

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NICANOR SESPEÑE, APOLINARIO LEONARDO, PEDRO CALIZO,
BIENVENIDO SAJERA AND DOMINGO SAJONA, DEFENDANTS AND
APPELLANTS.**

G.R. No. L-9346. October 30, 1957

Ponente: FELIX, J.

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FELIX, J.:

The evidence submitted by the prosecution proved the following facts:

In the afternoon of June 23, 1953, Leonardo Enerio left his home located in barrio Tagbaya, Ibayay, Capiz, and went to the field to tend his carabao. Left in the house were his wife Gloria Enerio, three minor children the oldest of whom being 9 years of age, and a houseboy. Before departing, Leonardo Enerio left behind his bolo and instructed the houseboy to split some firewood.

Between 6:00 and 6:30 o'clock that evening, Mrs. Priscila Enerio Andrade, a sister of Leonardo, arrived at the house for the express purpose of fetching the latter because their mother, Marenciana Bitong, was then seriously ill. Not finding her brother at home, Priscila waited, and while she was conversing with Gloria and one Eliang from Buracay, Bienvenido Sajera and Domingo Sajona arrived at the place. Sajona sat himself on a chair inside the sala, while Sajera hid behind the shutters in the balcony. Inside the sala were Gloria, Priscila and Eliang, aside from Sajona, and the place was then well lighted with a "Coleman" lamp hanging in the center. Sajona inquired for the deceased and scarcely had Gloria replied when the sound of chopping of banana stalks in the backyard and the dropping of stones atop the roof, were heard. Gloria then asked Sajona as to who were with him, and the latter replied that there was no one. Thereupon Gloria invited Priscila and Sajona to the balcony, and as they looked outside Gloria and Priscila saw three individuals hiding behind Gloria's store, which is about half meter from the house (Exhibit G, p. 134 rec). While they were watching the movements of said individuals, Leonardo Enerio arrived, and just as he was about to step on the first rung of the ladder Jesus Mangilog suddenly appeared and rushing towards him, attacked the latter from the rear with a bolo, locally known as "talibong". Taken completely by surprise, the deceased was struck on both shoulders, after which, he faced his assailant. Mangilog then stepped backward, a little to the left side, and at this instance Nicanor Sespeñe, Apolinario Leonardo and Pedro Calizo, each armed with a firearm, arrived and fired four shots at Leonardo Enerio. Upon seeing the latter fall, Gloria and Priscila shouted for help. At this juncture, Sajera and Sajona went down of the house, after which Sajona removed the ladder, while Nicanor Sespeñe, Apolinario Leonardo and Pedro Calizo stood around. After Sajona had laid the ladder on the ground, and upon seeing the victim stand up and make an effort to escape, he fired his revolver at his victim. Immediately thereafter Sajera, who was behind, knifed the deceased once on the nape. Still with life, Leonardo Enerio made an attempt to flee from his assailants, but the latter surrounded him and so he was forced to lean against the fence fronting the house. The fence broke due to weak condition and Leonardo Enerio fell with it, his head touching the canal while his feet rested at the base of the fence. While in this position, Sespeñe shouted "kill him" and one of them fired a shot at Leonardo Enerio. Immediately afterwards, the assailants fled

from the scene. After the assailants had left, Gloria and Priscila jumped out of the house and went to succor Leonardo Enerio. With the help of Camilo Calizo, Gloria's brother, they carried Leonardo Enerio to the house, while Gloria's mother called for a doctor. Leonardo Enerio told his wife that his assailants were Nicanor Sespene, Apolinario Leonardo, Pedro Calizo, Bienvenido Sajera, Domingo Sajona, and Jesus Mangilog. A few minutes after Leonardo Enerio was brought into the house, he breathed his last (Exhibit I, p. 142 rec). According to Dr. Sulpicio Sityar who performed the autopsy, the offended party sustained the following injuries:

(1) A cut incise wound, 1 1/2 inches long, near the left cheek, penetrating up to the cheek bone, caused by a sharp cutting instrument ;

(2) A puncture wound on the left epigastric region, near the umbilicus, 2 1/2 inches long', penetrating the internal organs with the intestines coming out, caused by a sharp pointed instrument;

(3) An incise wound located at the fist, on the left side of the right elbow, 3 inches long, penetrating up to the bone, cutting the veins and arteries, caused by a sharp instrument;

