

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO PERIO-PERIO, ACCUSED-APPELLANT.***G.R. No. L-39683. October 10, 1983*

Ponente: RELOVA, J.

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On June 24, 1972, spouses Domingo Albios and Tomasa Albios, their daughter Luzviminda Albios, and nieces Ester Tangcay and Delia Villa, attended the inauguration of a new school building in Bagwa, Sibutad, Zamboanga del Norte. As part of the celebration, a dance was held attended by the residents of the community. Domingo Albios and his family left the dance at about two o'clock in the morning of June 25, 1972 and proceeded for their residence. As it was showering, Tomasa wore a hat, her husband's loafer and a towel. Domingo covered himself with a banana leaf only, while their other companions did not have anything on to protect themselves.

While they were walking home in a column, with Tomasa Albios leading the way, they heard an explosion or a gunshot. Immediately, Domingo and his companions, except Tomasa, hid themselves in the bushes nearest them, and almost simultaneously they heard Tomasa saying: "Aguy, Domingo, I was hit." From his hiding place, Domingo saw his wife Tomasa turn around and fall to the ground. As he was not armed, Domingo ran home to inform the members of his family that Tomasa was shot. Likewise, he was able to report the matter to the policeman who was on duty at the dance.

Tomasa died on the spot. Her body was taken to the Albios residence where they found her wounded at the left side of her back thru the front of the abdomen. Her body was not examined by a physician before she was buried at the municipal cemetery of Sibutad, Zamboanga del Norte.

The incident was brought to the attention of the Chief of Police who, together with Patrolmen Palma and Necesario, went to the scene of the crime immediately after they had received the information. As the body of the victim was no longer there, they proceeded to her residence. It came out from the investigation conducted by the said peace officers that Tomasa Albios was a para-mour of one Florencio Jumawan. As a consequence, said Jumawan was brought to the police station where he was investigated and admitted that he hired one Rogelio Perio-Perio to shoot Domingo Albios, husband of Tomasa. In the process, it was Tomasa who was hit.

The Chief of Police had Perio-Perio located and, upon investigation, the latter admitted that he was hired by Florencio Jumawan to shoot Domingo Albios, husband of Tomasa. Perio-Perio also revealed that it was a home-made shotgun he used in shooting the victim. Florencio Jumawan indicated to the authorities the place where he hid the fatal weapon. The Chief of Police, together with Fiscal Balisado, went to the place indicated (in the plantation owned by a certain Cabilin) and there they found the weapon.

An information for murder was filed against Rogelio Perio-Perio, and only against him because Florencio Jumawan died when he was detained in the municipal jail of Sibutad.

Defendant Perio-Perio denied his alleged participation in the commission of the crime charged. In fact, he claimed

that he did not even know where Sitio Bagwa is, much less has he ever been there. He admitted his signature in the document, marked Exhibit "E", but contended that he had to sign it because the policemen told him that he would be killed if he would refuse. He was not even asked questions but was only presented with the said document for his signature. Likewise, he denied having been brought to the Office of Municipal Judge Nicomedes Cabasa. It was in the Office of the Chief of Police where he saw the judge. He also denied the statement imputed to him that Florencio Jumawan offered him P100.00 to shoot Domingo Albios; and, regarding the weapon used in the commission of the crime, he saw it for the first time only in court.

The testimony of the accused Perio-Perio was rebutted by Patrolman Mario Calizo saying that it was the Chief of Police who investigated herein accused, and that he did not maltreat or force the latter to sign Exhibit "E."

After trial, the lower court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Rogelio Perio-Perio guilty beyond a reasonable doubt of the crime charged in the information. The commission of the crime, however, was attended with treachery, and as defined and penalized under Article 248 of the Revised Penal Code, the penalty imposable is reclusion temporal in its maximum period to death. As there are no mitigating and no aggravating circumstances to consider, the penalty to be imposed should be in its medium period.

"The accused Rogelio Perio-Perio is hereby sentenced to reclusion perpetua.

"He is further sentenced to suffer all the accessory penalties provided for by law.

"He is further sentenced to pay the heirs of the victim P12,000.00 as indemnity for the death of the victim; P10,000.00 for moral damages; P10,000.00 for exemplary damages and P5,000.00 for loss of earning capacity.

"He is further sentenced to pay the cost.

"As detained prisoner he is entitled to all his preventive imprisonment if he will agree in writing to abide by all the rules and regulations provided for convicted persons, otherwise he will be entitled to only four-fifths (4/5) thereof. The firearm, a homemade shotgun or paliuntod used in the commission is hereby ordered confiscated in favor of the state and turned over to the Philippine Constabulary for proper disposition."

The trial court said that even if it were to disregard the extrajudicial confession, the following facts appeared uncontradicted:

"(a) That on June 25, 1972, Tomasa Abao de Albios was shot while on her way home from a dance at the Bagacay Elementary School and died on the spot. Her body was later taken to her home where police authorities saw and examined it.

