

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILLIAM LIM Y TUMALIUAN AND WILSON LIM Y TUMALIUAN,
DEFENDANTS-APPELLANTS.**

G.R. No. L-46890. November 29, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal of the defendants William Lim y Tumaliuan and Wilson Lim y Tumaliuan from the decision of the Circuit Criminal Court, First Judicial District, Ilagan, Isabela in Criminal Case No. CCC-1-46 Isabela (220) entitled "People of the Philippines vs. Victor Dayag y Turaray, William Lim y Tumaliuan and Wilson Lim y Tumaliuan", the dispositive part of which reads:

"WHEREFORE, the Court finds, after trial on the merits, the accused Victor Dayag y Turaray and William Lim y Tumaliuan GUILTY beyond reasonable doubt of the crime of Murder, qualified by treachery and penalized under Article 248 of the Revised Penal Code, as co-principals thereof, while the accused Wilson Lim y Tumaliuan is likewise found GUILTY beyond reasonable doubt as accomplice to said crime, and favorably appreciating the mitigating circumstance of voluntary surrender with respect to accused William Lim, and applying the benefits of the Indeterminate Sentence Law to him as well as accused Wilson Lim, hereby sentences them as follows: (1) the accused Victor Dayag to suffer the penalty of reclusion perpetua or life imprisonment; (2) the accused William Lim to suffer the indeterminate penalty of imprisonment for TEN (10) YEARS and ONE (1) DAY of prison mayor as the minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal as the maximum; (3) and the accused Wilson Lim to suffer the indeterminate penalty of imprisonment for FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prison correccional as the minimum to TEN (10) YEARS and ONE (1) DAY of prison mayor as the maximum; all of them to indemnify jointly and severally the heirs of the deceased Calixtro B. Cauan in the amount of P12,000.00 plus P18,000.00 as moral and exemplary damages, without subsidiary imprisonment in case of insolvency, and to pay proportionately the costs of this action.

The accused William Lim and Wilson Lim shall be credited with the benefits of Republic Act No. 6127, it appearing that they were under preventive imprisonment from September 20, 1971 to September 28, 1971 in the case of the former, and from January 28, 1972 to April 15, 1972 in the case of the latter.

SO ORDERED.

Given this 20th day of April, 1974, at Ilagan Isabela.

(SGD) ROMEO M. ESCAREAL

Judge"[1]

It does not appear that the defendant Victor Dayag y Turaray has appealed from the aforementioned decision.

Victor Dayag y Turaray, William Lim y Tumaliuan and Wilson Lim y Tumaliuan were charged with murder in the Court of First Instance of Isabela in the following:

"AMENDED INFORMATION

The undersigned Provincial Fiscal accuses VICTOR DAYAG Y TURARAY, WILLIAM LIM Y TUMALIUAN and WILSON LIM Y TUMALIUAN of the crime of MURDER, provided for and penalized under Article 248 of the Revised Penal Code, committed as follows:

That on or about the 29th day of July, 1970, in the municipality of Cabagan, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, together with Leticia Lim and Fred Nison, who are still at large, conspiring and confederating together and all helping one another, with evi-dent premeditation and treachery and in consideration of a prize, reward and/or promise, did then and there wil-fully, unlawfully and feloniously, with intent to kill, suddenly and unexpectedly and without giving him chance to defend himself, shoot with a 38 Caliber revolver one Calixtro Cauan, inflicting upon the latter a gunshot wound located on the mid-portion of the coronal region of the head (dome), bullet traversing almost perpendicu-larly downwards plowing thru the brain tissue and a superficial tangential gunshot wound at the base of the right fore-finger, inner aspect, which directly caused the death of said Calixtro Cauan due to failure of vital centers due to brain injuries.

CONTRARY TO LAW.

Ilagan, Isabela, July 12, 1972.

(SGD.) JOSEFINO C. DRACULAN

Provincial Fiscal"[2]

The case was later transferred to the Circuit Criminal Court at Ilagan, Isabela.

The defendants William Lim y Tumaliuan and Wilson Lim y Tumaliuan appealed to the Court of Appeals assigning the following errors:

"First Assignment of Error

THE LOWER COURT ERRED IN NOT GIVING WEIGHT AND CREDIT TO THE DEFENSE OF ALIBI INTER-POSED BY DEFENDANTS-APPELLANTS.

Second Assignment of Error

THE LOWER COURT ERRED IN GIVING TOO MUCH IF NOT FULL WEIGHT AND CREDIT TO THE EXTRA--JUDICIAL CONFESSION OF VICTOR DAYAG PARTICULARLY ON THE POR-TION THEREOF INCRIMINATING THE DEFENDANTS-APPELLANTS AND IN REJECTING HIS AFFIDAVIT OF RETRACTION AND STATEMENT OF AFFIRMANCE.

