

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FELIZARDO PASIONA, DEFENDANT AND APPELLANT.***G.R. No. L-18295. February 28, 1966*

Ponente: REGALA, J.

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REGALA, J.:

Felizardo Pasiona appeals from a judgment of conviction, for the crime of murder, rendered against him by the Court of First Instance of Camarines Sur.

It appears from the testimony of Eпитacio Gutierrez, introduced by the prosecution, that at about 7 o'clock in the evening of March 30, 1957, while the said witness and some other barrio folks were in the store of Napoleon Picazo in the barrio of Salog, municipality of Goa, province of Camarines Sur, Antonio Rios arrived and borrowed P1.00 from Napoleon Picazo saying that he had lost in the cockfight. After receiving the money from Picazo, Rios was asked by Francisco Tiances to buy some drinks but the former refused, saying that he had already lost much in the cockfight. Rios then left the store followed moments later by the accused. Not long afterwards, Rios returned, presumably after taking supper in his house. He was in an angry mood saying that someone had hit him. He approached Francisco Tiances and asked if he was the one who hit him but the latter denied the accusation- Rios then confronted Simeon Arnesto but the latter demurred. At the same time, Rios struck Arnesto with a stick, but Arnesto was able to parry the blow and no harm was caused, although the rooster which he was holding flew away. As Rios stepped back towards the door to get out, the accused who had just arrived and was standing near the door struck him on the head with a piece of wood 3 inches in diameter and 1 meter in length. Thereupon, Rios slumped to the ground just outside the door, his head resting against the wall of the store. The store owner, Napoleon Picazo, angered by the trouble, shooed away all the persons out of his store and closed it. Pasiona, the accused, left the place immediately and ran towards the road, leaving behind the piece of wood which by the force of the impact against Rios' head, had broken into two.

Simeon Arnesto, another witness for the prosecution, told of the same story, thus; In the same evening of March 30, 1957, while he was walking on the road of Salog, Goa, Camarines Sur, going towards the store of Napoleon Picazo, he met Antonio Rios. Soon after, he also met the accused Felizardo Pasiona carrying a piece of wood. After he had reached the store of Picazo, and while sitting and holding his fighting cock, Rios came and asked Tiances why he, Tiances, hit him. The latter answered that he did not know anything about it. Then Rios, upon seeing Arnesto, confronted him and hit him with a piece of wood but Arnesto parried the blow, with his arms and the fighting cock which he was then holding got loose. As Rios retreated towards the door, the accused hit him in the head with a piece of wood and Rios fell to the ground at the doorstep of the store. Picazo ordered all those in his store to go out, pushing them towards the door which he locked up afterwards. Rios was lying on the ground agonizing when Arnesto left.

Dr. Luisa A. Andaya, municipal health officer of Goa, testified that she performed an autopsy on the body of the deceased on March 31, and she found the deceased to have sustained a wound on the head with several fractures of the skull and his death was due to compression of the brain.

The accused, on the other hand, declared that since 6:30 to 10 :00 in the evening of March 30, 1957, he, his wife and his father were in the house of one Marcelino David in the same barrio of Salog, attending the novena prayers occasioned by the death of the father of Marcelino David. He did not leave the house of Marcelino David until 10:00 p.m. because he was the sponsor of the fifth day novena prayers and he and his wife had to attend to the distribution of tuba and bread to the people who attended the prayers. At 10:00, the accused, his wife and father, while on their way home, met Apolinario Alvarez who told them that his brother-in-law Antonio Rios met an accident. The accused then left the empty demijohn, which he was holding, with his father and joined his compadre Apolinario Alvarez to the place where Rios was supposed to be. Alvarez informed him that his brother just fell down in front of the store of Picazo, so they proceeded to that place, but when they arrived there, Rios was already brought in a hammock to the poblacion. The two hastened to follow the group and were able to overtake them. The accused even assisted in carrying the hammock and when they reached the town, Rios was brought to the Puericulture Center where he was attended and given injection by the doctor. Rios was still groaning when the doctor suggested to call for a priest to hear the victim's confession. Thereupon the defendant himself went to the convent but the priest did not open his door, so that he went back to the Puericulture Center from which he proceeded home at almost 1:00 in the early morning. At 7:00 a.m. of March 31, 1957, the accused was fetched by a policeman and was brought to the office of the Chief of Police where he was confronted for having hit Rios.

