when, while in that store, he saw some nine or ten armed men which came from the direction of the municipal building, walking along Muling Pagsilang and heading towards the Gawaran place. In fear, he went upstairs and peeped through a hole in the window, and saw the chief of police Bienvenido Osteria among them. The gunmen tarried in the store for a while asking some questions from the neighbors, and then proceeded towards Digmaan, leaving Osteria in the store. Eased somehow of his fears upon seeing his friend Osteria, Atty. Gawaran came from his hiding place upstairs down to the store and was greeted by Osteria. They had a friendly conversation and the attorney was told by Osteria that the men who had just passed were the agents of the Governor on a scouting mission. Soon the mother of Atty. Gawaran came running, crying and shouting at him to hide because she had just met the armed men going to their house, and at that same moment several shots were heard. Atty. Gawaran asked Osteria what those shots were and was told that the Governor's agents were just having some target practice, but at the same time Osteria told him to run and hide himself; whereupon Atty. Gawaran ran to the house of his compadre, Arsenio Guinto, and transferred to the house of Marcelo Landas. He stayed in the latter's house till late afternoon where he was found by Manila newspapermen, who informed him that his father was dead. He wanted to see his father, but the newspapermen hid him instead in their car and whisked him to Manila, telling him that it was perilous for him to be seen in town by reason of the fact that armed men were looking for Nacionalista leaders. Upon reaching Manila and upon instructions of the then president-elect Ramon Magsaysay, Atty. Gawaran was interviewed by reporters, which was radiocast.

The armed group which went to the barrio of Digmaan at noon that election day was seen by neighbors of the vicinity, among them Ricardo Almeda, an employee of the Bureau of Labor, who testified that while he was in front of his house at Calle Martinez, he saw eight or ten armed men coming from the direction of the municipal building, and walking along Martinez street toward Muling Pagsilang. He went upstairs and peeped through a window as they passed so as to identify them, as he had already heard about the Kaingin killing before that. He recognized the chief of police Osteria among them, and he saw that upon reaching Muling Pagsilang they turned towards Digmaan. After they had passed, Almeda stayed again in front of his house, and later saw the same group taking the same route on their way back.

Another neighbor, Marciano Pusieran, who was at the store of a certain Aling Tacion at the corner of Martinez and Muling Pagsilang, was chatting with Gregorio Mateo and other neighbors, the subject being the killing of vice-mayor Ocampo and his men. That noon, he saw the same armed group - nine of them - deployed on both sides of the street as they were coming along Martinez street and heading towards Digmaan. He recognized chief of police Osteria who was at the tail-end, as well as Pakingan, Corcillo, and Caminero. While they were walking, he heard Corcillo say in a loud voice, "Let the chief go ahead because he knows the place." Pusieran had a good look at appellant who was then wearing a white T-shirt and noticed a scar on his forehead as well as small pimples on his face. Shortly thereafter, he heard several successive shots coming from the direction of Digmaan, and again saw the same persons, now walking fast on their way back, Osteria heading straight along Muling Pagsilang to the provincial road after waiving a handkerchief to his companions who turned towards Martinez street.

Testifying in his defense, appellant limited himself to denying the facts testified to by prosecution witnesses. He denied having gone to Bacoar at noon on November 10th, 1953; that he never went to Gawaran's house; he has never been with Caminero on that day, nor on any day, although he knows him to be a "wanted" man; he was not with the chief of police Osteria on that day either, nor knows him personally; he did not have a long firearm on that day; he does not know Pusieran, Virginia Gawaran and the other witnesses for the prosecution. He admitted, however, that he knows Saratan because both of them are from the barrio of Anabu, municipality of Imus. In addition to his testimony, his counsel presented, without objection on the part of the fiscal, the transcript of his

former testimony in Criminal Case No. 11653 of the court of first instance of Cavite, entitled *People vs. Dominador Camerino, et al.*, for sedition (Exhibit 4-Pakingan), wherein he testified that on November 10, 1953, he was in his house situated in the barrio of Anabu, attending to his wife who had just had a baby; that he did not go out of Anabu for three days; that on that election day he was seen and had conversation in the street with councilor Remigio Reyes of Imus who asked him if he had already voted, to which he answered in the negative; that he was seen in his house by Jacinto Purificacion who persuaded him to vote, but that he could not leave the house on account of his ill wife. To corroborate appellant's testimony, his counsel likewise marked as Exhibit 5-Pakingan the transcript of the testimony of Remigio Reyes in Criminal Case No. 11653 mentioned above, and as Exhibit 6-Pakingan the transcript of the testimony of Jacinto Purificacion in the same criminal case. We find, however, that although the said two exhibits were admitted by the trial court (35, t.s.n., Villanueva), the same were not attached to the record, and according to the minutes of the hearing of May 25, 1954, certified copies of said exhibits 5-Pakingan and 6-Pakingan were yet to be presented, and as a matter of fact they were not presented at all nor sent to this Court, as shown by the index of exhibits certified to by Ponciano F. Martinez, clerk of the court of first instance of Cavite. We have, therefore, that appellants defense consisted merely in his uncorroborated testimony.