Third Assignment of Error

THE LOWER COURT ERRED IN NOT FINDING VICTOR DAYAG ALONE AS THE AUTHOR OF THE CRIME.

Fourth Assignment of Error

THE LOWER COURT ERRED IN NOT ACQUITTING THE DEFENDANTS?APPELLANTS."[3]

The Court of Appeals in a resolution promulgated on July 25, 1977, written by Justice Conrado M. Vasquez and concurred in by Justice Delfin Fl. Batasan and Justice Jose B. Jimenez certified the case to this Court in ac-cordance with Section 31 of the Judiciary Act 1948, as amended.

The Solicitor General adopted the following findings of fact of the trial court:

"On July 29, 1970, the Crystalline Theatre at Cabagan, Isabela, was showing a double feature. The first movie had Lopito in the starring role, while the second feature starred Dolphy. Among those who were in the theatre were Ex-Mayor Calixtro B. Cauan of San Pablo, Isabela, Mrs. Monserrat Masigan, Domingo Mallanao alias Domingo Apostol and accused Victor Dayag. (pp. 101-103, 1956-158, 215-216, 222-225, tsn, Miss Salvador; Exhibits '1-Dayag', '1-Lim' and '2-Lim', pp. 7, 9, 15, Records) 'San Pablo is the next town northward of Cabagan, while barrio Awitan, San Pablo, which is the residence of accused William Lim and Wilson Lim is the next bar-rio to the north of Centro, San Pablo, a distance of about 8-10 kilometers to Centro, Cabagan. From San Pablo going south along the national highway, one passes the towns of Cabagan, Tumauni, Ilagan, Naguilian and turning east on the provincial roads, the towns of Benito Soliven and San Mariano. After Naguilian proceeding southward on the national highway, one passes the towns of Reino Mercedes and then Cauayan. From San Pablo to Cauayan is a distance of almost 100 kilometers.' (pp. 237-239, 504, 512-513, tsn, Miss Salvador; pp. 210-211, 228, tsn, Mr. de Claro)

'On that fateful day, ex-mayor Cauan and Mrs. Masigan saw the first feature while sitting beside each other in the left side of the theater just near the main entrance. Mrs. Masigan saw accused Victor Dayag, who was then seated on a bench on the right side of the theater opposite them, fidgeting and staring uneasily often at her and Cauan.' (pp. 158-162, tsn, Miss Salvador; Exhibit '1-Dayag') 'Soon thereafter, someone called her and Cauan to play mahjong at the second floor of the theater, hence, Cauan went upstairs and played a round of 16 games. Mrs. Masigan followed after five minutes but did not play.' (pp. 162-164, tsn, id.; Exhibit '1-Dayag') 'Afterwards, they both went downstairs and Cauan took a bamboo armchair and sat on it at the lobby, while Mrs. Masigan went to her former seat. From there, she saw accused Dayag rise from his seat, go to the main door and look at Cauan and then at her. She went to the door and also looked outside. Then both returned to their seats. Cauan went inside and stood in front of Mrs. Masigan, who told him about Dayag's staring at him. When he asked her if she knew him, she replied that she did and that Dayag is from Sta. Maria. Cauan told her not to mind it, and he does not have an enemy. Cauan then went out and placed the armchair on the lobby facing the road, and conversed with Anastacia Sia, the theater owner, and one Mackly Palogan.' (pp. 164-169, 178, 180-181, 229-230, tsn, id.; Exhibit '1-Dayag')

'After the screening was over, Mrs. Masigan went out together with others in the audience and heard the sound of a door closing. She went to the kitchen beside the lobby and saw Dayag inside. She asked him what he was doing there and he said he would like to buy a coke, to which she told him that this was not a store. Dayag went out and she also returned to the stairs leading to the main door of the lobby.' (pp. 171-174, 182-183, tsn, id.; Exhibit '1-Dayag') 'She then saw Dayag draw a nickel plated gun from his waist, point it at the head of Cauan, who was then reclining in the armchair with his right and left hands spread on top of his head, and fire two shots at the latter. Mrs. Masigan shouted for help upon seeing Dayag run away to the north and seeing Cauan wounded. Immediately thereafter, she left for fear of her life and took a tricycle for her home in barrio Calamagui, San Pablo, which is the barrio between the poblaciones of Cabagan and San Pablo.' (pp. 174-177, 183-192, 196-197, 225-227, 235, tsn, id.; Exhibit '1-Dayag')

