

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANGEL ZAPANTA Y TUAZON, DEFENDANT AND APPELLANT.***G.R. No. L-861. September 30, 1947*

Ponente: BENGZON, J.

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At about midnight of September 15, 1945, the accused Angel Zapanta y Tuazon and one Antero Gomez proceeded to the house of Policarpio Salazar on Francisco Street, Tondo, Manila. Gomez removed the bamboo pole that barred the gate, and both climbed the stairs, and knocked at the door of the dwelling. Answering a question of Policarpio's wife, one of the nocturnal visitors falsely identifying himself as "Maning" requested admittance pretending that he wanted "to tell something" to her husband. As the door was opened, the two entered, pistol in hand, and then the accused pointing his gun at Salazar asked, "Are you Totoy Kalabaw?" (nickname of Salazar). The next instant Salazar and the accused were grappling for the possession of the firearm. At this moment Gomez shot Salazar to death. Thereafter both assailants hurriedly fled.

Police officers subsequently investigating the affair were handed the gun which had fallen from the hands of the accused in the scuffle, he having forgotten to retrieve it in his flight from the scene of the shooting.

It was later discovered, upon investigation, that two days before the fatal incident Antero Gomez, informing the accused that he had a quarrel with Salazar, asked for assistance to kill him; and the accused agreed to help.

Antero Gomez was not prosecuted because he died before the presentation of the information, he having been reportedly killed in an affray with the police.

Haled into court for murder and confronted with the evidence of the People above related, the defendant-appellant Angel Zapanta y Tuazon attempted to prove an alibi with his lone testimony, which the trial judge discredited, obviously because, (1) it was uncorroborated, (2) for all his youth, the prisoner was a confirmed lawbreaker (See footnote) and (3) because he was positively identified by an eyewitness, the wife of the deceased, Ponciana Isidro, and her assertions were backed by the finding of appellant's gun in the house and by the latter's confession, Exhibits C and Q.

Appellant's counsel sensibly abstain from insisting on that defense; but in their carefully prepared brief, they discuss several errors allegedly committed by His Honor, to wit: (a) in holding there was conspiracy between appellant and Antero Gomez; (b) in ruling that Zapanta was duly identified and (c) in considering the latter's confession.

In criminal cases the identification of the culprit has always been a paramount question. Several instances of miscarriage of justice on that score are known in judicial annals. Therefore, judges can not be overly cautious in analyzing evidence on the point. On the other hand, where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted. And this is more so where the witness is the victim or his near-relative, as in this

case, because these usually strive to remember the factions of the assailants. In this expediente no reasons exist to question the veracity of the bereaved widow, and it is admitted that a kerosene lamp lighted the place. Hence, considering the confessions of appellant in Exhibits C and Q, he should be deemed sufficiently identified.

It is true that, as contended by counsel, the herein accused would not be responsible for the murder, in the absence or conspiracy between him and Gomez (who actually did the killing). But unluckily for him, such conspiracy was established by proof that he had agreed to help Gomez assassinate Salazar, that both at midnight repaired to the house, tricked the inmates into opening the door, and rushed inside with drawn pistols, almost immediately eliminating the surprised "kalabaw." There was concerted action, and the common homicidal intent was unmistakable, from which solidary criminal responsibility arose.[1]

The record discloses that when in custody of the police, herein appellant made the following admissions of guilt:

"Two days before Totoy Kalabaw was shot by Antero Gomez, Antero told me that he and Totoy Kalabaw had a quarrel. Antero told me to go with him and kill Totoy Kalabaw and I agreed. Antero and I were both armed with .45 Cal. automatic pistols when we proceeded to the house of Totoy Kalabaw. When we arrived at Totoy Kalabaw's house, we found the gate closed and a bamboo bar was slung across the gate. Antero picked up the bamboo bar and placed it near the gate. We then climbed up the stairs of the house. Antero knocked several times on the door and after ten (10) minutes a woman opened it. Antero drew his gun when he entered the door and I followed him. We saw Totoy Kalabaw as soon as we entered standing beside the woman who opened the door and when I went near him, he suddenly grabbed me by the arms and tried to get my pistol at my waist. He tried to grab for my gun and was able to wrest it away from me but at this time Antero shot him. We then run down the house and fled, in our haste to get away I left my .45 automatic pistol at the place where Totoy Kalabaw fell." (Exhibit C.)

