

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE
“PITONG” TIONGSON AND PAQUITO LAGUNSA,
DEFENDANTS-APPELLANTS.***G.R. No. L-29569. October 30, 1972*

Ponente: FERNANDO, J.

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For the death of Juana Valmonte, who was stabbed and fired at on March 21, 1966 in Gapan, Nueva Ecija, by a group of malefactors intent on despoiling her of the proceeds of a sale of rice, Jose "Pitong" Tiongson and Paquito Lagunsad,[1] now appellants, were prosecuted and thereafter convicted of the crime of robbery with homicide. They were sentenced to suffer a penalty of reclusion perpetua. The appeal in essence would have us assess the weight of evidence differently from that of the trial court. A realization that such an approach is hardly impressed with the requisite degree of persuasiveness to overturn a conviction must have led their counsel de oficio, Atty. Rafael Salcedo, in his well-written brief, to stress the factor of contradiction that in his opinion vitiated the testimony of the father of the victim, the principal witness for the prosecution. There was likewise an effort to dilute the doctrine of *res gestae* of much of its force. Also, there was an attempt to escape from the generally accepted notion as to how a conspiracy could be shown. As will be shown, such a line of attack, even if vigorously pressed, was hardly successful. There is no justification then for a reversal. We affirm.

From the evidence of the prosecution, it was shown that on the evening of March 21, 1966, Juana Valmonte, with the family driver and a third man, went back to Gapan, Nueva Ecija from Manila, where she disposed of 160 cavans of rice. The truck on which they rode was then parked in front of the rice mill of her father, Ricardo Valmonte, in such municipality.[2] He was thus at a vantage point from which to observe what next occurred.[3] He testified seeing that as the truck stopped, the headlights were put out; but after a short while, they were turned on again. At that time, his daughter, Juana Valmonte, got off the truck. While walking towards the rear, and shortly before such spot was reached, the lights were extinguished again. It was then that he heard the shouts "Ay! Ay!" coming from her, with the sound of a firearm being discharged.[4] Unfortunately, instead of rushing to her aid right away, he thought of getting a gun, went back to his house, was at first uncertain as to which weapon to use, and finally decided on a rifle. Thus armed, he ran after the unknown assailant or assailants. He was unsuccessful how-ever. He returned to his ricemill.[5] It was then that he saw his daughter with her hands spread out, bleeding and writhing in pain.[6] Apparently still in possession of her senses, she informed her father that she recognized two of her assailants as Pepito Lagunsad and Jose Tiongson.[7]

He rushed her to the Divina Pastora Clinic, making use of a tricycle, the only available means of transportation, but the persons in charge of such clinic refused to admit her for the alleged reason that they were not in a position to treat the kind of wounds sustained.[8] The victim was next taken to the Provincial Hospital at Cabanatuan City. It was found by the doctors in attendance that she suffered from a gunshot wound in the middle of the breast above the abdomen and a stab wound above the waistline. Notwithstanding an operation performed on her, she died at 10:30 the following night.[9] From the certificate of death, it appeared that she suffered from irreversible

shock, with injury to her liver, stomach and kidney, resulting in a massive hemorrhage.[10]

It was on the basis of such competent and credible evidence that the lower court adjudged the guilt of appellants. It had no difficulty in rejecting the defense of alibi submitted by appellants. Tiongson asserted that he slept at around 8:00 o'clock on the evening of that day and did not wake up until 5:30 o'clock the next morning, which testimony was corroborated by his wife; while appellant Lagunsad declared that he was at the time in Valenzuela, Bulacan. The decision now on appeal made mention of circumstances which militated against this plea of non-involvement, one of the most telling of which was that both appellants had previously worked in the rice mill of the victim's family and were therefore not unfamiliar with its business operations. The lower court was not unaware that the lure of the sizeable amount of money in the possession of the victim, of which she could be divested, perhaps without undue risk to themselves, must have been too strong to be overcome, resulting in the occurrence of this grim tragedy. A sense of realism as to the weight that could be accorded such a defense of alibi must have impelled counsel de officio, in the light of the above, to stress what he would want this Court to consider as a fatal contradiction in the testimony of the father, the weakness of the identification of the appellants by the victim as part of the *res gestae* and the absence of a conspiracy. As noted at the outset, while the effort to put the case for appellants as strongly as he could was evident, the arguments advanced by him do not call for a reversal.