In view of the alibi put up by appellant and his denial of the acts imputed upon him, we have carefully examined the record relative to his identification.

Virginia Gawaran-Nario, the eyewitness to the shooting, positively identified appellant as the gunman who appeared at the door of their house, her attention having been arrested by the scar on his left forehead just above the left eyebrow (143, t.s.n., Miranda); she had opportunity to observe his face three times: first, when she saw him at the door; second, when he held the arm of the deceased and led him outside; and third, when he shot the old man (1, t.s.n., Matro). Evidently the features of appellant made a deep impression on her for, when she was investigated by a P.C. officer that same afternoon, she gave a good description of the killers: Pakingan as having a scar on the left forehead, and Caminero as having gold teeth and thick eyebrows (163, t.s.n., Miranda). After appellant's arrest about a month later, she again identified him in a line-up at the P.C. barracks in Imus, and that was the first time that she ever knew that his name was Pakingan (169, t.s.n., Miranda). And to cap it all, she stated that even without the telltale scar, still she recognized him by his face and features (170, t. s. n., Miranda),

Sabina Torres, who was also in the living room with Virginia on that occasion, had a good look at appellant and noticed his scar when he appeared at the door (82, t.s.n., Miranda). Again she identified him in the municipal building of Bacoar after his arrest (85, t.s.n., Miranda), and at the trial of the case she did not hesitate to point him out to the court.

Aside from these two eyewitnesses, we have the testimony of Emiliano Gawaran who positively identified appellant and four others as among the eight armed men who were coming from the scene of the crime right after he heard the series of shots (25, t.s.n., Matro). Witness could not have been mistaken in his identification of appellant as, according to him, he long knew Pakingan as a boxer and had seen him in the ring (25, t.s.n., Matro); besides, he used to see him in the rotunda or plaza of Imus where appellant is known as "kikil" (35, t.s.n., Mafcro). As a matter of fact, witness was instrumental to the apprehension of appellant in the house of a certain Poling in the barrio of Aniban, Bacoar, for, sometime after the 10th of November, 1953, he saw appellant in a cockpit and "tailed" him, which finally led to his arrest by ten P.C. men and two NBI's, witness accompanying the arresting party. (25, t.s.n., Matro).

Marciano Pusieran, a resident of the vicinity, positively told the court that he recognized appellant as one of those armed men that went to the barrio of Digmaan, and remembered not only his scar on the forehead but also the small pimples on his face (198, t.s.n., Miranda). Again he recognized him when he saw appellant, after the latter's

arrest, in the P.C. barracks in Imus (200, t.s.n., Miranda). On cross-examination, he assured the court that he remembered appellant by his very face and that although Pakingan be shown to him attired differently from the white T-shirt he was wearing at that time, still he could recognize him by his face and by his hair (19, t.s.n., Matro), and when asked by defense counsel to show how appellant wore his hat on that occasion, he demonstrated it to the court in such a way that not only the "patilla" of the haircut could be seen, but that the hair itself on the forehead was visible (20, t.s.n., Matro).

We entertain absolutely no doubt that between 12:30 and 1:00 o'clock noon on the election day of November 10, 1953, a group of armed men coming from the direction of the municipal building of Bacoar, appellant among them, went to the barrio of Digmaan by passing along Martinez street, then to Muling Pagsilang, and after reaching the shore turned right to the residence of the deceased. Once there, triggermen Caminero and appellant Pakingan took him out of the house and killed him on the beach, Caminero firing the first shot when Gawaran was at a standstill, and Pakingan finishing him off by a series of shots when the victim was already sprawled on the ground. The Bacoar killings acquired national notoriety through the radio and newspapers (Exhibit C), and although there is no positive evidence on record as to the real motive behind the killing of the deceased, the testimony of witnesses strongly indicate that politics had much to do with it.

Appellant points out in his brief that the trial court erred in "admitting as evidence" Exhibit I (a written statement by appellant before the NBI wherein he admits having gone to Bacoar on that election day and arrived there at 1:30 p.m.) on the ground that it has not been formally offered by the prosecution. The transcript of the evidence really reveals that Exhibit I has not been mentioned as among the exhibits offered (39, t.s.n., Matro), although there appears an instruction by the court to the fiscal that the latter could just present it (345 t.s.n., Villanueva), which was not complied with. We agree with appellant that this exhibit should not have been considered by the trial court in the weighing of the evidence.

