

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EMILIANA GO ET AL., DEFENDANTS. EMILIANA GO (ALIAS
EMILIANA G. PORCIUNCULA, ALIAS MAAY), ANAS-TACIO BORJA Y
GUILLERA (...)**

G. R. No. L-1527. February 27, 1951

Ponente: REYES, J.

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REYES, J.:

At about 7:30 o'clock in the evening of April 11, 1946, Pedro Porciuncula, a tobacco merchant, was shot to death at his office in his house on Ramon Fernandez Street, City of Manila, where he and his wife and children were then living. He received four gunshot wounds: one through the head, another through the chest, and two through the right arm.

Questioned by the police, the deceased man's wife, Emiliana Go, gave the information that her husband had been shot by two unknown persons, and while professing ignorance of the killer's true motive, she made the hint that, because her husband had three *queridas*, one of them might have been "instrumental" in having him killed.

The crime was solved with the arrest of four suspects: Anastacio Borja, Juan Susaya, Ricardo Quilaquil, and Erlinda Carson. The four gave signed statements admitting their participation in a conspiracy to kill the deceased and at the same time implicating his widow. Also implicated were three others, who, though not captured, were identified as Felipe Tumandao, Filemon Salcedo, and Marciano Peras. The police was also able to recover the written instrument by which the widow gave formal approval to the conspiracy. The police found the original copy of the document in the army cot of Filemon Salcedo in the house of Juan Susaya on Galicia Street, Sampaloc, Manila, a carbon copy thereof in another part of the same house, and still another copy in the trunk of Anastacio Borja at his residence on Lepanto Street. Referred to in the record as the "murder contract," the instrument reads as follows:

"April 3, 1946

"To whom it may concern:

"I, Emiliana Go y Porciuncula, 25 years, married, of 2508 R. Fernandez, Tondo, Manila with my own consent have agreed with Felix Lopez regarding the shooting of my husband (Pedro Porciuncula, 31 years, married, of the same address) for the following reasons:

"1. He is living with another woman.

"2. He always torture me when he comes home from the house of his woman.

"3. I can't withstand his treatment to me. "Felix and I, have written the following agreement:

"1. That I will give Felix Lopez P10,000 on installment basis.

"2. That I gave him P6,000 cash.

"3. That after the killing of my husband, I will completely give him the rest of the amount.

"4. That I will answer everything for him.

"5. That if something may happen to him, do not do something, instead look for me.

"6. In other words, I will take all the responsibility, in case something may happen to him.

"Witnesses:

"JUANITO SUSAYA

"ANASTACIO BORJA

"Thumbmark:

(Here two thumbmarks)

"Signed By:

"EMILIANA G. PORCIUNCULA

"This 4th day of April 1946

"Thumbmark:"

(Here one thumbmark)

Confronted with the above document, Emiliana Go and Anastacio Borja admitted their signatures and thumbmarks thereon, while Juan Susaya, on his part, said that the document was signed and thumbmarked for him by his common-law wife in his presence. Erlinda Carson confessed to having typed the document from a draft signed by Emiliana Go, Anastacio Borja, and Juan Susaya, and she also divulged that the Felix Lopez therein mentioned was no other than her common-law husband, Filemon Salcedo, who, not wishing his name to appear in the contract, had asked to be designated by another name.

On the strength of the facts thus revealed and of other proofs unearthed by the police, an information was filed in the Court of First Instance of Manila, charging Emiliana Go alias Maay, with parricide and her co-defendants Anastacio Borja (alias Tating), Juan Susaya, Ricardo Quilaquil, Erlinda Carson, Filemon Salcedo (alias Felix Lopez), Felipe Tumandao, and Marciano Peras, with murder, the information alleging—

"That on or about the 11th day of April, 1946, and for some time prior thereto, in the City of Manila, Philippines, the said Emiliana Go alias Emiliana G. Porciuncula alias Mrs. Porciuncula alias Maay did then and there willfully, unlawfully, feloniously and directly induce her co-accused, the said Anastacio Borja y Guillera alias Tating, Juan Susaya y Corbil, Ricardo Quilaquil y Bordaje, Erlinda Carson y Ador, Filemon Salcedo alias Felix Lopez, Felipe Tumandao and Marciana Peras, to kill Pedro Porciuncula, her own husband, by paying them in advance a big amount of money and promising to pay them an additional large sum after the

killing; and that on or about said day, April 11, 1946; in said city, the said Anastacio Borja y Guillera alias Tating, Juan Susaya y Corbil, Ricardo Quilaquil y Bordaje, Erlinda Carson y Ador, Filemon Salcedo alias Felix Lopez, Felipe Tumandao and Marciano Peras, with intent to kill in consideration of the price and promise of an additional price or reward as above set forth, during night time purposely sought, with evident premeditation and treachery in that the attack was sudden and unexpected, conspiring with the, said Emiliana Go alias Emiliana G. Porciuncula alias Mrs. Porciuncula alias Maay and with one another and mutually helping each other, did then and there willfully, unlawfully and feloniously attack and assault the said Pedro Porciuncula by shooting him repeatedly with firearms, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his instantaneous death."

