

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PAULINO FRANCISCO, DEFENDANT AND APPELLANT.***G.R. No. L-5900. May 14, 1954*

Ponente: MONTEMAYOR, J.

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Paulino Francisco is appealing from a decision of the Court of First Instance of Masbate finding him guilty of double murder and physical injuries, and sentencing him to reclusion perpetua, to indemnify the offended parties for the death of Ema and Elsa, both surnamed Medina in the amount of P3,000 each, and to pay the costs.

On April 2, 1951, Balbino Solana and his wife Sabina Villa were living in the barrio of Morocborocan, Uson, Masbate, atop a hill in a small house of light materials with no partitions inside, and with only one window and a door. The floor was scarcely a yard above the ground. Living with them were their two children Rodrigo and Pernito, 13 and 7 years old, respectively, and their grand-children Elsa and Ema Medina, aged 9 and 6 years. Sabina ran a small store where she sold petroleum, cigarettes, soap and bread, and for this purpose she had a shelf where her merchandise were kept. On the evening of that day between 8 and 9 although her husband and the children were already asleep, Sabina was still awake, smoking and sitting inside the house, about two meters away from the half-open door, presumably to accommodate late customers. Hanging from the rafters was a petromax lamp according to Sabina, burning brightly. From the barking of their dogs she suspected that somebody was approaching the house and she peeped through the opening of the door. By the light of the petromax lamp she saw the defendant Paulino Francisco whom the family had known for a long time; wearing trousers of a dark color but naked from the waist up. He was holding a stick of dynamite with the wick already lighted and was in the act of throwing the explosive into the house which he in fact did despite the frantic protest of the housewife. During those days fishing with dynamite was not unusual among fishermen in the locality, and it is to be presumed that Sabina was not unacquainted with the destructive nature of dynamite. She tried to catch the explosive as it was hurled thru the door, with the intention presumably of throwing it back outside of her house but she failed, and it landed against the shelf, bounded to the very spot where the children and her husband were sleeping, causing a tremendous explosion that completely demolished their small dwelling. Sabina was violently thrown outside the house and she lost consciousness, but on coming to, she shouted for help particularly calling to her neighbor Pablo Languido, asking him to bring light because they had been blasted by Picu (nickname of Paulino Francisco). With a light Pablo with his wife, found the house of Sabina completely destroyed, the two grandchildren Elsa and Ema dead, and her husband Balbino and their two children Rodrigo and Pernito seriously injured, suffering from shock and multiple first and second degree burns, Balbino still unconscious. Upon Pablo's arrival Sabina repeated to him that appellant had blasted their house with dynamite. After first aid was rendered to the injured, Sabina asked Pablo to notify the authorities. Pablo notified the lieutenant of the barrio and the two hastened to the poblacion which is only about 3 kilometers away. Upon being informed of what had happened, Chief of Police Santos Ondevilla with three of his policemen proceeded to the scene of the blast accompanied by Pablo and the lieutenant of the barrio. Sabina recounted to him what had happened, emphasizing the fact that it was the defendant who caused the explosion. Still partially deaf because of the blast she was talking in quite a loud voice and one of the

policemen cautioned her not to speak so loud particularly in her accusation against appellant because he might still be near and may cause further harm to her and her family. Balbino, the husband, had recovered consciousness by then, but conversation with him was impossible because he could not hear.

The victims of the blast including the two dead grandchildren were taken to the poblacion that same evening and Chief of Police Ondevilla sent his three policemen to apprehend the defendant who was living in the sitio of Miaga about a kilometer away. After some delay and rest, with the aid of a guide, the three peace officers repaired to the house of the defendant where they arrived about three o'clock the next morning. As they approached his house and from a distance of about ten meters therefrom, they heard him and his wife conversing although the conversation was not sufficiently distinct for them to understand it. One of the policemen called out the name of Paulino Francisco and after the second call, his wife Felicidad Ampuan came down and upon meeting and recognizing one of the policemen named Andres, she called to her husband and said: "Andy (Andres) is here." Later appellant came out of the house still wearing trousers with a dark color and still naked from the waist up but with a shirt thrown over his shoulder. The policemen searched him for weapons and told him that the Chief of Police wanted him for questioning, and he voluntarily and meekly went with the policemen without even inquiring why he was wanted by the Chief of Police. It remained for his wife who accompanied him to ask the policemen why her husband was being taken to the poblacion.

