

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EDUARDO BERDIDA Y INGUIITO, ET AL., DEFENDANTS, EDUARDO
BERDIDA Y INGUTO, LORETO SABERON Y CASAS, VICENTE ABERAS
Y CORD...**

G. R. No. L-20183. June 30, 1966

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PER CURIAM:

This is an automatic review of death sentence pursuant to the Rules of Court.[1]

On 10 May 1960, an information for frustrated murder[2] of Antonio Maravilla and another Information for murder[3] of Federico Cañalete, were filed in the Court of First Instance of Manila. Said informations were directed against the same eight accused: Eduardo Berdida y Inguito, Jesus Felicia y Balidbld, Vicente Aberas y Cordero, Cristoto Mitilla y Paral, Demetrio Oarin y Payos, Protacio Libres y Corona, Loreto Saberon y Casas and Mario Mustrado y Sumaya.

After the defendants pleaded not guilty at their arraignment on 16 May 1960, the two cases were tried jointly. Acting on a motion to dismiss filed by defendants Cristoto Mitilla and Mario Mustrado, after the prosecution rested its case, the court dismissed the charges against Mario Mustrado, with costs de oficio. After the trial, the Court of First Instance rendered on 27 July 1962 the decision now under review. Its dispositive portion states:

"IN VIEW OF THE FOREGOING CONSIDERATION, the Court finds the defendants Eduardo Berdida, Loreto Saberon, Vicente Aberas and Jesus Felicia guilty beyond reasonable doubt of the crime of murder. This Court has in previous cases endeavored to avoid the imposition of the capital punishment. In the case at bar, however, where the offenders, pretending to be police officers, kidnapped the victims and mercilessly beat one of them to death, the Court finds no other alternative, in pursuance to the mandate of the law, but to impose, as it hereby imposes upon the said defendants, the death penalty, to indemnify jointly and severally the heirs of Federico Cañalete in the sum of P4,000.00 and to pay the costs. May God have mercy on their souls.

"In Criminal Case No. 52338, above-said defendants are also hereby found guilty beyond reasonable doubt of the crime of attempted murder and considering the aggravating circumstances present, they are sentenced each to suffer a maximum penalty of TEN (10) YEARS of prision mayor and a minimum of SIX (6) YEARS of prision correccional, and to pay the costs, without prejudice on the part of the complainant to institute a separate civil action for the recovery of damages.

"The defendants Garin, Mitilla and Libres are hereby acquitted, in both cases, with costs de oficio, and their immediate release is hereby ordered,

"SO ORDERED."

The records show the prosecution's evidence, as follows:

At about 10 o'clock in the evening of 7 May 1960, Antonio Maravilla, Federico Cañalete, Virgilio Haban and Fedrito Rapadas left the store of one Mang Terio at Mabuhay Street, North Harbor, Tondo, Manila, and proceeded

walking towards their homes. They were met on their way by Eduardo Berdida, Antonio Louie, one Tiquio and one alias Ifugao, who identified themselves as detectives, told them not to move, and pointed sharp and long bolos at them.[4] Antonio Maravilla and Federico Cañalete raised their hands, but Pedrito Rapadas and Virgilio Haban were able to run away. Antonio Louie then dealt a fist blow on Antonio Maravilla. After that, the group took Antonio Maravilla and Federico Cañalete along the rail tracks, telling them that they had done something wrong.

At the end of the rail tracks, said group tied the hands of Antonio Maravilla and Federico Cañalete. After doing this, they dragged the two and took them to a place in Pier 8 at the North Harbor near Vicente Aberas' house. In said place, there were others who joined the group, among them, Jesus Felicia, Loreto Saberon and Vicente Aberas. At this point, Eduardo Berdida told Antonio Maravilla and Federico Cañalete to dig their graves, but they refused. Arturo Macabebe, who also joined the group, took two sticks of cigarettes and told Antonio Maravilla and Federico Cañalete to smoke. Antonio Maravilla again refused. Following said refusal, the victims were hit with a piece of wood. Eduardo Berdida and Jesus Felicia then held Antonio Maravilla and Federico Cañalete, respectively, by the hands and from behind. As they were thus held, Vicente Aberas delivered fist blows on them, first on Antonio Maravilla, then on Federico Cañalete.[5] Furthermore, Loreto Saberon also held Federico Cañalete while others gave fist blows to the latter.[6] At about 1 o'clock in the morning of 8 May 1960, Antonio Maravilla lost consciousness, shortly after hearing Loreto Saberon say that the group would cut off the ears of Antonio Maravilla and Federico Cañalete, for appetizer or "pulutan." [7]