(4) An incise wound located on the left forearm just above the dorsal part of the forearm, 2 1/2 inches long and exposing the bone and cutting the arteries and veins, caused by a sharp instrument;

(5) A penetrating¹ wound on the left hip; the bullet was found in the abdominal cavity without exit, injuring the internal organs on its trajectory, caused by a bullet;

(6) Another penetrating wound that penetrated the posterior portion of the left arm upward and coming out of the anterior side of the arm, near the left shoulder, caused by a bullet;

(7) Left thumb being almost severed, caused by a sharp cutting instrument;

(8) A puncture wound, at the base of the neck, about 2 1/2 inches deep and about one inch long, caused by a sharp pointed instrument;

(9) An incise wound located at the back, near the base of the neck, about 4 1/2 inches long and 1/3 inch deep, caused by a sharp instrument ;

(10) An incise wound at the back on the level of the right shoulder that caused a cut that almost severed the arm from the body, caused by a cutting instrument;

(11) A penetrating wound that penetrated on the vertebral column, sacral region, the bullet embedded at the vertebral column without exit, caused by a bullet;

(12) A puncture wound, located at the right thigh, penetrating through and through, caused by a sharp cutting instrument.

Upon opening the thoracic and abdominal cavities a great quantity of extravasated blood was found accumulated in said cavities. The man died of hemorrhage. Translation. (Exhibit A, p. 140 rec.—See also Exhibits C, D and E—Decision, p. 115-117 of Annex A of appellant Nicanor Sespeñe's brief).

As a result of the investigation conducted by the authorities, a complaint for murder was filed on July 3, 1953, with the Justice of the Peace Court of Ibajay, Capiz, against Nicanor Sespeñe, Apolinario Leonardo, Pedro Calizo, Bienvenido Sajera, Domingo Sajona and Jesus Mangilog, which was provisionally dismissed for the reason that the principal witnesses for the prosecution, namely: Gloria Enerio, widow of the deceased Leonardo Enerio was absent, and Priscila Enerio Andrade could not be located. However, on July 29, 1954, the case was again revived with the filing of a new complaint against the same accused. Having the accused waived their right to a preliminary investigation, except Jesus Mangilog who had not been arrested, the case was elevated to the Court of First Instance of Capiz where an information for murder was filed against all of them except Jesus Mangilog who continued at large.

After due hearing, all the defendants were found guilty of murder, qualified by treachery, and sentenced to reclusion perpetua, with the accessory penalties prescribed by law, to indemnify the heirs of the offended party in the sum of P6,000, and to pay the costs. The court further ordered that: "The amount of P3,500 that was paid to the widow as partial compensation for the death of Leonardo Enerio should be deducted from the indemnity of P6,000."

From this decision all the defendants appealed to Us and in this instance counsel for Pedro Calizo, Bienvenido Sajera, Domingo Sajona and Apolinario Leonardo, as well as counsel for appellant Nicanor Sespeñe charge the trial Judge with the commission of several errors relative to the sufficiency of the evidence and the credibility of the witnesses for the prosecution.

Appellants' version of the case is accurately narrated by the trial Judge in the following language:

"Sometime on June 21, 1953, Prefetiza Enerio, Domingo Sajona and Bienvenido Sajera were teasing Camilo Calizo, the brother of Gloria Calizo. Prefetiza took off the hat of Camilo thus exposing his shaved head. Bienvenido, in the spirit of fun, touched Camilo's head and Domingo Sajona laughed out loudly. Camilo felt offended and he got sore. He upbraided Bienvenido and told him that he is a teacher while Bienvenido is only a 'vaquero', Domingo Sajona apologized and he went home. In the morning of June 23, Sonia Totol told Domingo Sajona to go to the house of Leonardo Enerio with Bienvenido Sajona in order to settle the misunderstanding they had with Camilo. "When Domingo was on his way to Leonardo's house, in the afternoon of that day, he met Leonardo in his ricefield. Leonardo told him to go to his house with Bienvenido to settle their misunderstanding with Camilo. Domingo fetched Bienvenido and before proceeding to Leonardo's house, they passed the house of Guadalupe Zowan. There they met several people who wanted to attend the last canvassing of the candidates for queen in a celebration of the feast of San Pedro, wherein Nolita Tumbokon, the niece of the accused Nicanor Sespeñe, was a candidate. On their way they met Priscila Andrade, in front of the house of Silvestre Tumbokon and Priscila asked them where they were going. They

