

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN AYONAYON AND GASPAR ACERADOR, DEFENDANTS-APPELLANTS.*G.R. No. L-16664. March 30, 1962*

Ponente: LABRADOR, J.

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This is an appeal from a decision of the Court of First Instance of Ilocos Sur, Hon. Felix Q. Antonio, presiding, finding Juan Ayonayon and Gaspar Acerador guilty of murder, for killing of Florentino Lazo and Jose Lazo and, frustrated murder, for the wounding of Genoveva Lazo, and sentencing each of them to death for the crime of murder, and to an indeterminate penalty of from 8 years of prison mayor as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum, for the frustrated murder, with the proper indemnities and the accessories of the law, and to pay each his proportional part of the costs.

The evidence for the prosecution shows that on August 5, 1959, while Florentino Lazo and members of his family, namely, his wife, Juana Resuello, his children, Jose Lazo, 25 years, Pergentino Lazo, 17 years, Genoveva Lazo, 21 years, Samuel Lazo, 7 years, and Juan Lazo, 12 years, were taking their supper around a low table in the bamboo kitchen of their house at barrio Namalpalan, Municipality of Magsingal, Ilocos Sur, their two dogs suddenly started barking and running to and fro, below and near the house. Genoveva Lazo called the attention of her father to the unusual behavior of the dogs and commented that there must be some persons on the ground. So she stood up and peeped thru the window of the kitchen and saw a man dressed in dark green fatigue clothes, standing on the ground on the opposite end of the kitchen, peeping at the southwestern part thereof in a semi-stooping position, with his gun pointed thru the corner of the kitchen. The kitchen door was about four feet eight inches from the ground. The wall of the kitchen was made of bamboo split and flattened as in "sawali". She heard a burst of gunfire (parac-pac-pac) and she felt that she was hit on her left shoulder. She fell to the floor of the kitchen wounded, and lying flat on the floor hid herself near the stove.

With the first burst of the gunfire Jose Lazo was also hit and he fell dead on the floor of the kitchen. Pergentino Lazo, upon observing the gunfire and what had happened to his brother and sister, he promptly ran away from the kitchen, crossing the bataan that separated the kitchen from the sala, and to the sala towards a side beside a wardrobe. Here, behind the wardrobe, he hid himself. From this position, behind the wardrobe, he heard gunfire from the bataan near the stairs of the house, and as he directed his eyes to the place where the gunfire came from, he saw through the opening of the window just above the stairs, the accused Juan Ayonayon and his companion, the other accused Gaspar Acerador. From the top of the stairs, the accused fired at his father who had run to the sala, but who fell down on the other side opposite the wardrobe.

Juana Resuello, got her two minor sons in her arms, Juan and Samuel, and tried to run away from the kitchen also. It so happened, however, that her husband Florentino was already ahead of her and was already crossing the bataan that separated the kitchen from the sala, running to escape from the gunfire.

As she was about to cross the bataan to the sala, she saw towards the left the two accused Juan Ayonayon and

Gaspar Acerador. At that time, Ayonayon was already on top of the stairs, while his companion was on the last rung of the stairs.

The prosecution also proved that, that same evening, upon receipt of news of the murders in the barrio of Namalpalan, a group of Constabulary soldiers stationed in the poblacion, together with the municipal health officer and others, went to the scene of the murders. The soldiers found .30-caliber empty shells on the ground near the kitchen, also on the batalan above the stairs. They also found that the walls of the kitchen and a wall of the sala was pierced by bullet holes. The dead body of Florentino Lazo was found lying on the floor of the sala, and that of Jose Lazo also in the kitchen, both of them riddled with bullets. Genoveva Lazo was found near the stove. Pergentino Lazo, upon being questioned by the Constabulary sergeant, gave details of the incident, also already described by the witnesses for the prosecution, and pointed to the two accused herein as the ones responsible for the assault.

It is also shown that paraffin casts were taken of the hands of both accused and the casts, upon examination in the National Bureau of Investigation, had positive traces of nitrate.

Various slugs were extracted from the body of the deceased Jose Lazo and another was also extracted from that of Genoveva Lazo, and these, upon examination, were found to have been fired from a semi-automatic or an automatic .30-caliber carbine, from the same gun firing the empty shells.

It was further shown that upon learning who the assailants were, as per information by Pergentino Lazo, two soldiers went to the house of accused Gaspar Acerador. He was not in his house and as he was then wearing undershirt and drawers, he had to be taken to his house so he could put on his clothes, before being brought to town for examination. The constabulary men who accompanied him to his house saw that a green fatigue suit and poncho were hanging on the wall. On the other hand, Juan Ayonayon was arrested by a Constabulary captain and his company that same evening in the house of Marcelino Uberita in Santo Domingo, about seven kilometers from Magsingal.

As possible motive for the crime, it was shown that accused Gaspar Acerador had been accused of the murder of Pablo Resuello, the brother of Juana Resuello, wife of Florentino Lazo, the deceased. On the other hand, Florentino Lazo used to drive a carromata where Hipolito Peralta, who was accused of the murder of a relative of a cousin of Ayonayon, usually rode in going to court. While nobody could testify as to the motive of the murder, it is apparent from these circumstances that enmity must have existed between Florentino Lazo and his wife Juana Resuello on one hand, and the accused Gaspar Acerador and Juan Ayonayon, on the other.

