

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SERGIO VALDEZ, ET AL., DEFENDANTS. SERGIO VALDEZ,
DEFENDANT AND APPELLANT.**

G.R. No. L-5177. March 28, 1953

Ponente: REYES, J.

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REYES, J.:

At about 8:30 o'clock in the evening of October 20, 1950, the now deceased Primitivo Adel was attacked by five men with knives, a bolo and a piece of Wood near his house in barrio Nato, municipality of Taft Samar, sustaining serious wounds in the back and in the abdomen and other wounds and bruises in other parts of the body from which he died a few hours thereafter.

Identified as the assailants, Sergio Valdez, his son Ambrosio Valdez, and the brothers Zosimo Balibat, Ambrosio Balibat and Ogun Balibat were prosecuted for murder in the Court of First Instance of Samar, and having been found guilty as charged, they were all sentenced to reclusion perpetua, with the accessory penalties prescribed by law, and to pay an indemnity of P5,000.00 and the costs. From this sentence only Sergio Valdez has appealed.

There is no disputing the fact that the deceased was attacked and killed by several men. Motive for the attack was some property dispute between the deceased and the Balibats and resentment of the Valdezes towards the deceased growing out of a case of carabao stealing. The only thing to be determined is whether the appellant participated in the attack.

Denying participation in the crime, the appellant testified that at the time of its perpetration, that is, on the night of October 20, 1950, he was in the distant barrio of Hilabaan, having passed the night there in the house of his overseer, Vicente Tejero. But, although appellant's testimony on this point was corroborated by Tejero, the alibi was weakened by the latter's admission that he knew the date to be October 20 because he was "taught" by his wife before going to court. Moreover, Nicolas Lopinia, the ferryman at the Canavid river, testified that at about 11 o'clock on the night of the murder he ferried the appellant across the river on his way to his plantation in Hilabaan.

On the other hand, appellant was named by the deceased as one of his assailants and positively identified by the deceased's wife, Valeriana Ademos, who, coming to the scene of the crime in answer to her husband's call for help, at a distance of less than two meters saw appellant and his companions attacking the deceased with bolo and knives but running away upon her arrival. Appellant was also identified by Estanislado Ademos, who being at the time in the house of the deceased and looking out of the window when he called for help, saw him surrounded by appellant and his co-accused. Between them and this witness the distance was only seven meters. Furthermore, Canesia Chicano, who lived in another house, also saw appellant that same night as he and his son Ambrosio Valdez passed by about 3-½ meters from her, running towards their house some 50 meters away after leaving the scene of the crime.

Though the defense questions the testimony of the three women above named, especially that of Estanislado

Ademos, who could not read without glasses, we find no sufficient reason for doubting their veracity. Recognition of the appellant by them was not improbable, considering that there was a bright moon that night and they knew appellant well and saw him at close range. Their testimony not being incredible, is not to be denied credence just because they were in one way or another related to the deceased.

Appellant complains that the trial court took into account an alleged statement made by Ambrosio Balibat on the witness stand to the effect that Ambrosio Valdez has told him that he and Sergio Valdez had killed the deceased when it does not appear that Ambrosio Balibat has testified as a witness. Although the transcript of stenographic notes forwarded to this Court does not include the testimony of this witness, the minutes of the session held on January 23, 1951, do show that he had in fact testified in the case. In any event, even without the statement attributed to him by the trial court, there is sufficient evidence in the record to sustain the conviction below.

Wherefore, the judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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