With the defendants Salcedo, Tumandao, and Peras still at large, the case came up for trial with respect to the other accused, all of whom pleaded not guilty, with the exception of Erlinda Carson, who had to be discharged from the information so that she could be used as a state witness. Emiliana Go moved for a separate trial, but the motion was denied, and she was tried jointly with Anastacio Borja, Juan Susaya, and Hicardo Quilaquil. She, however, had her own separate counsel, who conducted her defense independently of the others.

The evidence shows that Emiliana Go's married life with the deceased Pedro Porciuncula was far from being a happy one. Embittered as it already was by their petty quarrels and his illicit affairs with other women, it was made well-nigh unbearable by his frequent outbursts of temper in the course of which he would lay hands on his wife and give her a good thrashing. Unable to endure her misery any longer, Emiliana in her desperation decided to eliminate her husband, and to that end she appealed to her cousin Anastacio Borja to look for someone who would do the job. Sympathizing with his relative and making common cause with her, Borja contracted Juan Susaya and the latter's housemate Filemon Salcedo (whom he knew to be a hold-upper) and introduced the two to Emiliana in her house in Gagalangin. After several days' negotiation an understanding was reached, with Emiliana agreeing to pay P10,000 for the killing of her husband and to assume all responsibility therefor. The agreement was reduced to writing, typed by Salcedo's common-law wife, Erlinda Carson, and then signed and thumbmarked by Emiliana and Borja and also by Susaya's common-law wife with his name and in his presence.

To carry out the planned assassination of Pedro Porciuncula, Salcedo first recruited Ricardo Quilaquil, took him along to Emiliana to ask for transportation expenses, and then, with him and Susaya and one Pedro Castillo, set out in a jeep in the early morning of April 11, 1946, Ixmnd for the house of the intended victim. But on the way they happened to be stopped and searched by a police patrol at the corner of Tayuman and Juan Luna Streets, and Quilaquil and Castillo were arrested, Quilaquil for carrying a .45—caliber pistol and Castillo for carrying a balisong. Quilaquil remained in confinement until the afternoon of the following day.

Temporarily thwarted but still bent on performing his end of the bargain, Salcedo recruited two new companions (Marciano Peras and Felipe Tumandao) and in the evening of the same day (April 11) went with them on a jeep to the residence of the deceased. There Salcedo and Peras left Tumandao in the vehicle as guard, entered the house through the back door and, with Emiliana to guide them, went into the room where the deceased was, shot him to death and then fled.

With the murder accomplished, Salcedo sent Erlinda to Emiliana's house to collect from her the price agreed upon. Knowing that Erlinda was in the conspiracy, Emiliana confided to her how the murderers had entered through the kitchen door and been led by her to the room of the deceased, and after showing her the bullet marks and blood stains therein she took her to her own room and handed her the sum of P2,150, explaining that it was all the cash she had but promising to pay the balance on May 10. The money was divided between Salcedo, Susaya, Quilaquil, and five others.

The evidence further shows that previous to the murder of her husband, Emiliana had been making threats to have

him killed. Thus Rodolfo Penaflor, who was bookkeeper and secretary of the deceased and lived with the spouses, testified that he often heard Emiliana utter such threats. And according to Telesfora Porciuncula, sister-in-law of the deceased, Emiliana complained to her shortly before the murder that the deceased had quarreled with her and that for that reason she was going home to her province, but warning that he would yet have "his day" for she would have him killed before she left. Brigido Porciuncula, brother of the deceased, also testified that when, after Emiliana's arrest, he visited her in jail and informed her that he had seen the murder contract, and then asked her why she went through with it, she broke into tears and said: "Forgive me for what I have committed."