Antonio Maravilla's sister, Elizabeth, had meanwhile been informed by Virgilio Haban, one of those who were able to run away, that her brother and Federico Cañalete were taken by armed men. She therefore went out with some companions in search of her brother. She asked the help of Patrolman Carlos Pili, who was then at the corner of Kagultingan and Lakandula Streets in front of Pier 6. Patrolmen Amado Santos and Pabroante also joined them. As the other policemen took to separate directions, Patrolman Pili and Elizabeth Maravilla went along Mabuhay Street. They came upon a group of men, between Piers 6 and 8, who were hesitant to answer their inquiries. So they proceeded further, entering a small alley. As they went on, Elizabeth found the shoes of her brother. So they continued until they met Vicente Aberas, stripped to the waist, with bloodstains on his hands.[8] Patrolman Pili detained him. Since somebody threatened them should they proceed any further. Patrolman Pili and Elizabeth Maravilla went to Precinct 3, taking along Vicente Aberas. Assistance from the Mobile Patrol was then requested. Accompanied by her neighbors and more policemen, Elizabeth, together with Patrolman Pili, returned and went further to the interior of Mabuhay Street. Finally, they came upon Federico Cañalete and Antonio Maravilla, sprawled on the ground, the former face down, the latter flat on his back. Federico Cañalete was found dead. Antonio Maravilla was alive, though his face was swollen, rendering him barely recognizable. Antonio Maravilla was taken to the North General Hospital.

Patrolman Pili, meanwhile, went still further to the interior and saw, about 12 meters away from where they found the victims, a group drinking liquor. At the approach of Patrolman Pili, about four men ran away, leaving behind four men, namely, Loreto Saberon, Mario Mustrado, Cristoto Mitilla and Protacio Libres, the last mentioned being then drunk and asleep on a bamboo bed.[9] A Mobile Patrol car thereafter arrived and apprehended them, except Libres. Patrolman Pili next went towards a house near Tagumpay Street in which direction the others had fled. In said house, which was that of Crisanta Melgar, the patrolman found some persons who pretended to be sleeping, namely, Demetrio Garin, Jesus Felicia and Eduardo Berdida. Patrolman Pili brought them outside, and they were taken by the Mobile Patrol to the Detective Bureau.

Furthermore, the body of Federico Cañalete was examined at the scene where it was found by officers of the Mobile Patrol. Detective Bureau agents likewise went to said place. Finding bloodstains near an alley to Tagumpay Street, they went to a house thereat and found Protacio Libres sleeping on a bamboo bed. Said

detectives took Libres to the headquarters.

At the police station, all the apprehended suspects were made to mingle with other persons. Antonio Maravilla, who was fetched to point out therefrom the persons who attacked him and Federico Cañalete, identified Eduardo Berdida, Vicente Aberas, Loreto Saberon and Jesus Felicia.

An autopsy was made on 8 May 1960 on the body of Federico Cañalete by Dr. Luis Larion, Medical Examiner of the Manila Police Department, The postmortem findings in his report areas follows (Exh. M):

"CENTRAL NERVOUS SYSTEM

Hemorrhage, extensive, subarachnoid, brain.

CARDIOVASCULAR SYSTEM:

Laceration, blood vessels, brain and spleen.

RESPIRATORY SYSTEM:

Contusion, posterior lung, bilateral. Congestion, lungs, bilateral.

GASTROINTESTINAL SYSTEM:

About 150 cc, partially digested rice meal with slight alcoholic odor.

Hemoperitoneum about 100 cc. blood, abdominal cavity.

SPLEEN: Maceration, spleen.

PANCREAS: Contusion, hemorrhagic, pancreas.

BONE AND JOINTS:

Fracture-separation, left parieto-occipital and right fronto-temporal skull.

MISCELLANEOUS:

Wound, stab, non-penetrating, 1.3 x 0.5 cm. x 1.5 cm. deep, right lumbar region.

Wound, lacerated, 3 x 0.5 cm. occipital region.

Wound, lacerated, 2.5 cm. x 1.5 cm. x 1 cm. deep, non-penetrating, left abdomen.

Hematoma, frontal, right; left, parieto-occipital, and occipital, scalp, head.

Contusion, multiple, left forehead; left lower eyelids; left face; nose; lower lip; left lateral neck; posterior neck; left shoulder; left and right posterior chest. Contused abrasion, anterior left lower chest and right abdomen.

CAUSE OF DEATH:

Shook and hemorrhage due to traumatic fracture of the skull with maceration of spleen, contusion of the lungs and extensive subarachnoid hemorrhages in the brain." Antonio Maravilla, as shown in the medico-legal certificate of Dr. Cumalinga Sspinosa of the North General Hospital (Exh. R), sustained these injuries:

"Contusion with abrasions, and periorbital hematoma, eye right. Contusion upper and lower lip. Contusion 2 mental region. Contusion with Blight hematoma, malar right, and mandible bilateral. Abrasion 3", lateral neck left. Abrasion, 2" No. 2 level of the 10th rib right, along the MCL."

