

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
OLIVER S. TAJON, DEFENDANT-APPELLANT.***G.R. No. L-47067. April 17, 1984*

Ponente: RELOVA, J.

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This is an automatic review of the decision dated August 19, 1977 of the then Court of First Instance of Ilocos Norte in Criminal Case No. 78-IV imposing the death penalty on Oliver S. Tajon and ordering him to indemnify the heirs of Exequiel Lucero in the sum of P12,000.00, plus the amount of P1,591.00 representing mortuary and funeral expenses, and to pay the costs.

The evidence of the prosecution shows that about 6:30 in the evening of October 27, 1971, Exequiel Lucero, Roman Balgos, Romeo Balgos and Primo Campos were standing at the junction of the municipal road, barrio No. 1, Canaan, Badoc, Ilocos Norte. Accused Oliver S. Tajon, armed with a short firearm approached Exequiel Lucero and without saying a word, suddenly grabbed the collar of Lucero's shirt and immediately shot him on the forehead, left breast and left arm in rapid succession. Tajon, at the time was accompanied by Pepito Ladera and Romeo Corpuz who were armed with a short and a long firearm, respectively.

Peace officers Alfredo Cala and Patrolman Godofredo Rañon arrived upon being summoned and they saw the victim, Exequiel Lucero, prostrate on the ground still breathing. Near his body were three (3) empty shells of a .32 caliber firearm. However, when asked who his assailant was, Lucero could not talk and was unable to answer the query of Sgt. Cala. With the help of some people around, the victim was brought to the clinic of Dr. Amador Corpuz who, after conducting a preliminary examination, caused his transfer to the adjoining town of Sinait, Ilocos Sur. He was dead upon arrival at the bigger clinic of Dr. Corpuz. Autopsy report shows that Exequiel Lucero suffered the following:

- "1. Wound, gunshot, through and through, entrance .6 x .6 cm; 6.5 cm above the eyebrow, 4 cm. to the sagittal line of the head, left side.
2. Wound, gunshot, through and through, entrance .6 x .6 cm., 5 cm above the cubital fossa of the elbow on the antero lateral aspect of the forearm, left side.
3. Wound, gunshot, through and through, exit of wound No. 2, .6 x .6 cm., 6 cm above the cubital fossa of the elbow on medial aspect of the forearm, left side.
4. Wound, gunshot, through and through, exit of wound No. 1, 1 x 1.5 cm., 4.5 cm below vault of the skull just on the sagittal line, left side.
5. Wound, gunshot, re-entrance of wound No. 2, .6 x .6 cm., 1.5 cm behind the entero-axillary line, between the 7th and 8th rib. 12.5 cm below armpit, left side." (p. 4, Appellee's Brief)

Dr. Arzadon testified that Exequiel Lucero's death was due to hemorrhage as a result of gunshot wounds.

Further, evidence shows that on October 24, 1971 or three (3) days before the incident, Lucero, nephew and political campaigner of Benjamin Coloma who was running against incumbent Mayor Angel Bautista of Badoc, Ilocos Norte was threatened by accused Oliver S. Tajon, bodyguard and political follower of Mayor Bautista.

Defense evidence is alibi. Tajon denied being the assailant of Lucero, his childhood mate, because about 6:30 in the evening of October 27, 1971 he was at Badoc Municipal Building calling for Atty. Gines via the police radio communication network. His uncle Abundio Gines was with him and he even saw Pat. Godofredo Rañon, Jr. in front of the municipal building on his way to fetch Sgt. Alfredo Cala to tell the latter about the shooting of Exequiel Lucero. The two, Pat. Rañon and Sgt. Cala went to the municipal building first before they left for the scene of the crime. He denied the truth of the testimonies of Roman Balgos and Romeo Balgos that he held the collar of the shirt of Lucero before the latter was shot and claimed that mayoralty candidate Benjamin Coloma directed Roman and Romeo Balgos to point him out as the assailant. Finally, he denied having seen, much less met Exequiel Lucero that evening of October 27, 1971.