"I together with Antero Gomez went to the house of Totoy Kalabaw and when his wife opened the door, I drew my pistol from my waist but before I was able to do so, Totoy Kalabaw grappled with me and we wrestled for the possession of the pistol. I was hit then by the pistol on my right index finger. Antero Gomez, seeing that Totoy Kalabaw had the edge on me, shot at Totoy Kalabaw about two times as I remember." (Exhibit Q.)

Contending that the trial judge erred in considering this confession, appellant's counsel do not assert it was obtained through violence or fraud. They merely claim that it contains improbabilities, and should therefore be disregarded. But mere improbability should yield to actual facts told by the accused himself. If the confession was voluntarily signed—there was evidence to that effect—the appellant should not be heard to impugn the events therein described on grounds of improbability, because he would thereby be saying: "that is my story, but do not believe it because I lied".

The offense charged was murder. The facts proved established it, the destruction of Salazar's life having been accomplished with evident premeditation (article 248, Revised Penal Code). Although there are the aggravating circumstances of nighttime and dwelling, the penalty imposable is reclusion perpetua only, in view of the dissent of some members of this Court (article 47, Revised Penal Code). Consequently, the judgment of the court below is affirmed, it being in accordance with the law for such cases made and provided.

Moran, C.J., Paras, Feria, Pablo, Hilado, Briones, Padilla, and Tuason, JJ., concur.

Hardly twenty years old, he told the court he had been arrested for illegal possession of firearm, then escaped, was captured later, again escaped, joined his mistress in Subic, and when re-arrested was again found with a gun. His statements to the police further show that he was a pickpocket, twice arrested as such, was a member of the gang that shot and killed Sgt. Salano, and it was he who shot and killed one Antonio Cubinar because the latter "was stooling to the police about me." (See Exhibit C.)

[1] U.S. vs. Asilo, 4 Phil., 175; U.S. vs. Matanug, 11 Phil., 188; U.S. vs. Grant, 18 Phil., 122; People vs. Laoto, 52 Phil., 401.

DISSENTING

PERFECTO, J.:

Appellant Angel Zapanta, 18 years old, is accused of the murder of Policarpo Salazar which took place at 171 Francisco, Tondo, Manila on September 15, 1945.

Upon the alleged participation of appellant in said killing, the prosecution presented the testimony of Ponciana Isidro, the widow, and Exhibits Q and C, the alleged written confession of appellant.