Going back to the explosion, particularly the time it took place, and shortly before that hour, Tomste Tinay, an herb doctor was in the house of his niece Gloria Rivera because she had called him to treat her sick child. After treating his grandchild, he heard the explosion from the direction of the house of Sabina. He took his leave and he started for his home not far away. On the way, he met or was overtaken by a man wearing dark trousers but naked from the waist up, whom he recognized to be the defendant. He had known Paulino Francisco for about a year because he was his companion in husking coconuts. Paulino was coming down the path or trail from up the hill where Sabina's house stood. He asked him the usual question: "Where he had been" but Francisco instead of answering hurried or rather ran away in the direction of the sitio where his house was. The following morning as Tomas Tinay was pasturing his carabaos the party of three policemen and the defendant and his wife passed near him and out of curiosity he inquired why Francisco was being accompanied by these peace officers and when informed that he was being taken to the poblacion for questioning he told the policemen that he had seen Francisco the night before shortly after the explosion and that he refused to answer Tinay's inquiry as to where he had been, and that he ran away.

There is also evidence to the effect that on their way to the poblacion, accompanying the defendant, the policemen met one Juanita Lambayo who upon seeing appellant told the policemen that Francisco was the person who blasted the house of Sabina Villa. Francisco instead of denying this charge or imputation kept quiet although afterwards while on their way to the poblacion he told the policemen that he was informed that Sabina's house had been blasted, and he wondered who the author of the blasting could be.

At the poblacion the victims of the explosion were medically examined. The examining doctor found that the two children besides sustaining multiple first and second degree burns, had their skulls fractured and their brains macerated. Sabina, her husband Balbino and their two children were also found to have suffered from first and second degree burns and they were hospitalized or treated for periods of from one to two months. During the trial Balbino was still partially deaf, and Sabina could not write because of the effect of the explosion.

To establish the motive, the prosecution proved that about two years previous to the blasting, through the recommendation of Balbino the appellant was employed as a tenant on the coconut plantation of one Pipay Sanano. After some time, however, Pipay discovered that the appellant had secretly converted about 500 coconuts into copra and without notifying his landlord sold the said copra and appropriated the price for himself. For this,

he was dismissed as a tenant. Francisco asked Balbino who was then employed as overseer of the plantation to intercede for him but Balbino declined because he said that he felt ashamed to do so especially since he was the one who had recommended him to Pipay Sanano. The appellant deeply resented Balbino's refusal to help and began hating not only Balbino but also his family. As further proof of this grudge, there is evidence to the effect that sometime in February 24, 1951, that is, a little over a month before the blasting of the house, on the occasion when Arsenia Solana, daughter of Balbino and Sabina went to the seashore and while she was passing by the house of the defendant, the latter's wife named Felicidad Ampuan nicknamed "Pidang" challenged her to a fight because she said the two families were at war. There followed a discussion and a heated exchange of words, Arsenia asking Pidang why she should be included in a grudge or fight in which she had taken no part. Just then the defendant arrived from the seashore, carrying some fish and upon hearing the discussion, addressing his wife, shouted: "Pidang, kill her and bury her at the seashore." Then he went to his house and from there he shouted to Arsenia: "Someday I will blast your heads to pieces." Arsenia later told her father about the incident particularly the threats hurled by Francisco and her father told her that he would file a complaint against him but later changed his mind saying that he wanted to avoid trouble.