replied that they were going¹ to town to dance and to attend the last canvassing of the candidates, Magdaleno Mangilog was carrying a guitar. Upon reaching the house of Leonardo, Domingo Sajona and Bienvenido Sajera begged leave from their companions to drop at the house of Leonardo for a few moments, so the rest of the company proceeded up to the. Culbert where they tarried to wait for Domingo and Bienvenido. Bienvenido remained in the balcony while Domingo proceeded to the sala of Leonardo's house. Upon inquiry, Gloria told Domingo that Leonardo was out pasturing his carabao. She asked him what he wanted and he replied that he went there to settle the misunderstanding they had with Camilo. But finding Leonardo out from the house, he asked permission to go home. Gloria accompanied him up to the door of the sala where Domingo met Leonardo coming up the ladder. Upon meeting Domingo, without much ado, Leonardo stabbed Domingo with a butcher's knife (Flamingo). Domingo stepped back and parried the blow wounding him on his left hand. The witness showed a scar on the. palm, below the little finger, four inches long. Leonardo, gave him again another bolo blow but he retreated .and jumped' put of the balcony. Gloria, upon seeing the attack, shouted, 'Don't, don't, Leonardo', closed the door and shouted for help. Bienvenido Sajera, upon seeing the unwarranted attack, tried to escape by going downstairs but he was blocked by Leonardo who gave him also a bolo blow. Bienvenido parried the blow by taking hold of Leonardo's hands with his left hand and with his right hand he grasped the blade of the knife. But Leonardo continued pushing the point of the knife far enough to hit Bienvenido on his right chest. This caused Bienvenido to lose his balance and he fell downstairs, Leonardo chased Bienvenido after recovering from his fall but he succeeded in escaping. Bienvenido was taken to the hospital where he was confined for about twenty (20) days from June 24, 1953 to July 14, 1953 (Exhibit 6). While Nicanor Sespeñe and his companions were waiting for Domingo and Bienvenido, they heard a shout for help. Nicanor Sespeñe proceeded to the place where they heard the shout and on the road he saw Leonardo chasing Bienvenido. Nicanor told him, 'don't, Nardo'. As he blocked the way, Leonardo warned him, 'you too?' Nicanor raised his hands as a sign to stop him, saying that he was not going to fight. But despite Nicanor's protestation, Leonardo boloed him. Nicanor parried the blow and grabbed the sharp blade of the knife, but the point of the knife hit him on his right chest below the right clavicle. The witness showed a scar, a little smaller than the size of a ten-centavo coin. He was pushed by Leonardo and he stumbled down face up. As Leonardo was about to give another thrust with his bolo, Nicanor kicked him with his left leg. The knife thrust landed on the right dorsal region of his thigh above the knee. As Leonardo stepped back Jesus Mangilog coming from behind gave him a bolo blow hitting him on his back. Leonardo turned around and he wrestled with Jesus. Nicanor escaped and ran to the road where he met his companions, Gil Cera, Pederico Gonzales, Enrico Saron, Magdaleno Mangilog, Placido Castro, Apolinario Leonardo, Pedro Calizo and others, who helped him. After they heard four explosions from the place of the incident, they all ran away, leaving Leonardo Enerio and Jesus Mangilog still wrestling. The other accused, Pedro Calizo and Apolinario Leonardo did not reach the place where Leonardo and Jesus were wrestling, because they were afraid to approach them."

It is to be noted that all the appellants admit having been present at or near the scene of the killing, at the time of its occurrence, appellants Sajona, Sajera and Sespeñe, even claiming that they were the very victims of an attack initiated by the deceased offended party who used a "flamingo" or butcher's knife for the purpose. They deny, however, having lifted so much as their little fingers against the offended party, or that they had participated in any way in the slaying of the latter.