Ponciana testified that her husband and she were soundly asleep when they heard somebody knocking at the door saying: "Totoy, open the door." She asked "Who is there?" The answer was "It is Maning." Her husband told her not to open the door right away. She told the man calling to wait for a few minutes. But he continued knocking at the door saying: "Open the door. I want to tell something to your husband." She opened the door with her husband behind her. Two men with revolvers went inside the house. One of them pointed the revolver at the stomach of her husband who was then on her left. The intruder who was pointing his revolver at her husband's stomach asked: "Are you Totoy Kalabaw?" When asked who was the man pointing his revolver at her husband, the witness answered: "I saw their form and as that was the first time I saw him, I did not know him nor his name, but I saw the form of his figure." But at the time she was testifying she knew that it was Angel Zapanta and his companion was Antero Gomez. Antero Gomez was standing as guard with his revolver. The incident took place in the kitchen. "My husband took hold of the wrists of Angel Zapanta, even twisting it, and took him to the kitchen because he was fearing that Angel would fire shots and hit me and my two children." Then Antero Gomez said: "Let him go, let him go." The witness pleaded for mercy, kneeling before Antero Gomez and imploring him not to kill her husband, but Gomez proceeded to approach the husband, and all of a sudden she heard shots followed by a thud and then she saw her husband fall. The shots were fired by Antero Gomez. The intruders went down to look for the gun of Zapanta. The gun was in the kitchen. The husband sat on it. The gun was seen by the witness when the police authorities arrived. The witness could not talk anymore with her husband because he was killed instantly. When the witness screamed for help nobody came. The neighbors arrived shortly after the police authorities had arrived. The incident took place at 11:40 in the evening. On that night there were no lights in the streets. The moon was bright. In the house, there was a kerosene lamp. The struggle took place in the kitchen. On cross examination, she testified that "nobody covered up my husband. What I mean was that Antero Gomez came in first and stuck his revolver at my husband's stomach." She never saw the intruders before. That was the first time she saw them. On September 16, 1945, she made a statement to the police authorities regarding the incident but she did not mention the name of any of the intruders. When she made the statement, "she knew their faces only not their names." The first time she heard the name of Angel Zapanta was: "From the police officers, and in the newspapers, because I was called to the fiscal's office." She learned about the name of Antero Gomez since September, and of Angel Zapanta, about October. The only identifying detail she gave to the police officers were the clothes worn by the appellant. She was asked if she wanted to see Angel Zapanta in the municipal jail. "I told them I preferred not to see him because it would only madden me to see his face." So she did not see him and she only saw him in court. On re-direct questions of the fiscal, she emphasized the fact that she saw Zapanta on the night of the incident and, for the second time, when she was testifying in court. The witness did not notice whether or not the assailants were wearing any hat. The witness identified the bamboo pole, Exhibit B, as the one which served as a bar to close the gate of their fence.

Fred G. Luchico, testifying for the prosecution, declared that he found no fingerprints of Angel Zapanta on the bamboo pole Exhibit B, but he found fingerprints of Antero Gomez thereon.

The testimony of the widow appears to us not convincing enough to show that she was able to identify conclusively appellant Angel Zapanta. On the night of the incident it was the first time she saw the two assailants. She alleges seeing for the second time appellant Zapanta in the court room, at the time she was testifying. She refused to have a look at him at the municipal jail. Was she so sure that she even refused an opportunity to verify whether the person who was in jail was really one of those who assaulted their house? The incident took place at 11:30 at night. The witness was soundly asleep at the time the appellant knocked at their door. Upon entering the house, one of them stuck his revolver immediately at the stomach of her husband. There was a struggle. The appellant and her husband went to the kitchen, the other appellant followed and fired shots. Her husband fell down. The assailants then went down. There was a kerosene lamp. But in view of the suddenness of the attack and the brief moment in which the incident took place, it seems to us improbable that the widow could have identified the two assailants by their faces. Our doubt is emphasized by the fact that the widow had contradicted herself on an important, essential and decisive detail. In her direct testimony she testified that it was Angel Zapanta who stuck his revolver at the stomach of her husband. On cross-examination she stated that it was Antero Gomez who stuck his revolver at the stomach of her husband. No explanation has been given on this contradiction. Neither the prosecution nor the witness attempted to give any explanation at all.

Detective Montilla testified upon the alleged confession of appellant Angel Zapanta, Exhibit Q. He testified that he met Zapanta when the latter was turned over to him by Lt. Pelgin and Lt. Lomosa then assigned to Precinct No. 4. On said occasion appellant admitted before him having taken part in the killing of Policarpo Salazar. The statement was made in writing and it is presented as Exhibit Q, carrying the signature of Angel Zapanta on pages 1 and 2. The statement Exhibit Q was prepared by witness Montilla. The witness testified that appellant "can talk a little English," but in another part of his testimony he said that appellant "could not understand English" and later on, that appellant can write a little English, showing to said effect the signatures of appellant in Exhibit Q. In Exhibit Q there is a statement as follows: "I was hit then by the pistol on my right index finger."