"(b) That the accused Florencio Jumawan had an 'affair of the heart' with the deceased Tomasa Abao de Albios.

"(c) That there was a prior attempt to eliminate Domingo Albios.

"(d) That immediately before the shooting of Tomasa, the accused Florencio Jumawan was seen by witness Warlito Embrado talking with accused Rogelio Perio-Perio. Florencio Jumawan was pointing to accused, Rogelio Perio-Perio, at several directions around them;

"(e) That Tomasa Albios was shot and killed near the spot where both accused had been seen talking, the previous day.

"(f) That accused Rogelio Perio-Perio was then living with the accused, now deceased, Florencio Jumawan.

"(g) That accused Rogelio Perio-Perio, before his affidavit (confession) was taken, he admitted his

participation in the commission of the crime.

"(h) He admitted that he was offered by his then co-accused Florencio Jumawan the sum of P100.00 to shoot Domingo Albios.

"(i) Instead of Domingo Albios being shot and killed, it was Tomasa Albios, the paramour of Florencio Jumawan who was killed.

"(j) That the death weapon, Exhibit 'F' was found by the authorities where both Jumawan and Perio-Perio said Jumawan hid it in the mud in a rice field. This particular fact belied the claim of the accused that he did not know anything about the death weapon. As hidden, it was impossible to find that 'paliuntod' unless the person or persons who hid it were to locate it themselves. Therefore, it is clear that accused, Rogelio Perio-Perio knew where the gun was hidden, otherwise he could not have divulged its exact location to the police authorities." (pp. 20-21, Rollo)

Appealing to Us, Perio-Perio alleged that the trial court erred (1) in finding that appellant, before his alleged extrajudicial confession was taken, had admitted his participation in the commission of the crime and that he was offered by his then co-accused Florencio Jumawan a sum of money to shoot Domingo Albios; and, (2) in finding that appellant knew where the deadly weapon was.

Going over the records of the case, it is clear that prosecution witnesses, Domingo Albios and Luzviminda Albios, who were then with the deceased, Tomasa Albios, both admitted in court that they did not see, much less recognize, the appellant. Domingo declared:

"Q Have you heard a shot that was fired that hit your wife?

A I heard.

Q Then what did you do upon hearing the shot?

A What I did when I heard the explosion I threw myself to the bushes to hid myself.

Q How long, have you kept yourself hidden in the bushes?

A For short while.

Q Then what did you do?

A During the explosion I heard my wife said, 'Aguy, Domingo, I was hit.' From the place I hid myself I looked towards the place where my wife was and I saw her turn around and fall to the ground. When I saw that I ran towards out place because I have no arm.

Q Were you able to see the persons who shot your wife?

A I did not." (pp. 4-5, tsn., May 17, 1973, Underscoring supplied)

And, hereunder is the testimony of Luzviminda Albios on this point:

"Q While on your way, do you remember if there was anything unusual that happened?

A Yes, sir.

Q What was that incident about?

A The incident was that my mother was shot, sir.

Q Have you seen the person who shot your mother?

A I did not see, sir.

Q How did you know that your mother was shot?

A I know that my mother was shot because I heard an explosion, sir.

Q When you heard that explosion, what did you do?

A I hid myself, sir.

Q Where did you hide yourself?

A Among the bushes, sir.

Q How long have you remained hiding yourself in the bushes?

A If I am not mistaken, almost one hour, sir." (tsn., pp. 4, June 19, 1973 hearing)

Basis of the suspicion that it was appellant who fired the shot was the testimony of Warlito Embrado who, according to the trial judge, saw Florencio Jumawan the day before the incident talking with and pointing to Perio-Perio "several directions around them." Thus, Embrado testified as follows:

"Q Do you remember where were you on June 24, 1972 particularly in the afternoon?

A Yes, Sir.

Q Please tell the Honorable Court where were you on that date?

A In our place in Bagwa, Sibutad, Zamboanga del Norte, sir.

Q While you were in your place in Bagwa, Sibutad, Zamboanga del Norte, do you remember having seen a person somewhere in your place?

A Yes, sir.

Q Who were those persons whom you saw?

A I saw Florencio Jumawan and the accused, Rogelio Perio-Perio, sir.

x x x x x x x x

Q In what particular place in Bagwa, Sibutad, Zamboanga del Norte did you see these two persons?

A In our palay seedbeds near our house, sir.

Q What were they doing when you saw them?

A I saw them and in that instance, Florencio Jumawan was raising his hands and pointing in different directions and my wife inquired from me what they were doing there and I answered 'maybe about the tethering of the carabao of Florencio Jumawan' because Florencio Jumawan used to tether that carabao in that place, sir.

Q How long did Florencio Jumawan and Rogelio Perio-Perio stay in that place near your house?

A About five minutes, sir.

Q After that, did you notice where did they go?

A Yes, sir.

Q Where?