For the defense of herein appellants, the following evidence was presented to establish alibi:

Sometime between 7 and 8 o'clock in the evening of 7 May 1960 Crisanta Halgar was filling drums with water in

her house at 1205 Tagumpay Street, Tondo, Manila. Shortly thereafter, Eduardo Berdida, Iioretto Saberon and Jesus Felicia arrived. Since her husband was on night duty and her brother-in-law was ill, Crisanta Helgar asked the three to remain and help her fill up the drums with water, intending to sell the same the next morning. Said defendants consented and for some time helped Crisanta fill the drums with water. At about 9 o'clock in the evening, however, said defendants went to sleep in the ground floor of Crisanta's new house, still under construction, adjacent to the house aforementioned. At about midnight, a policeman and someone in civilian clothes knocked at the door and inquired from Crisanta if there were three persons sleeping in her house. She said yes, and opened the door. The policeman then told Crisanta that a dead man was found near their place. The one in civilian attire went to the back of the house. Crisanta told the policeman she knew nothing of any incident and that the three men had been in her house for some time. She then awoke the defendants Berdida, Saberon and Felicia. The policeman told them to stand up and the man in civilian was asked if they were the ones involved. Said man looked at the defendants and replied in the negative. The policeman and the civilian then left and the defendants went back to sleep. After a while, Crisanta, who was restless and could not sleep, went down, awoke the defendants, and told them that it was better for them to leave. So, the said defendants left, but a policeman stopped them at Tagurapay Street and took them to the police headquarters.

As to the defendant Vicente Aberas, his defense of alibi is as follows:

In the evening of 7 May 1960, he was on board the fishing boat "Bon Paulino." At about 10:30 o'clock in the evening, after unloading their catch of fish, he left for home, bringing with him a tulingan fish. Juan, a co-worker of his, invited him to drink beer in a store near Pier 8. For some time they stayed there, then he left for home. On the way he met five men beating up somebody. Approaching them, he asked them to have pity on the man and not to beat him. Someone in the group, armed with a club, warned him not to interfere, so, becoming afraid, he left. In reaching home, he took off his shirt, cut the fish he brought with him in half, lengthwise, and took one of the halves to the house of Smiliano Retone, another co-worker of his, who did not report for work that day. Retone invited him to drink gin. After drinking, he headed for home, but on his way he met two policemen and a woman. After being asked where he came from, which he answered, and whether he had seen a fight, to which he said yes, he was taken to Precinct 3.

Appellants would, first of all, assail Antonio Maravilla's testimony identifying them as the assailants, for the reason that he lost consciousness, and, therefore, could not be relied upon to make said identification. Appellants would further insist on their defense of alibi. Antonio Maravilla, it is true, lost consciousness, at about 1 o'clock in the morning of 8 May 1960. It is however equally true that before his senses faded out he saw herein appellants perform their atrocities on himself as well as on Federico Cañalete. It cannot therefore be doubted that he made no mistake in pointing out to herein appellants as definitely among their assailants. This he did, not only at the police station but also in open court during the trial. It is furthermore not disputed by defendants-appellants that Antonio Maravilla has no reason or motive to falsely accuse them of murder and attempted murder. The positive identification he made must therefore be given full credence.

It follows that the defense of alibi cannot be sustained. The rule is settled, to the point of being trite, that the defense of alibi is worthless in the face of positive identification by prosecution witnesses, pointing to the accused as participants in the crime.[10]

The trial court, moreover, found the above-related defenses of alibi not credible. For, according to said court, If defendants Berdida, Felicia and Saberon really went to help Crisanta Melgar, their provincemate, fill drums with water at her house. It is rather unusual that they all went to sleep at about 9 o'clock in the evening. Furthermore, the policeman who inquired about persons sleeping in Crisanta Melgar's house strangely knew their number, that 10, three persons, And, finally, it is unbelievable that said policeman did not take them to the headquarters for

identification by Antonio Maravilla himself.

And, with respect to the defendant-appellant Vicente Aberas, the trial court found it too surprising to believe that he went to such lengths of amiability, as to go, shirtless at that, to his friend Retone, at an unholy hour, to share with him one-half of his tulingan fish. No previous agreement, or urgent need for such an act obtained. It could have waited for the next morning, especially since, having allegedly come from work, defendant Aberas must have been tired.

As this Court stated in *People vs. Constante*, L-14639, December 28, 1964, the defense of alibi is an issue of fact that hinges on credibility; that the credibility of an alibi depends so much on the credibility of the witnesses who seek to establish it; and that, in this respect, the relative weight which the trial Judge assigns to the testimony of said witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted. For, as is well recognized, his proximate contact with those who take to the witness chair places him, compared to appellate Justices, in the more competent position to discriminate between the true and the false.