The appellant bases his defense on alibi, claiming that when the explosion occurred he was peacefully sleeping in his house. He admitted that there was no ill-feeling between him and the prosecution witnesses Tomas Tinay and Pablo Languido and could not explain why they testified against him, particularly Pablo who was his compadre. As to Balbino and Sabina he claimed that they must have testified against him out of spite because they suspected him as the person who denounced Balbino to the police for keeping explosives; that as a matter of fact, the Chief of Police conducted the corresponding investigation and found two sacks of explosives in Balbino's possession but did not prosecute him for its illegal possession because he was paid P90 by Balbino. All this was flatly denied by Balbino and the Chief of Police.

The blasting of the house of Balbino on the night of April 2, 1951, resulting in the death of two of its occupants and serious injuries to the rest is an admitted fact. The identity of its author depends upon the credibility of witnesses. We agree with the trial court which had the opportunity of passing upon said credibility that the witnesses for the prosecution are more worthy of credit and their story more reasonable and satisfactory. We reproduce the pertinent portions of the trial court's decision on this point:

"The court took more than a passing interest in observing the manner and conduct of the witnesses who testified against the accused. Sabina Villa, had been emphatic and persistent in pointing the accused, Paulino Francisco as the very person whom she saw throw the dynamite into their house on the night in question.

"As against the clear and candid testimonies of Sabina Villa and the circumstantial evidence given by disinterested parties, the accused was not able to offer any evidence which could creditably exculpate him other than a general denial.

* * * * *

"Carefully considering the weight of evidence for the prosecution, the Court is compelled to conclude that the accused, Paulino Francisco, out of a resentment for Balbino Solana's denial to intercede for him so that he may be reinstated to his former place in the employ of Pipay Sanano to erase the suspicion against his character, committed the hideous act of throwing a dynamite into the abode of Balbino Solana as he had foretold when he a month before, saw his wife quarreling with Arsenia Solana, the daughter of Balbino Solana."

Atty. Amanda Viola Viray, designated attorney de oficio for the appellant has filed an able brief, and has made valiant efforts to save her client; but against the overwhelming evidence against the latter, her efforts are bound to be of no avail. She has even asked for new trial and presented an affidavit (Annex B) to her brief wherein one Arturo Balenbino now serving sentence in the Bilibid Prison in Muntinlupa for the crime of robbery states that it

was he and one Rodrigo Francisco who committed the crime of which the appellant was accused and convicted; that said crime was committed at the instigation of a Chinaman named Jose Lim who promised to pay them P5,000, and that Rodrigo Francisco is still at large.

We confess our failure to be impressed by the affidavit; and this is not the first time that we decline to attach much, if any, importance to similar affidavits where persons now serving long sentences for serious crimes committed by them and therefore have not much, if anything to lose, assume responsibility for crimes of which fellow prisoners had been convicted in order to save the latter from criminal responsibility. It is not improbable that said schemes are conceived and carried out for a consideration, usually monetary, and that if successful, and the person convicted is finally acquitted, it would still remain for the Government to successfully prosecute and find guilty the convict assuming responsibility because he might then repudiate the contents of his affidavit and resort to other schemes to avoid criminal responsibility himself. For this reason,' we find no reason for seriously considering, much less, acceding to the motion for a new trial.

The lower court as already stated, found the appellant guilty of double murder and physical injuries. Considering that the two murders and the physical injuries were produced by one single act, namely, the explosion caused by the hurling of the dynamite into the house, the case comes under Article 48 of the Revised Penal Code regarding Complex Crimes, which provides that the penalty for the more serious crime (murder in this case) which is reclusion temporal in its maximum period to death, should be applied in its maximum period, namely, death. So that even without considering the aggravating circumstances of nighttime and dwelling, that attended the commission of the complex crime, the penalty applicable here is necessarily that of death. However, due to lack of the number of votes required for the imposition of the extreme penalty we hereby impose the penalty of reclusion perpetua, but with the opinion that the appellant does not deserve executive clemency. Furthermore, the indemnity for the death of Ema and Elsa fixed by the lower court at P3,000 each is raised to P6,000 each. With this modification, the decision appealed from is affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Reyes, Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

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