It is a settled rule in this jurisdiction, enunciated in a long line of decisions, "that the appellate court will not disturb the findings of facts made by the trial court as to the credibility of witnesses, in view of its opportunity to observe the demeanor and conduct of the witnesses while testifying, and that the said findings will generally be accepted and acted upon" (People vs. Borbano, 76 Phil. 702, citing People vs. De Asis, 61 Phil. 384; People vs. Garcia, 63 Phil. 296; People vs. Masin, 64 Phil. 757; People vs. Macalindong, 76 Phil. 719; Hermenegildo La O vs. Director of Lands, 76 Phil. 736, citing Baltazar vs. Alberto, 33 Phil. 858; Licad and Vitug vs. Bacani, 51 Phil. 58). "Nor will the appellate court reverse any findings of fact by the trial court made upon conflicting testimony

and dependent solely upon the credibility of witnesses, unless the court below failed to , take into consideration some material fact or circumstance presented to it for consideration." (U.S. vs. Ambrosio, 17 Phil. 295; U.S. vs. Melad, 27 Phil. 488; Baltazar vs. Alberto, 33 Phil. 336; Melliza vs. Towle, 33 Phil. 345; U.S. vs. Remigio, 37 Phil. 599; People vs. Cabrera, 43 Phil. 64; Carazay vs. Arquiza, 53 Phil 72; Garcia vs. Garcia, 63 Phil. 419.).

In the case at bar We see nothing on record to justify any disturbance of the findings of fact of the trial court. Appellants have concentrated their frontal attack on the testimony of Priscila Andrade as the star witness of the prosecution. They tried, to establish that Priscila Andrade was not an eyewitness to the incident and that she was only informed of the death of her brother by Prima Lumio. On this point the trial Judge says:

"Dolores Calizo and Nemesia Pereira were requested to inform Priscila of the death of her brother, but while they were in their house she was not informed because her mother was seriously ill. It was only when Priscila met Prima Lumio near the house of Silvestre Tumbokon that she was told of the tragedy. When she learned of the death of her brother, she sat down, rolled on the road and wept. Silvestre -Tumbokon took Priscila's hand and told her to stand up and not to roll on the ground because it is dirty and there is plenty of dust. Priscila asked Silvestre Tumbokon to accompany her to her brother's house but Silvestre refused because he had not yet taken his supper."

The Court did not gave much credence to the testimony of defense witnesses, not only because of their bias for being related to some of the accused, but also because of the inherent weakness of their versions. As His Honor reasons out:

"Prima Lumio told Dolores Calizo and Nemesia Pereira to inform Priscila of the death of her brother. Dolores did not tell this fact to Priscila because her mother was seriously ill. They accompanied Priscila on the way Tip to the house of Silvestre Tumbokon, a distance of 250 meters. Yet Dolores and Nemesia never disclosed to Priscila their prime mission to inform her of her brother's death. "Under the circumstance, the most natural act or impulse was to inform Priscila of their mission as soon as she was (beyond) hearing of her ailing mother. The falling of Priscila on her buttocks, her rolling on the ground and her sobbing hysterically are too poignant to be true. * * * The most natural reaction of Priscila upon being informed of the death of her brother would have been to run or hurry-up to the house of her brother and not to roll on the ground like a spoiled child. * * * The Court believes that the theory of the prosecution is more credible. Gloria and Priscila have seen all the accused attack Leonardo Enerio from the time he was boloed by Jesus Mangilog to the last shot that suffered his life. They have seen in detail the participation of each of the accused who were unmistakably identified. There was sufficient light coming from the Coleman lamp that hanged inside the house and it was moonlit night. Although the motive for the murder is trifling and frivolous such as denial to extend further credit and boundary dispute, there may have been more potent cause not known to the widow, that impelled the accused to conspire and plan for the death of Leonardo. Conspiracy was not definitely established but gleaned from the sequence of events, the Court believes that there was a preconceived plan to send Domingo Sajona to engage the occupants of the house to a conversation; Bienvenido remained in the balcony as a lookout; while Jesus Mangilog, Nicanor Sespeñe, Apolinario Leonardo and Pedro Calizo hid themselves in strategic positions behind the store and the house. The chopping of the banana stalks and the throwing of stones on the roof of the house were purposely done to attract attention and thus force Leonardo Enerio to come out. Or the throwing of the stones might have been a prearranged signal that Leonardo Enerio was approaching the house and thus the concerted attack commenced. The twelve wound received by Leonardo three of which are gunshot wounds, tallied approximately with the participation each of the accused had taken as established by the prosecution. It was Jesus Mangilog who gave two bolo blows which caused wounds Nos. 8 and 10, followed by the shots fired by Nicanor Sespeñe, Pedro Calizo and Apolinario Leonardo. It is not impossible that only two bullets