1. The first error assigned in the brief of appellants would ostensibly raise the objection that the lower court should not give credence to the testimony of the prosecution insofar as the deceased identified them as her assailants. As developed, however, the stress is on the alleged contradiction in the testimony of the father, Ricardo Valmonte, as to the identification of those responsible for the death of the victim. In the interest of accuracy, the exact wording of what was testified to should be given. On direct testimony, this is what was stated by him: "What I asked her is whether she knew or recognized the one who shot and stabbed her, and what she told me that she recognized among the people who assailed her Paquito Lagunsad and Jose Tiongson quite far from her, sir." [11] On cross-examination, counsel for appellants in the lower court did elicit the following: "I looked at the direction of my daughter to see what happened to her and I saw Romy Sartin and Pitong Tiongson running towards the road. It was at that time that I learned that my daughter was held up." [12] In the light of the above, did he really contradict himself? It is to be noted that as far as appellant Tiongson is concerned, no such claim can be made. Moreover, all he did say on direct testimony was that he saw not only appellant Tiongson but also Romy Sartin, who was likewise included in the information but had not been apprehended, as individuals "running towards the road." [13] He did not say that they were the only two persons who attacked his daughter. On cross-examination, he was testifying not as to what he did see, but as to what his daughter told him as part of the *res gestae*. How can there be a contradiction, then, when the previous statement referred to what was seen by him and the latter declaration involved what his daughter told him.

Even if it could be assumed, however, on the most strict view, hardly compatible with what sound rationality demands, that there was any inconsistency could it be maintained seriously that his testimony could be summarily disregarded? The answer must be in the negative. As set forth in a 1916 decision, *United States vs. Lazaro*, [14] this Court speaking through Justice Trent: "It is true that witnesses may be impeached by evidence that they have made at other times -- statements inconsistent with their present testimony, but this character of evidence, which is introduced for the purpose of impeaching the witnesses, is not conclusive. It may be overcome by the probable nature of the story the witnesses may tell on the trial of the case, their seeing and knowing the matters concerning which they testified, and, if from all the circumstances the court is satisfied that the statements of such witnesses are true, it has the right to accept them, * * *." [15] An excerpt from a 1951 opinion in *People vs. Tan*, [16] penned by Chief Justice Paras, reaffirmed such a doctrine. Thus: "The appellant, without giving particulars, also alleges that there are contradictions between the testimony of the witnesses for the prosecution and their affidavits. As

aptly pointed out by the Solicitor General, the contradictions, if any, may be explained by the fact that an 'affidavit * * * will not always disclose the whole facts, and will oftentimes and without design incorrectly describe, without the deponent detecting it, some of the occurrences, narrated * * *' and 'being taken ex parte, is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belong to the subject.' "[17] It is thus evident that the first error on which so much stress was laid by counsel for appellants would hardly justify any assertion as to the appealed decision suffering from an incurable weakness.

2. The second assignment of error would impugn the admissibility of the testimony coming from the father, Ricardo Valmonte as well as the sister, Marina Valmonte, that she did recognize defendants-appellants as among her aggressors, uttered just after the murderous attack launched against her. What was testified to by the father had been set forth a few pages back. This is what the sister stated on the witness stand: "At about 10:30 o'clock that night, I woke up when I heard the shooting and I ran to the crime scene. When I saw my sister, I asked her if she recognized her assailants and she told me that she recognized two persons, Paquito Lagunsad and Pitong Tiongson, sir." [18] It thus appears clear that the thrust of the second assignment of error is directed at the applicability of the doctrine of *res gestae*. Appellant's point of view, while not necessarily antagonistic to, is hardly consistent with, the authoritative precedents coming from this Court as to such principle. It is well-settled that as an exception to the hearsay rule, such evidence must comply with these requisites, an occurrence both startling and unusual in character and an utterance made before the declarant could have any opportunity for falsification or distortion, one moreover limited to such event as well as the immediate attending circumstances. [19] The marked trend of decisions, as noted in a 1942 decision, [20] in the language of Justice Ozaeta, "is to extend, rather than narrow, the scope of the doctrine admitting declarations as part of the *res gestae*. Whether specific statements are admissible as part of the *res gestae* is a matter within the sound discretion of the trial court, the determination of which is ordinarily conclusive upon appeal, in the absence of a clear abuse of discretion." [21] That such should be the case is not surprising as what is testified to are the facts talking through the party and not a contrivance of the declarant. More specifically, it is to be noted that in the first case in point, *United States vs. Macuti*, [22] decided in 1913, this Court, through Justice Trent, spoke of a confession by the accused being "corrobo-rated by the declaration of the deceased (which must be considered as part of the *res gestae*, and which was heard by three of the witnesses for the prosecution) that Modesto was the one who wounded him. The deceased was certainly in a much better position to see who wounded him than anyone else. Had all the defendants or even three or four of them set upon him with knives, it is hardly probable that he would call out only one of their names. Rather, he would indicate that a number were attacking him with knives." [23] Clearly then, the second assignment of error is likewise devoid of merit. [24]