The defenses presented by the accused are alibis testified to by their respective relatives. Juan Ayonayon stated that at about 6:00 o'clock in the evening of the day in question, he was in the house of his cousin Engineer Uberita in Santo Domingo, with whom he was living then. But the barrio of Santo Domingo is only seven kilometers from the house of the Lazos, the victims, and he could easily have gone from his place of residence to the house of the Lazos in 10 minutes by jeepney. For his part, Acerador was living in a barrio of Panay, which is only a kilometer away from the scene of the crime. The fact, therefore, that the relatives of the accused stated that they were in their respective houses around 6:00 o'clock in the evening of the day of the crime, does not discount the possibility that the accused themselves had actually gone to the house of their victims at about the time of 6:00 o'clock in the evening. It must be noted that the time given was merely a calculation, and what may have been considered by one witness as six o'clock may actually have been 5:30, etc. So that the defenses of alibis appear to us as of very little weight or value, especially in view of the fact that the witnesses for the prosecution clearly identified the accused, such identification being positive and immediate because given as soon as the officers of the Constabulary arrive.

We will now proceed to the principal issue, namely, whether the three witnesses who testified to having identified the accused were really in a position to and did actually identify them. The first witness was Genoveva Lazo who said that she peeped out of the window and saw the face and figure of a man who later she identified as Gaspar Acerador. The description that she gave at the trial coincides with the physical features that the court saw in the person of the said accused at the time of the trial. Gaspar Acerador was also identified by the wife of the deceased, Juana Resuello, who declared that Acerador was seen by her on the last rung of the stairs leading to their batalan. Pergentino Lazo also identified both accused when, looking thru the window near the stairs, he saw them firing their guns at the deceased Florentino Lazo.

With respect to Juan Ayonayon, his identification by Juana Resuello is beyond question. As Juana was going to cross the batalan, she saw Juan Ayonayon already on the batalan and was about to speak to him. He, Ayonayon, was known to her, consequently, the identification was prompt and immediate. It is a fact that when one meets a person known to him, identification takes place at first sight, so the testimony of Juana Resuello that she identified Ayonayon, who was known to her, should be accepted. The same fact of identification is true as to the other accused Gaspar Acerador, also known to Juana Resuello.

As to the testimony of Pergentino Lazo, which testimony is being attacked, it is to be noted that he saw the two accused while the latter were already on the batalan. From the diagram of the house. We note that place where the accused were standing, while firing at the deceased Florentino Lazo, was visible through a window from the place beside the aparador where Pergentino Lazo had stationed himself. But the fact that Pergentino Lazo, when the officers came in the same evening, declared to the Constabulary officers that the assailants were Ayonayon and Acerador, this readiness, shows that he was able to positively identify them at the time of the assault, the accused being known to him.

Counsel for Acerador argues that since at the time of the assault, which was 6:00 o'clock in the evening, it was already dark, the accused could not have been identified by Genoveva Lazo, Juana Resuello or Pergentino Lazo. We checked the time when the sun set on August 5, 1959 and We have been informed that the sun set on that date at about 6:38 in the evening, which shows that at 6:00 o'clock, the surroundings of the house where the victims were shot, were not yet dark. The use of a kerosene lamp inside a house does not mean that, outside the house, where the assailants were seen, was also dark. The inside of a house is necessarily darker than the outside; so the use of a kerosene lamp while the inmates are taking supper, does not mean that persons outside cannot be identified from within the house.

Capital is made of the fact that the witness Genoveva Lazo said that during the day there were stars. She did not say that during the daytime there were stars; she must have meant that during the time when the assault was made there were stars in the sky at night. Besides we take judicial notice of the fact that while it is true that the month of August is characterized by showers or rains, they generally are passing showers and rains, after which the atmosphere becomes clear.

But as the most compelling reason why the witnesses for the prosecution must be believed as to the identification of the accused by them, is the fact that they had no cause or reason to charge or point out the accused as the ones responsible for the offense, there being no strong reason why they should violate their oaths and declare falsely.

After a review of all the evidence, We are convinced that the two accused were really the ones who assaulted and fired at Genoveva, Florentino and Jose Lazo, and killed Morentino Lazo and Jose Lazo, and that their guilt has been proved beyond reasonable doubt. The penalty that was imposed by the lower court is that of death for the murders of Florentino Lazo and Jose Lazo. There is no question that the murders were committed with the qualifying circumstance of evident premeditation and with the aggravating circumstances of treachery and

dwelling of the offended party. But while the penalty imposed appears justified by the aggravating circumstances, there is no sufficient number of votes to affirm the penalty of death for the reason that it does not appear from the evidence that the accused-appellants were so perverse as to deserve the supreme penalty. Hence, no sufficient number of Justices voted to affirm the imposition of the death penalty.

WHEREFORE, the decision appealed from is hereby modified by imposing upon each of the accused-appellants the penalty of reclusion perpetua for the murder of Florentino Lazo and Jose Lazo, but the judgment is hereby affirmed in all other respects. The judgment and sentence imposed upon them for the wounding of Genoveva Lazo is affirmed, with costs against accused-appellants. So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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