'The flight of accused Dayag after the shooting of Cauan had been witnessed by one Domingo Mallanao, who had returned to the theater at around 6:00 p.m. after taking a merienda at a bakery 100 meters from the theater. He had gone to see the movies at 2:00 p.m. and after the end of the second feature past 4:00 p.m. he had gone outside to take his merienda, since there was no canteen inside or near the theater. While inside and seeing the movie, he had sat beside accused Dayag whom he knew as a resident of Sta. Maria, Isabela, a town just across the Cagayan River, and across which river, Mallanao operates a ferry which Dayag uses in crossing over to Cabagan.' (pp. 76-78, 88-97, 107-110, 137, 210-214, 218, tsn, id.; Exhibit '1-Lim')

'Upon his return, he went inside to his former seat and met Dayag who was then going out. He was not yet seated when he heard two gun reports and so he went out to the lobby. He saw Cauan lying wounded on the bamboo armchair, and also saw Dayag with two companions, about 10 meters behind him running together to

the north. He identified the two companions of Dayag as the accused, brothers, William and Wilson Lim, whom he knew to be residents of barrio Awitan, San Pablo, Isabela, having stayed in the Lims' residence where there was a sound system for dancing. He chased the three but lost them near the church, so he returned to the theater, where he saw policemen already hear Cauan's body.' (pp. 79-83, 120-125, 128, tsn, id.; Exhibits '1-Lim' & '2-Lim')

'The flight of Dayag and his two companions was also witnessed by one Macario Bautista who was then going to the theater looking for his children. While at the corner of the road beside the Evergreen restaurant, he heard two gun reports and saw three persons running towards the north. They passed by the corner where he was and he saw them continue running eastward to-ward the direction of the church and the Alhambra warehouse.' (pp. 18-22, 24, 28, 31-34, 37, 40, 55-58, 64-66, tsn, Miss Camacho) 'He followed them and at his next corner, he saw Chief of Police Binag and a policeman running towards the direction taken by the three men. He shouted to the policemen and pointed to the fleeing figures. He also followed the policemen and joined in the chase but they lost track of the three men some-where between the Chinese cemetery and the municipal cemetery.' (pp. 22-27, 71-73, tsn. id.)

'Chief of Police Franco Binag was, at the time of the shooting, then in front of the Cabagan municipal building, giving instructions to his policemen. He heard gun reports coming from the direction of the town's commercial establishments, ran in that direc-tion and upon reaching a kiosk at the corner of the road, met one Arturo Palogan who shouted to him that 'he was shot and is already dead. Palogan pointed to the north and Chief of Police Binag with Pat. Taurino de la Rosa pro-ceeded in that direction' (pp. 248-255, 284-289, tsn, Miss Salvador; Exhibit 'C') where he met Macario Bautista who was shouting 'police, police' and also pointing to the three fleeing men going northwards.' (pp. 259-260, tsn. id.; Exhibit 'C') 'Binag recognized one of them as the accused Victor Dayag when the latter looked back-wards while running with a gun in his hand. He also noticed the physical build and appearance of Dayag's two companions as very simi-lar to those of the accused William Lim and Wilson Lim' (pp. 256-258, 261-265, 290--294, tsn, id.; Exhibit 'C').

'The chase reached as far as the Alhambra warehouse then to the cemeteries where the pursuers lost track of the ac-cused Dayag and his companions because of darkness. Some of the policemen returned to the theater while others remained to scour the area.' (pp. 265-268, tsn, id.; Exhibit 'C') 'At the lobby of the theater, Binag saw the victim lying dead in an armchair locally known as 'butaka'. Blood was oozing out of the back of the victim's head. Binag also noticed the grazing of a bul-let on the bookrest of the armchair and a chip on the cement floor.' (pp. 269-272, tsn, id.; Exhibit 'C'). 'He then called for a photographer, Fr. Balisi of the Balisi studio, who took a photograph of the victim, and also called for the municipal health officer of Cabagan, Dr. Tercial Ramirez, who examined the victim while still at the lobby.' (pp. 36, 43-44, 272-275, tsn, id.; Exhibits 'C' and 'D'). 'When Binag interviewed the persons around the scene, including the owners of the theater, nobody wanted to cooperate or reveal what they had wit-nessed because they were afraid.' (pp. 305, 308-309, 310, 275-277, tsn, id.; Ex-hibit 'C') 'It was only around October, 1970, when Chief Binag was able to get the sworn statements of Domingo Mallanao and Mrs. Monserrat Masigan on the basis of which he filed the corres-ponding criminal complaint against Victor Dayag and two John Does.' (pp. 277-279, 299, 302-304, tsn, id.; Exhibits 'C', '1-Lim', '1-Dayag')

Dr. Tercial Ramirez, after conducting a post-mortem examination of the victim at the lobby of the theater, also went to make another examination at the victim's residence the next morning where it lay in state to be sure of his findings, which he then prepared in a post-mortem examination report dated Aug. 3, 1970.' (Exh. 'A'; pp. 36, 43, 46, 63-64, tsn, id.) 'According to him, he found the following injury on the victim, to wit:

INJURIES FOUND:

1. A gunshot wound of medium caliber 1/3 of an inch in diameter at its point of entrance, located on the mid-portion of the coronal region of the head (dome), the bullet traversing almost perpendicularly downwards plowing thru the brain tissues to a depth of 5 inches.