3. The third assignment of error is to the effect that even assuming *arguendo* the presence of appellants at the scene of the crime, the lower court should not have held that a conspiracy to commit such an offense existed. This is to ignore what has been so constantly held by us on such a question. An excerpt from the recent decision in *People vs. Pudpud* [25] is illuminating. Thus: "A conspiracy in the statutory language 'exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.' The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent. There is need in the language of Justice Mapa in the early leading case of *United States vs. Magcomot*, a 1909 decision, for 'concurrence of wills' or 'unity of action and purpose.' The usual phraseology employed in many of the later cases is 'common and joint purpose and design.' At times, reference is made to 'previous concert of criminal design.' Its manifestation could be shown by

'united and concerted action.' Thus, a conspiracy need not be proved by direct evidence; it may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of a common design to accomplish a criminal purpose and objective. If, to use the apt words of Chief Justice Bengzon, there is 'a chain of circumstances' to that effect, then conspiracy has been established. If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others. So it has been our constant ruling from the 1905 decision of the United States vs. Maza."^[26] The futility of any insistence on the third assigned error is thus manifest.

4. The last two assignments of error to the effect that appellants should have been acquitted on the ground of reasonable doubt, or that, if guilty, they should be held liable only for robbery and not robbery with homicide, need not be touched upon at all, their guilt for the offense in question having been so clearly and palpably demonstrated.

WHEREFORE, the decision of February 28, 1968, finding appellants guilty of the crime of robbery with homicide and imposing the sentence of reclusion perpetua as well as each of them to pay one-fifth of the costs of the proceeding, is affirmed, with the only modification that the indemnity to the heirs of the deceased should be in the amount of P12,000.00.

Concepcion, C.J., Zaldivar, Ruiz Castro, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

Antonio, J., did not take part.

Makalintal, J., on official leave.

[1] In the information filed against the two appellants, three other individuals were included, Romy Sartin, Rolando Abello and T. Carlos. They had not been apprehended, however, at the time of the trial, and, therefore, no judgment was rendered as to them.

[2] T.s.n., Session of Dec. 18, 1967, pp. 5, 7, 9 and 10.

[3] Ibid.

[4] Ibid., pp.10, 11 and 13.

[5] Ibid., pp. 13-14.

[6] Ibid., pp. 14-15.

[7] Ibid., p. 16. That the deceased recognized the two appellants was likewise testified to by another witness, Marina Valmonte. Cf. T.s.n., Session of Jan. 9, 1968, p. 5.

[8] Ibid., pp. 16 and 17. T.s.n. of Dec. 9, 1968, p.7.

[9] Ibid., pp. 17, 18 and 27. Ibid., pp. 4 and 7.

[10] Exh. A.

[11] T.s.n., Session of Dec. 18, 1967, p. 16.

[12] Ibid, p. 31.

[13] Ibid.

[14] United States vs. Lazaro, 34 Phil. 871. Cf. United States vs. Magtibay, 17 Phil. 417 (1910) and United States

vs. Briones, 28 Phil. 367 (1914).

[15] *Ibid.*, p. 878.

[16] 89 Phil. 337.