The trial court, in convicting appellant Oliver S. Tajon of the crime of murder, said -

"x x x [T]his Court is inclined to believe the version of the People to be the truth, for the State's witnesses testified in clear, straightforward, positive and convincing manner regarding the audacious shooting to death (like a public execution and in the presence of his teenager companions Primo, Roman and Romeo) of the late Exequiel Lucero at the cross-roads that unfortunate evening of Oct. 27, 1971, some 300 meters away from the Badoc Municipal Hall. No convincing motive was shown by the defense why eye-witnesses Roman Balgos and Romeo Balgos would testify falsely against accused imputing to him the heinous crime of snuffing the life of an 18-year old boy and in a treacherous manner. That victim, Roman and Romeo, were living in the same house and are relatives are not questioned, but this fact does not prevent the court in having reliance in their testimonies as they are very credible witnesses. Their narration of the execution of Exequiel by herein accused impudently made in their presence, the suddenness of the act electrifying them into immobility like voiceless ciphers, were immediately relayed, first to their relatives and then to the authorities and without any delay; hence, no time to concoct their story to suit State's interest. Their statements partake of the nature of Res Gestae explaining the facts in issue, for they are sufficiently contemporaneous with the act that they accompany and explain (Topacio vs. Paredes, 23 Phil. 255); that the account of the instant killing is the offspring of the facts speaking through the party talking about the facts, when the human mind taken aback by the suddenness of the event has automatically expressed itself through the tongue and neither had the opportunity to fabricate (People vs. Umblas, 5 C.A.R. (2s) 1234). On the other hand, herein accused cannot be relied upon as a believable witness because his version contradicts that of his corroborating witness Jaime Calaycay. For instance, while Jaime claims that Pepito Ladera was also with them, herein accused insists that said Ladera was not with them at the POLCOM in the office of the Badoc Police Chief; while Jaime states that he was called by Abundio Gines to his house and on the way he saw accused about 6 P.M., October 27, 1971, in front of the house of Mayor Angel Bautista just across the street, accused on the other hand says that said Jaime arrived at Abundio's house where he (accused) also stays at 3:00 that afternoon; that while they negotiated walking the some 300 meters distance from Abundio's house to the municipal building for about ten (10) minutes, accused Oliver asserts that it took them to walk that distance of about a kilometer from house to municipal building one and a half (1½ ) hours; that while accused testified that Abundio wanted to send message to one Noling Gines in Dingras, Ilocos Norte, Jaime's version was that Abundio wanted to have contact with Atty. Manoling Corrales at Dingras, and about a fighting cock they wanted to match in the cockpit. Incidentally, Exh. 'I-1' of the Dingras POLCOM Log Book contains the message 'Come Badoc on Sunday. This is very urgent.' The matter about the fighting cock is not at all mentioned. Besides, this corroborating witness (Jaime) is also a biased witness considering that the father of accused's wife Delia and the former's are brothers. Jaime's declaration therefore, cannot be given credence, as he is a close relative and as such is naturally inclined to give the testimony confirming accused's assertions. These contradictions above-referred to by the way are on material points; it being so, they cannot be relied upon. As a rule, a witness

may be said to be a biased one when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements or to suppress or prevent the truth or to state that is false (PP. vs. Watin, 67 O.G. 590). Another rule, is that contradictions in the testimony of witness may render his testimony worthless (Mondragon vs. CA, et al., Dec. 1974, S.C.D., page 224 and other cases too numerous to cite). Applying the above precepts, the Court cannot find reliance on Jaime and accused, for their versions are based on contradictions and vacillation. The defense of Alibi must be convincing and to the satisfaction of the Court and not based on 'contradictions' and 'vacillations' as in the instant case." (pp. 95-97, Rollo)

Appellant's defense is untenable in its transparent flimsiness and weak character. The clear and convincing evidence of the prosecution on the felonious shooting perpetrated by accused-appellant Oliver S. Tajon may be taken as conclusive. His guilt has been established beyond reasonable doubt. Roman Balgos testified on the identity of accused appellant Tajon, as follows:

"FISCAL -

Q If Oliver Tajon is here now, will you point to him?

A Witness pointing to Oliver Tajon who is in the courtroom.

x x x x x x x x

FISCAL -

Q How did Oliver Tajon kill Exequiel Lucero?