Testifying in her own defense, Emiliana denied having had anything to do with the murder of her husband. She admitted signing the murder contract, but alleged that she did so without reading it and without knowing its contents, Filemon Salcedo having assured her that it was merely a contract for the services of a lawyer who was to work for her separation from her husband. She denied having given or promised to give money to any of her co-defendants and even denied having known some of them. She, however, gave to understand that she was not happy with her husband, her life with him having been made miserable by his infidelity and by their frequent quarrels in the course of which he would beat her up even to the extent of crippling her and causing her to spit blood. She said that on one occasion he threw a pair of shoes at her, thereby inflicting upon her lower lip a laceration which had to be sutured in the hospital. She claimed that she still cherished his memory, but she also made it plain that life with him had become so unbearable that she conceived the idea of separating from him. And then she admitted that although Erlinda Carson had told her of SaJcedo's complicity in the murder of her husband four or five days after it took place, yet she made no mention of it to the police, this despite the fact that she sometimes went to the detective bureau to find out who had killed her husband.

The other appellants, namely, Anastacio Borja, Ricardo Quilaquil, and Juan Susaya, all denied participation in the murder plot and claimed that their confessions had been extracted from them through force and violence.

Borja did admit signing the murder contract, but claimed that he did so only after Salcedo had maltreated him and threatened him with death. He would make it appear that the said contract was not a murder plot, that it was signed by him after the killing, and that Salcedo informed him that he was merely going to use it to blackmail Emiliana. He said that he did not know the contents of the document and that although he had a copy of it he never read it. He admitted having introduced Salcedo to Emiliana, claiming, however, that the incident was purely accidental, for while talking to Emiliana on that occasion he happened to see Salcedo pass by. But he also admitted that although he had learned from Salcedo that Porciuncula had been the victim of a foul play he neither informed Emiliana about it nor reported it to the police. It appears that Borja was a first year high school student.

Ricardo Quilaquil on his part testified that he did not know the deceased Pedro Porciuncula or his widow Emiliana Go and came to know Anastacio Borja only in Bilibid. He said that he could not have taken part in the killing because at the time it happened he was in jail, having been detained for illegal possession of a firearm from the afternoon of April 10 up to the following day. But he admitted that among his companions in the jeep when he was arrested on that occasion were Filemon Salcedo, Juan Susaya, and Pedro Castillo, though explaining that he was then on his way to Navotas to sell his firearm.

The defendant Juan Susaya also put up an alibi, saying that from 8 o'clock in the morning of the day in question he was in an army camp where he was working as a cook. He admitted that Filemon Salcedo and his wife were living in his house, and referring to the incident when with Salcedo and Quilaquil he was detained by the police in the afternoon of April 10, he said that he happened to be with Salcedo then because on his way to the camp he was invited by Salcedo to ride with him in the jeep and he accepted the invitation because he had nothing else to do. He denied having entered into any plot to murder Pedro Porciuncula or having received any money in that connection.

On the foregoing evidence the trial court found Emiliana Go guilty of parricide and her co-defendants Anastacio Borja, Juan Susaya, and Ricardo Quilaquil guilty of murder, sentencing all of them to suffer each the penalty of reclusion perpetua, jointly and severally to indemnify the heirs of the deceased in the sum of P2,000, without subsidiary imprisonment in case of insolvency, and each to pay one-eighth of the costs. The three defendants last named were declared entitled to be credited with one-half of the preventive imprisonment undergone by them. From this sentence the defendants have appealed, with defendant Emiliana Go presenting a separate brief.

Taking up first the appeal of Emiliana Go, we find that this defendant contends in the first place that the trial court erred in not granting her a separate trial. As a matter of law the granting of a separate trial when two or more defendants are jointly charged with an offense is discretionary with the trial court (Sec. 8, Rule 115). But it is claimed that judicial discretion was abused in this case when Emiliana Go was denied separate trial because her defense was antagonistic to that of her co-defendants, some of whom had made confessions implicating her in the crime. We find, however, that defendants did not as a matter of fact put an antagonistic defenses, and there is no reason to believe that Emiliana Go has suffered substantial prejudice from the fact that she was tried jointly with her co-defendants.

It is contended that because of the denial of a separate trial for Emiliana Go, evidence that was competent only against her co-defendants, consisting of their extrajudicial confessions, helped in convincing the trial court that she conspired with them to kill her husband. But it would appear from the record that the trial judge had been forewarned about the incompetency of said evidence as against Emiliana and that he obviously took heed of it in his order denying the petition for separate trial. And in any event, while those confessions were not admissible as against Emiliana Go as proof of a specific fact, they could nevertheless, because of their materiality, be taken into consideration as a circumstance in judging the testimony of one of the conspirators, Erlinda Carson (*People vs. Badilla*, 48 Phil., 718). Said this court in that case:

"* * * The general rule is that extrajudicial declarations of a co-conspirator made before the formation of the conspiracy or after the accomplishment of its object, are inadmissible in evidence against the other co-conspirators, on the ground that the accused in a criminal case has the constitutional right to be confronted with the witnesses against him and to cross-examine them. It has however, been held that where extrajudicial confessions had been made by several persons charged with a conspiracy and there could have been no collusion with reference to the several confessions, the fact that the statements are in all material respects identical is confirmatory of the testimony of an accomplice. It was so held in the case of *United States vs. Lancaster* (44 Fed. 896), where three persons were jointly charged with a conspiracy, one of whom made a voluntary confession, another was permitted to become a witness for the Government under implied pardon and testified, and the third made a declaration during the pendency of the criminal enterprise, the court saying among other things that '* * * while the testimony of the two accomplices could not corroborate each other, and while the confession of Clemens cannot be considered as evidence against the other prisoners, yet the unanimity of statements of the three, made without the opportunity of conference, is a fact which tends to corroborate the three statements so made. * * *'."

"In other words while an extrajudicial declaration of a co-conspirator may not be directly introduced in evidence against another co-conspirator as proof of specific facts, it may nevertheless under certain conditions be taken into consideration as a circumstance in judging the credibility of the testimony of an accomplice." (*People vs. Badilla*, 48 Phil., 718, 725-726.)

We find, moreover, that independently of the above confessions there is ample proof on record upon which the conviction of Emiliana Go could be based. In the first place, there is the murder contract itself, which Emiliana Go admits to have signed and which speaks for itself. Her explanation that she never read it is too improbable to be believed. Then there is the testimony of Erlinda Carson that when she visited Emiliana after the murder, the

latter described to her how the murder was committed and how she had guided Salcedo to her husband's room, even showing her the bullet marks and blood stains therein; and that Emiliana gave her P2,150 as part payment of the price agreed upon for the killing, which sum she later delivered to the triggerman Filemon Salcedo. There is also the testimony of Rodolfo Penaflor that he often heard Emiliana making threats to have her husband killed. And significant is the fact that when Brigido Porciuncula, brother of the deceased, visited her in jail and asked her why she went through with the contract to have her husband killed, she broke into tears and asked forgiveness for what she had done. In addition, there is the existence of a strong motive on her part for getting rid of her husband, discernible from her own account of her unhappy married life. And her admission that, though she had information that Salcedo was the one who killed her husband, she said nothing about it to the police, clearly belies her protestation that she was innocent of the whole affair.

The rest of the assignments of error of this appellant deals with the findings of fact of the trial court and in the final analysis their resolution hinges on the credibility of the witnesses. But after carefully going over the record we find nothing that would justify the conclusion that the trial court has not made a correct appreciation of their testimony.

The declaration of the state witness Erlinda Carson is assailed on the ground that it conflicts in some of its details with her extrajudicial confession. But while contradictions do exist between her two declarations the same may have been due merely to her imperfect memory in matters of detail and, as the Solicitor General suggests, also to "the lengthy cross-examination to which she was subjected by a renowned and justly feared criminal lawyer." But the contradictions in important parts have been satisfactorily explained by her and on the whole her statements agree as to the main and ultimate facts.

Turning now to the appeal of Anastacio Borja, Juan Susaya, and Ricardo Quilaquil, we find that the case against them is even stronger. For aside from the testimony of Erlinda Carson and the murder contract we have their extrajudicial statements admitting their participation in the conspiracy to kill the deceased. It is immaterial that these appellants took no direct part in the execution of the criminal act or lent no cooperation in its commission by another act without which the crime could not have been accomplished. Once conspiracy is proved, each and every one of the co-conspirators must answer for the acts of the others, provided such acts are the result of the common plan or purpose. (*People vs. Maasin*, 64 Phil., 757.) It does not appear that these appellants had withdrawn from the conspiracy or ever made any attempt not to have it carried out. On the contrary, the acceptance by all of them, with the exception of Anastacio Borja, of a share in the price paid for the murder after this had been consummated, as appears in their confessions, would belie any claim that they ever desisted from the unlawful enterprise. As to Borja, it would appear that this defendant received money from Emiliana before the murder; but we have his admission that, though he had learned from Salcedo who the murderer was, yet he did nothing to have the authorities informed about it. This denotes continued interest in the success of the conspiracy of which he was, according to one of his co-defendants, the real "master mind."

After going over the record, it is our conclusion that the trial court was justified in finding the appellants guilty as charged, and as the sentence imposed is in accordance with law, the same is hereby affirmed, with costs.

Moran, C. J., Pardo, Ferial, Pablo, Bengzon, Tuason and Montemayor, JJ., concur.

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