found their marks, namely, wounds Nos. 5 and 6 and the rest of the shots had gone wild. The gunshot wound on Leonardo's back, wound No. 11, may have been the last shot fired by Domingo Sajona. Bienvenido inflicted the stab wound at the base of the neck, wound No. 9. The rest of the wounds received by Leonardo may have been inflicted by the accused armed with sharp cutting instruments. "When all the accused rushed at Leonardo, Nicanor Sespeñe, Domingo Sajona and Bienvenido Sajera may have been wounded during the scuffle or melee, either from the boloes of the other accused or that of Leonardo, if he had any."

As to the motive of the crime the record shows that a week before the incident, Gloria Enerio, wife of the deceased offended party, went to collect from Domingo Sajona, Pedro Calizo and Jesus Mangilog their outstanding debts for the tuba and sardines which they bought on credit from the store of the offended party, but they replied that they had no money then. In the afternoon of June 22, 1953, i.e., the day previous to the killing, the said appellants Sajona and Calizo, and Jesus Mangilog, returned to the store of the offended party and wanted to make purchases on credit, but the offended party refused to extend them credit until they had paid their old accounts. Disgusted, appellant Sajona remarked: "If you will not be taken during the day, by evening you will be taken", after which, he and his companions left. It appears further that sometime in March 1953, the offended party had a dispute with Sespeñe and (Apolinario) Leonardo regarding the boundaries of a certain piece of land situated in barrio Tagbaya, and that the same was settled by the barrio-lieutenant and a councilor.

The record further shows that after the first complaint was filed, the widow of the offended party was given on December 16, 1953, the sum of P3,000 by Nicanor Tumbokon, and a week later at the constabulary headquarters at Numancia she was given another sum of P500 by Nicanor Sespeñe in consideration that she would not testify during the trial. Because of a sick child in the hospital and furthermore as she was not given much choice, the widow accepted said sums of money, which she deposited with the branch office of the Philippine National Bank in Capiz, and she was made to sign several sheets of paper among them, a letter addressed to the Provincial Fiscal, (Exhibit 4) wherein she asked for the dismissal of the case because of her loss of interest over the subject-matter. Because Nicanor Tumbokon told her to leave the place, the widow left for Manila on February 22, 1954, which accounted for her absence on the date of the trial, with the result that as already stated, the case was dismissed. During her stay in Manila, the widow reported the matter to the constabulary authorities at Camp Crame and as a result, the second complaint was filed.

Aside from the fact that the motives shown on record might be in addition to other causes which have not been disclosed, We have already ruled that:

"Whatever the cause of the killing, it is not absolutely necessary to find a motive therefor. The question of motive is of course very important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but when there is no doubt, as in the case at bar, that the defendant was the one who caused the death of McKay, it is not so important to know the exact reason for the deed" (U.S. vs. McMann, 4 Phil. 561). "It is not indispensable to conviction for murder that the particular motive for taking the life of a human being shall be established at the trial, and in general, when the commission of the crime is clearly proven, conviction may and should follow even when the reason for its commission is unknown" (U.S. vs. Carlos, 15 Phil. 47—Padilla's Revised Penal Code, Annotated, 1955 ed., Book I, p. 31).

And We do not entertain any doubt that appellants are the perpetrators of the crime of murder, qualified by treachery, they are charged with in this case.

The Solicitor General maintains that the crime at bar was attended by the aggravating circumstances of superior strength, aid of armed men and dwelling, and in view of the penalty attached by the Code to the crime—reclusion temporal in its maximum period to death (Art. 248 of the Revised Penal Code)—he recommends that the decision

of the lower Court should be accordingly modified by raising the penalty to death. "We do not agree with this recommendation. The aggravating circumstances of superior strength and aid of armed men, as well as night time which also concurred in the commission of the offense, are included in the qualifying circumstance of treachery and cannot be appreciated separately from the latter circumstance. As to the aggravating circumstance of dwelling, We. entertain some doubts as to its applicability to the case at bar because the deceased was only about to step on the first rung of the ladder of the house when he was assaulted by appellants, and We prefer to maintain the penalty of reclusion perpetua imposed by the trial Judge. Anyway the required number of votes for the imposition of the death penalty has not been obtained.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellants. It is so ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

Judgment affirmed.

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