And in the present appeal, we find no warrant to depart from the lower court's finding on defendants-appellants' defenses of alibi.

It is also contended by appellants that the aggravating circumstances of nighttime, abuse of superior strength, and evident premeditation should not be appreciated in fixing the penalty. Appellants would argue that nighttime was not purposely sought to facilitate the offense or to afford impunity. At any rate, they would further argue, nighttime as well as abuse of superior strength are deemed absorbed in treachery. As to evident premeditation, they aver that the premeditation, if any, is not evident, for lack of sufficient lapse of time between the execution of the offense and a previous showing of intent to commit it, so as to show that the offenders clung to their determination to commit the crime.

The presence of one generic aggravating circumstance, apart from the qualifying circumstance of treachery, suffices to fix the penalty for murder at the extreme punishment of death. For there is no mitigating circumstance in the present case. From the facts and evidence of record in this case it is clear that appellants took advantage of nighttime in committing the felonies charged. For it appears that to carry out a sentence they had pronounced upon Antonio Maravilla and Federico Cañalete for the death of one Pabling, they had evidently chosen to execute their victims under cover of darkness, at the dead of night, when the neighborhood was asleep. Inasmuch as the treachery consisted in the fact that the victims' hands were tied at the time they were beaten, the circumstance of nighttime is not absorbed in treachery, but can be perceived distinctly therefrom, since the treachery rests upon an independent factual basis. A special case therefore is present to which the rule that nighttime is absorbed in treachery does not apply.[11]

In addition, the presence of evident premeditation is likewise borne out by the record. For the victims were told at the start, when they were taken captives, that they had done something wrong, that they were the ones who stabbed and killed one Pabling, and that for this reason they were to go with the group (T.s.n., 10 October 1960, pp. 20, 22; Exh. D). Not only that; the victims were then taken to a spot where they were ordered to dig their graves. The assailants were previously armed with deadly weapons, and their assault was a concerted and group action. From the time of apprehension of the victims, about 10 o'clock in the evening, to the time Antonio Maravilla lost consciousness, about 1 o'clock early the following morning, is sufficient time for the offenders to meditate and reflect on the consequences of their act.

In *People vs. Lopez*, 69 Phil, 298, this Court found the aggravating circumstance of evident premeditation present, in view of the repeated statements of the defendants that the hour of reckoning of the victim would arrive, the existing enmity between them, the fact that they were previously armed with deadly weapons, and the fact that the

aggression was simultaneous and continuous until the deceased was left unconscious on the ground. And in *People vs. Lazada*, 70 Phil. 525, four hours was held sufficient lapse of time for purposes of the presence of evident premeditation. Furthermore, sufficient lapse of time in this regard is not simply a matter of the precise number of hours, but of the reasonable opportunity, under the situation and circumstances, to ponder and reflect upon the consequences. In the present case, we find the facts and circumstances obtaining sufficient to support the trial court's finding of the attendance of evident premeditation.

Following previous instances, the indemnity to the heirs of the deceased in this case should be increased to P6,000.[12]

Anent the attempted murder case, no appeal therefrom was taken. The record shows that defendants perfected no appeal from the Judgment below. The present automatic review is limited only to the murder case in which the death penalty was imposed. It was only because of the Joint trial that the record of the attempted murder case was likewise elevated herein. Since no appeal was taken in the attempted murder case, the Judgment with respect thereto has become final. It therefore cannot now be reviewed herein, as some of the appellants would ask. And defendants-appellants, who are detained, should accordingly be deemed to have started serving their respective sentence in said attempted murder case from the time the decision of the trial court became final as to said case.

WHEREFORE, the death penalty imposed on defendants-appellants is hereby affirmed, and the indemnity to the heirs of Federico Cañalete is hereby Increased from P4,000 to P6,000, with costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

[1] Sec. 9, Rule 122, formerly Sec. 9, Rule 118.

[2] Docketed In the CFI as Crim. Case No. 52338.

[3] Docketed in the CFI as Crim. Case No. 52339.

[4] T.s.n., 10 October 1960, p. 13.

[5] T.s.n., 10 October 1960, p. 14.

[6] T.s.n., 23 November 1960, p. 2.

[7] T.s.n., 23 November 1960, p. 2.

[8] T.s.n., 13 July 1961, pp. 2, 4.

[9] T.s.n., 27 March 1961, p. 48.

[10] *People vs. Tansiangco*, L-19448, February 28, 1964; *People vs. Rival*, L-14077., March 31, 1964.

[11] See *People vs. John Doe*, L-2463, March 31, 1950; 2 Viada, *Codigo Penal*, 274-275.

[12] *People vs. Hernandez*, 91 Phil. 334; *People vs. Banlos*, L-3413, December 29, 1955.

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