However, even brushing Exhibit I aside, the defense of alibi put up by appellant is nothing but a flimsy excuse against the overwhelming force of the evidence for the prosecution, for at least four credible witnesses have sufficiently established his presence and placed him at the scene of the crime and its immediate vicinity prior to, during, and soon after its perpetration. His contention that he did not leave his house in the barrio of Anabu for three days because of his ill wife, is not at all incompatible with his having gone to Bacoar on the day and time testified to by prosecution witnesses, as Bacoar and Imus are contiguous towns, of which judicial notice may be taken, connected by a first-class road, and the barrio of Anabu and Imus, according to appellant himself, is just at the roadside. There is no showing, either, that it was impossible for him to be at Bacoar on the day and time in question.

"The rule is well settled that the defense of alibi can merit but a scant consideration if the presence of the accused appears sufficiently established by credible and reliable witnesses. Considering that the accused had not only been sufficiently identified, but the role they have played has been well depicted by the witnesses, and there is nothing that can detract from their testimony which the lower court found them to be truthful, the defense of alibi cannot be sustained." (People vs. Caubat, et al., No. L-7585, June 23, 1955).

"Where the accused had been positively identified by witnesses who recognized his features and identity, one of whom was even the husband of the sister of the wife of the accused and where no motive has been shown on the part of said prosecution witnesses that would have prompted them to testify falsely, the defense of alibi set up by the accused cannot overcome the testimony of the prosecution witnesses." (People vs. Baltazar, et al., No. L-5850, Jan. 4, 1956).

"The defense of alibi of the accused cannot prevail over the testimony of eyewitnesses to the incident wherein the accused had participated especially where the testimony of such witnesses are trustworthy, stating in detail

the participation of the accused had in carrying the plan for liquidating the victim and also witnesses who positively identified the appellant as one of those who went into the house of the victim to fetch the victim moments before the murder." (People vs. Umali, et al., No. L-8399, May 11, 1956).

"The defense of alibi is the weakest defense that an accused can avail of, and cannot prosper where the accused has been positively and properly identified by the offended party; and alibi should be proven by proper evidence which would reasonably satisfy the court of the truth of such defense (U.S. vs. Oxiles, 29 Phil., 337). Oral proof of alibi must be clearly and satisfactorily established because it is so easily manufactured and usually so unreliable that it cannot be given credit (People vs. Badila, et al., 48 Phil. 710)." (People vs. Moro Sarabi alias Gabriel Macrohon, et al., No. L-8054, September 21, 1956).

The Solicitor General recommends the imposition of the death penalty, alleging the presence of three aggravating circumstances which are not offset by any mitigating circumstance, namely: treachery, dwelling and abuse of superior strength, which appear to have been proved beyond reasonable doubt, the evidence on record clearly showing that the deceased was taken from his house, brought to a neighbor's yard and there killed; that when the deceased was ordered by Pakingan to come out of his room and he approached the latter, his right arm was held by appellant while Caminero took hold of his left arm, and thus held he was taken to a nearby yard 5 while at a standstill, he was fired upon by - Caminero causing him to fall, and while sprawled on the ground, appellant fired at him four successive shots which caused his instantaneous death.

The Solicitor General holds the view that the crime at bar is murder qualified by treachery with the aggravating circumstances of abuse of superior strength and dwelling, but it having been repeatedly held by this Court that the abuse of superior strength is merged in the qualifying circumstance of treachery, among the three aforementioned aggravating1circumstances, only dwelling should be considered as such. But besides dwelling, there is the aggravating circumstance of disregard of the respect due the offended party on account of his age, for he was a sexagenarian when killed by the appellant who was then 27 years old. And there being no mitigating circumstance that may offset the above-mentioned aggravating circumstance and taking into account the savagery with which the crime at bar was committed, we agree with the Solicitor General's view that the herein appellant deserves the supreme penalty of death.

As to the Solicitor General's recommendation that the indemnity to be paid by appellant be raised to P6,000, we find it well taken. (People vs. Banlos, G. R. No. L-3413, Dec. 29, 1955; People vs. Villareal, G. R. No. L- 3545, Dec. 29, 1953; People vs. Simbulan and Isip, G. R. No. L-5299, June 30, 1952).

Wherefore, the decision appealed from is hereby modified and the appellant sentenced to suffer the the penalty of death and to pay P6,000,00 to the heirs of the deceased Cesareo Gawaran, and the proportionate costs.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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