[17] *Ibid.*, p. 341. Cf. *People vs. Panopio*, 75 Phil. 767 (1946); *People vs. Jureidini*, 76 Phil. 219 (1946); *People vs. Ramos*, 77 Phil. 4 (1946); *People vs. Escosura*, 82 Phil. 41 (1948); *People vs. Lansanas*, 82 Phil. 193 (1948); *People vs. Bulatao*, 82 Phil. 753 (1949); *People vs. Orcullo*, 83 Phil. 787 (1949); *People vs. Ramos*, 84 Phil. 326 (1949); *People vs. Alupay*, 85 Phil. 688 (1950); *People vs. Piosca*, 86 Phil. 31 (1950); *People vs. Navea*, 87 Phil. 1 (1950); *People vs. Ubina*, 97 Phil. 515 (1955); *People vs. Jimenez*, 99 Phil. 285 (1956); *People vs. Paunil*, 103 Phil. 804 (1958); *People vs. Selfaison*, 110 Phil. 839 (1961); *People vs. Lumantas*, L-16383, May 30, 1962, 5 SCRA 157; *People vs. Ablog*, L-15310, Oct. 31, 1962, 6 SCRA 437; *People vs. Paz*, L-17320, May 31, 1965, 14 SCRA 132; *People vs. De Gracia*, L-21419, Sept. 29, 1966, 18 SCRA 197; *People vs. Hamtig*, L-27431, Aug. 22, 1969, 29 SCRA 14; *People vs. Bautista*, L-27638, Nov. 28, 1969, 30 SCRA 558; *People vs. Alcantara*, L-26867, June 30, 1970, 33 SCRA 812.

[18] T.s.n., Session of Jan. 9, 1968, p. 5.

[19] Cf. 5 Moran, *Comments on the Rules of Court*, 1970 edition, p. 360 (1971); *People vs. Ricaplaza*, L-25856, April 29, 1968, 23 SCRA 374.

[20] *People vs. Nartea*, 74 Phil. 8.

[21] *Ibid.*, p. 10.

[22] 26 Phil. 170.

[23] *Ibid.*, pp. 175-176. Cf. *People vs. Reyes*, 82 Phil. 563 (1949); *People vs. Alfaro*, 83 Phil. 85 (1949); *People vs. Avila*, 92 Phil. 805-(1953); *People vs. Alban*, L-15203, March 29, 1961, 1 SCRA 931; *People vs. Sampang*, L-15843, March 31, 1966, 16 SCRA 531; *People vs. Ner*, L-25504, July 31, 1969, 28 SCRA 1151; *People vs. Gundayao*, L-26240, Oct. 31, 1969, 30 SCRA 226; *People vs. Antonio*, L-25845, August 25, 1970, 34 SCRA 401; *People vs. Devaras*, L-25165, February 27, 1971, 37 SCRA 697,

[24] The counsel of record for appellants before the lower court, Atty. Reynaldo S. Reyes, likewise filed a brief for defendants-appellants wherein he disputed the admissibility as dying declaration of the above statement of the victim as to appellants being her aggressors, as among her assailants. With the proper characterization thereof as part of the *res gestae* there is no need to inquire further into such an objection. As noted by Chief Justice Avancena in *People vs. Reyes*: "But even if this statement is not deemed to be an *ante mortem* declaration, yet it was *res gestae*, since it was made immediately after the incident, when policeman Nicomedes went to the same place, and hence is also competent evidence to support conviction. Moreover, this statement was corroborated by Agustin Santiago's testimony before the justice of the peace of Malolos." *People vs. Reyes*, 52 Phil. 538, 542 (1928). Cf. *People vs. Diokno*, 63 Phil. 601 (1936).

[25] L-26731, June 30, 1971, 39 SCRA 618.

[26] *Ibid.*, pp. 624-625. *United States vs. Magcomot* is reported in 13 Phil. 386. The phraseology of "common and joint purpose and design" comes from *People vs. Abrina*, 102 Phil. 695 (1957). A variation thereof, "provides concert of criminal design" is found in *People vs. Magcamit*, L-25555, March 28, 1969, 27 SCRA 450. Another way of putting it, "united and concerted action" appears in *People vs. Castro*, L-17465, Aug. 31, 1964, 11 SCRA 699. The quotation from Chief Justice Bengzon is taken from *People vs. Villanueva*, L-12687, July 31, 1962, 5 SCRA 672. *United States vs. Maza* is in 5 Phil 346 (1905).

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