A We were standing together and this Oliver Tajon came near us and grabbed the collar of Exequiel Lucero, sir.

Q And then what did he do when Oliver Tajon grabbed the front collar of the shirt of Exequiel Lucero?

A He immediately shot at him, sir.

COURT -

Q About what time?

A Maybe 6:30, your Honor.

COURT -

Proceed.

FISCAL -

Q And where were you at the time?

A We were at the crossing, sir.

COURT -

Q How far were you from Lucero?

A Maybe one (1) meter, your Honor. (Witness pointing the distance from the witness stand to the ash tray).

Q Was there any conversation between the two before Lucero was shot by Oliver Tajon?

A None, your Honor." (pp. 4, 6-7, tsn., April 3, 1973 hearing)

Likewise, Romeo Balgos declared:

"Q Who were your companions?

A Exequiel Lucero and Roman Balgos, sir.

Q When you were there at that crossing, that you are referring to, do you know of any unusual incident that occurred?

A There was, sir.

Q What was that about, will you relate to the Honorable Court?

A That was when Oliver Tajon shot Exequiel Lucero, sir.

Q With what did Oliver Tajon shoot Exequiel Lucero?

A A short firearm, sir.

FISCAL -

Q Have you seen Oliver Tajon shoot Exequiel Lucero?

A Yes, sir.

Q Where were you at the time Oliver Tajon shot Exequiel Lucero?

A I was behind Exequiel Lucero, sir.

Q How far were you?

A More or less one (1) meter, sir.

Q And where was Oliver Tajon in relation to Exequiel Lucero when he shot him?

A At the time, we met Oliver Tajon, this Oliver Tajon went around us and he faced Exequiel Lucero and grabbed his collar and then shot him, sir.

Q And what did you do?

COURT -

Q What happened to Exquiell Lucero?

WITNESS -

He was shot, sir.

FISCAL -

Q What part of his body was hit, if you know?

A His head, sir.

Q And after that, what happened?

A By the first shot, I ran away, sir.

COURT -

Q Why, how many shots were there?

A Four (4) times, your Honor." (tsn., pp. 85-87)

On the other hand, defense evidence of alibi is the weakest of all the defenses in view of the ease with which it is concocted; it cannot prevail over the positive identification of appellant by the prosecution witnesses.

The crime committed by appellant Tajon is murder, qualified by treachery as alleged in the information. There was treachery because appellant made a deliberate surprise and unexpected assault on Exequiel Lucero. When appellant emerged from the dark, rushed in front of his victim, suddenly grabbed his collar and shot his forehead, left breast and left arm in rapid succession, Lucero was completely unaware of what would happen to him. Stated differently, the victim was caught flatfooted and was not in a position to put up a defense against the unforeseen assault upon him. The fact that the attack was frontal does not negate the presence of alevosia considering that the victim was shot in a defenseless situation.

We agree with the submission of the Solicitor General that the prosecution has failed to show that evident premeditation was present. The affidavit of the victim made three days before the incident purports to show that it was Pepito Ladera who actually threatened him and it is noteworthy that Ladera was not held responsible for the death of Lucero. This lack in evidence for the prosecution precludes the finding that evident premeditation was proved beyond reasonable doubt.

Likewise, We are in accord with the stand of the Solicitor General that the lower court erred in treating the circumstance of abuse of superior strength as a separate and distinct aggravating circumstance because it is deemed absorbed in the qualifying circumstance of treachery and is inherent in the same. For superior strength to aggravate a crime, it must be clearly shown that there was deliberate intent to take advantage of it (People vs. Bello 10 SCRA 298). Further, abuse of superior strength is absorbed by alevosia or treachery (People vs. Layson, 30 SCRA 92)

ACCORDINGLY, the judgment of the trial court is modified in the sense that appellant Oliver S. Tajon is sentenced to reclusion perpetua and is ordered to pay the heirs of Exequiel Lucero in the sum of P30,000.00 as indemnity, plus the amount of P1,591.00 representing mortuary and funeral expenses, and to pay the costs.

**SO ORDERED.**

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., and De la Fuente, JJ., concur.

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