A They proceeded on their way home, sir." (tsn., pp. 36-37, Feb. 14, 1974 hearing)

By any stretch of the imagination We cannot bring to ourselves the relevance or connection between the meeting and conversation of Jumawan and Perio-Perio and the death of Tomasa Albios. In the first place, Embrado did not hear what the two were talking about. On the contrary, he could only guess that they were referring to the tethering of their carabaos. Secondly, it is hard to believe that Jumawan knew at the time that the Albios family would be passing the place at the particular hour and in whose company they would be. To convict appellant on this testimony of Embrado or to consider it as proof would be basing conviction on mere inference "which can hardly be said to be reasonable, much less inescapable." (People vs. Maisug, 27 SCRA 742)

Then, there is the Chief of Police, Marcelino Camaso, who testified that when he investigated Florencio Jumawan, the latter pointed to herein appellant as the one who fired the shot intended for Domingo, but instead, hit Tomasa. Whereupon, Perio-Perio was brought in for investigation and the latter allegedly admitted in writing (Exhibit "E") that Jumawan hired him for P100.00 to shoot and kill Domingo Albios because the latter's wife was Jumawan's mistress. Further, Camaso declared that Jumawan pointed to him the place where he hid the weapon used in the shooting of the victim - in the coconut plantation of a certain Cabilin. Accompanied by Jumawan they went to the place and recovered the homemade shotgun (Exhibit "F").

The only evidence which would pin appellant to the case at bar are his statement (Exhibit "E") and the recovery of the firearm (Exhibit "F"). Relative thereto, We are dubious of appellant's guilt because -

1. Why would Jumawan, a married man, plot the assassination of Domingo Albios when the latter is the offended party in the alleged liaison of the former with Tomasa, a mother of ten (10) children. The reverse would be more natural and logical. And, there is no certainty that Tomasa is really the mistress of Jumawan.
2. After appellant was arrested and detained he obtained injuries during his investigation and signing of Exhibit "E". In his decision, the trial judge said: "He showed his small scar on his right upper lip and another scar on the right elbow and on the left forehead which according to him were scars of the wound when he was hit with the pistol butt by Patrolman Mario Caliso who warned him that he will kill him if he will not sign the confession or if he will tell the judge that he was maltreated." (p. 163-164, Original Records)
3. Florencio Jumawan died even before a case against him could be filed in court. As observed by the trial court in its decision, Jumawan "died of an illness. Apparently, he was not attended by any physician while he was detained in the municipal jail of Sibutad, Zamboanga del Norte, although he was sent to the Rizal Memorial Hospital for treatment when his sickness was already quite serious. As a matter of fact, he died on his way to the hospital." (p. 154, Original Records) Records do not show the nature of his fatal illness and what caused it, or why no medical attendance was given him - circumstances which, according to the defense - "give rise to the inference that he was a victim of torture."
4. The victim, Tomasa Albios, was not autopsied before she was buried. While it was true that she died of gunshot wounds, there is no evidence that the bullet that hit her came from the firearm, Exhibit "F". Stated differently, any gun could have been presented with a "concocted story that it was found where the accused had said it was hidden." (p.10, Appellant's brief).
5. Appellant, a third grader, testified that he saw the firearm, Exhibit "F", for the first time in court and he was not the one who told the Chief of Police where it was hidden; that he signed the statement (Exhibit "E") because he was maltreated and threatened to be killed. On this point, the Chief of Police declared that before taking the confession of Perio-Perio he advised the latter that under the constitution, he has the right to be assisted by counsel, right not to answer any question and explained to the accused that whatever the accused will say, will be used against him or in his favor, as the case maybe," (p. 158, Original Records) The advice

supposedly given appellant, particularly on the matter of assistance of counsel, does not appear on Exhibit "E" because the only question asked in connection therewith was -

'INVESTIGATOR: Are you willing to answer all questions that may be propounded to you, and are you willing to sign this statement to prove that all you stated here are true and correct?' (p. 86, Original Records)

'SUBJECT: Yes, I am willing to answer and to sign this statement'

We are astonished that the requisites of the 1973 constitution with respect to the admission of extra-judicial confession, were allegedly observed by the police when the statement of appellant was taken on June 25, 1972 or before the new fundamental law took effect.

Under these circumstances, it is hard to believe that the statement (Exhibit "E") was given freely and voluntarily. The least that can be said of the People's evidence in the case at bar is, it is insufficient to sustain the allegations of the information because it is tainted with doubt, inconclusiveness and inferences consonant with the innocence of the accused. The rule requiring proof beyond reasonable doubt has not been complied with. It is true that appellant's defense of alibi is weak, but well established and founded is the rule that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense; and that the accused need not prove his innocence because that is presumed.

WHEREFORE, on reasonable doubt, the judgment of the lower court, dated August 30, 1974 is REVERSED and appellant Rogelio Perio-Perio is hereby ACQUITTED.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Abad Santos, Plana, and Escolin, JJ., concur.

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