2. A superficial tangential gunshot wound of about 1" at the base of the right fore-finger, inner aspect.

CONCLUSION, Cause of Death:

Death was almost instantaneous, due to failure of vital centers due to brain injury.' (Exhi-bits 'A' and 'B'; pp. 46-52, tsn, id.)

(pp. 583-589, Records)"[4]

The appellants contend that they had no participation in the offense charged; that they did not induce the accused Victor Dayag to kill Calixtro B. Cauan; and that they "were never present at the scene of the crime and on the time and date when the same was perpetrated." [5] The appellants claimed that both of them stayed at the house of Cauayan Municipal Judge Dominador Mendoza from 6:30 o'clock in the afternoon of July 28, 1970 until 7:00 o'clock in the morning of July 30, 1970. [6]

The only evidence of the prosecution on the alleged participation of the appellants is the testimony on cross-examination of the accused Victor Dayag that the brothers Wilson Lim and William Lim broached to said Dayag the idea of killing Calixtro B. Cauan for P3,000.00; that in addition Dayag was promised the hand in marriage of Leticia Lim, the appellants' sister; that Dayag actually received only P300.00; and that on July 29, 1970 Dayag and the two appellants went inside the Crystallyne theater where Calixtro B. Cauan was shot by Dayag.

The accused Victor Dayag is not a credible witness. He executed three statements admitting that he killed Calixtro B. Cauan. Dayag also executed three different statements repudiating his three extrajudicial confessions.

The testimony of Dayag that the appellants went inside the Crystallyne Theater on July 29, 1970 was not corroborated by the evidence of the prosecution. Not one of the witnesses of the prosecution declared having seen the appellants inside the said theater at the time Calixtro B. Cauan was shot by Dayag. Indeed, the trial court found that "Among those who were in the theater were ex-mayor Calixtro B. Cauan of San Pablo, Isabela, Mrs. Mon-serrat Masigan, Domingo Mallanao alias Domingo Apostol and accused Victor Dayag," [7] The appellants were not mentioned as among those inside the Crystallyne theater. The witnesses for the prosecution could not have failed to see the appellants if said appellants were inside the theater.

The appellants were only seen running together with Victor Dayag by Domingo Mallanao and Macario Bautista, both witnesses for the prosecution.

There is no reason why the appellants should run away from the scene of the shooting if, according to the theory of the prosecution, they did not participate in the killing of Calixtro B. Cauan. The evidence of the prosecution is that the appellants are co-principals by inducement. At the time of the actual shooting no person had reason to suspect the appellants to have induced the shooting. Hence there was no need for said appellants to run away immediately after Dayag had shot Cauan.

The appellants have adduced evidence that they were in the house of Cauayan Judge Dominador Mendoza in Cauayan at the time that Dayag shot Cauan in the Crystallyne theater in Cabagan.

Although alibi is known to be the weakest of all defenses for it is easy to concoct and difficult to disprove, nevertheless, where the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not the accused committed the crime charged, the defense of alibi assumes importance. [8]

Thus in the case of *People vs. Fraga, et al.*, [9] this Court held that:

"x x x an accused cannot be convicted on the basis of evidence which, independently of his alibi, is weak,

uncorroborated, and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong."

In view of the foregoing, it is clear that the evidence for the prosecution against the appellants William Lim and Wilson Lim is weak and unsatisfactory to justify a finding of guilt as against them.

WHEREFORE, the decision appealed from is hereby reversed as to the appellants who are acquitted on reasonable doubt, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.

[1] Decision, pp. 74-76, Rollo, p. 16.

[2] Rollo, p. 4.

[3] Brief for Defendants-Appellants, p. 18, p. 26, p. 38 and p. 42, Rollo, p. 26.

[4] Brief for the Appellee, pp. 5-13, Rollo, p. 31.

[5] Appellants' brief, p. 19, Rollo, p. 26.

[6] Ibid., pp. 11-12, Rollo, p. 26.

[7] Decision, p. 13, Rollo, p. 16.

[8] People vs. Bulawin, 29 SCRA 710; People vs. Omega, 76 SCRA, 262, 270.

[9] 109 Phil. 241, 250.

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