In this regard, the transcript of the stenographic notes shows the following unchallenged statement made by counsel for the defense: "We only wish to make of record that in spite of the confession, or rather the testimony of Detective Montilla that the right index finger of Angel Zapanta was shot, said right index finger of Angel Zapanta remained intact and there is not even any sign or trace of its having been hit by any bullet, much less a .45-caliber bullet, even with the minutest ocular inspection."

Detective Diosdado Lapiña testified regarding Exhibit C, an alleged statement made by Zapanta on October 11, 1945, at the office of the Homicide Squad, Bilibid Prison. Lapiña testified that Zapanta does not speak or write English, but the contents of Exhibit C were translated into Tagalog and vice-versa by Lapiña.

Appellant testified that early on the morning of October 10, he was arrested by Lt. Pelgin with the help of Lomosa and Santos. He was arrested while he was sleeping. The arrest took place at Subic. He was brought to Caloocan, then to the CID at Bilibid Prison. "Upon arriving at the CID, I was taken to a lie-detector room and there I was given fist blows." The one who gave him fist blows was Moody, an American. When the accused was taken to the lie-detector room, he was manacled with his hands behind his back. The investigation was made by Pablo Montilla accompanied by two big Americans. The investigation was made in English but the appellant could not speak or understand English. The investigation was made through an interpreter. At the time he signed Exhibit Q it was not read to him by Montilla in Tagalog. He did not ask Montilla to explain his statement in Tagalog, because "I could not even talk because the agent who approached me gave me blows." The contents were even covered with a piece of paper. The only part shown to appellant when he signed it is the space for his signature.

Those who were investigating him imputed to him the commission of the crime and insisted that he should admit his guilt. Those who were insisting were all those who were investigating him. Appellant was investigated by Detective Dado. He was investigated with manacled hands. Answering questions propounded on cross-examination, appellant testified that Exhibit Q was only made by the detectives. That part of the exhibit concerning the killing of Policarpo Salazar is not true. He said the same regarding the killing of Policarpo Salazar appearing in Exhibit C. Lt. Pelgin was holding appellant by the hair. He was the one who choked him and after removing his handcuffs started giving him blows. They gave blows one after the other. At one time, two or three of them gave him blows, later took him to the bartolina where he was compelled to make an admission, and then took him back to the lie-detector room to give him more blows. It did not occur to the appellant to ask for hospitalization because he knew it would be impossible to talk as they treated him like a dog. Appellant was beaten because they compelled him to admit the murder imputed to him with which he had nothing to do. Finally he signed Exhibits Q and C stating: "I signed them not with my own accord but because I was afraid to receive more punishment; besides they assured me that this document had no meaning at all." The contents of Exhibit C were not read to appellant. Appellant signed Exhibit C for two reasons: (1) Because of their assurance that Exhibit C had no meaning at all, and (2) because he was afraid that refusal to sign it would mean further punishment.

The prosecution did not give any evidence on rebuttal to refute the testimony of appellant as to the torture and maltreatment to which he was subjected before he signed Exhibits Q and C.

Under the circumstances, we are compelled to reject said Exhibits Q and C as evidence against appellant. Not having been contradicted, appellant's statement with regard to the circumstances under which he signed Exhibits Q and C should be conclusive, and it appears from said statement that he did not sign the documents voluntarily. Not only because appellant's testimony has not been contradicted, but because there are so many cases in which police authorities have resorted to third-degree measures to extract confessions or admissions from detained persons, we are constrained to believe appellant's testimony. The legislature itself has shown its lack of confidence on confessions or admissions obtained by police officers from accused under arrest or detention. This is shown by article 114 of the Revised Penal Code in which the confession upon which an accused under said article may be convicted must be one given in open court.

The guilt of appellant not having been proved beyond all reasonable doubt, we vote for the reversal of the appealed decision and the acquittal of appellant.

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