The accused denied having had any ill-feeling against Rios. According to him, Simeon Arnesto was his enemy because the latter tried to get from him his protegee (a child nephew to both Arnesto and Pasiona) whom he refused to give. The accused further declared that the reason Eпитacio Gutierrez testified against him was that his father convinced him so, as his father believed that his (father's) common-law wife was Pasiona's paramour.

Marcelino David, also testifying in favor of the defense, corroborated Pasiona's declaration that the latter was really in his house since 6:30 p.m. of March 30, 1957 up to 10:00 after the novena prayers.

Francisco Tianes and Napoleon Picazo testified that the accused was not seen in the store that evening and it was Simeon Arnesto who was hit by Antonio Rios.

Giving due credence to the evidence for the prosecution, and disbelieving the story of the accused and his witnesses, the court below sentenced the accused to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased in the sum of P3,000 without subsidiary imprisonment in case of insolvency, and to pay the costs.

In appellant's brief, counsel for the accused first questions the conclusion reached by the court below that Felizardo Pasiona was the one who hit the deceased when, according to said counsel, the accused was not duly identified by the prosecution witnesses. The following testimony of Simeon Arnesto should dispel any doubt as to whether or not he did see and recognize the accused in the commission of the crime.

"Q. And while you were looking at Rios, your rooster was on the ground; is that not true? As a matter of fact, you were busy catching the rooster, is that not true?

A. No, sir; I caught my rooster when Napoleon was already closing the store. '

Q. You declared here that you were hit by Rios while you were sitting at the door leading to the bodega; that is

true, is it not? A. Yes, sir.

Q. By the way, how far is the door of the bodega from the main door?

A. About one (1) meter only.

Q. This stick that Rios hit you with, how big is it?

A. A little bigger than my thumb.

Q. And how long is that stick?

A. About one (1) meter also.

Q. You declared that when Rios stepped backward, he was hit by the accused. Are you sure that it was the accused that you saw?

A. It is sure that Felizardo was the one who struck him.

Q. Did you see the accused clearly?

A. It was clear because the light was very bright.

Q. But the accused did not enter the store of Napoleon Picazo; that is true?

A. He did not enter.

Q. So the accused Felizardo—when Rios was going out of the door—what part of the doorway was the accused standing?

A. When Rios was making the step backward, I saw Felizardo Pasiona facing me while he was behind Antonio Rios, and I saw him actually hit the victim.

Q. How far were you from Rios when Rios was hit?

A. A little more than one (1) meter because the distance from the main door to the door of the bodega is one (1) meter only." (pp. 23-25, t.s.n. Galalac)

The foregoing testimony is corroborated by the declaration of Gutierrez that it was the accused who hit the deceased with a piece of wood 3 inches in diameter and 1 meter in length. Gutierrez further declared that the store of Picazo was brightly lit with a petromax lamp at that time. While it may be true that this witness Gutierrez left the store through the window, it was not impossible for him to have seen the people involved in the trouble. As a matter of fact, we think it would be quite unnatural for one in the position of Eпитacio Gutierrez not to have looked at the person who attacked Rios when it happened at a distance of only a meter or two from him.

The accused-appellant points out some contradiction between the testimonies of Simeon Arnesto and Eпитacio Gutierrez as to the number of times the accused appeared in the scene. As the Solicitor-General has put it, the contradiction is more apparent than real. Arnesto's testimony is limited to a narration of the incident from the time he saw the accused carrying a piece of wood, but this was when the latter was already going to the store of Picazo for the second time that evening of the incident. Gutierrez, on the other hand, narrates the story from the time the accused went to the store for the first time to borrow some money.

Napoleon Picazo, the store owner, testified that there really was trouble in his store that evening for he even closed his door after driving all the people out of the establishment. This witness, however, could not tell who hit the deceased. It is incredible that he would not know the assailant when the crime happened right there at his doorstep in an early hour of the night.

Francisco Tíanes, also a witness for the defense, is a half-brother of the accused on the maternal side and that at the time of the hearing was a detention prisoner, having been convicted of robbery in band. As in the testimony of Picazo, Tíanes has pretended in his declaration that he did not see who hit the victim, although he admitted having been present in the store on that occasion.

While Gutierrez claims that the reason he testified against the accused was because the chief of police had threatened to include him in the information unless he told the truth, the accused-appellant, contrariwise, attributes ill-will upon the said Gutierrez. The imputation that Gutierrez must have been induced by his father to testify because the latter suspected the accused to have an affair with his (father's) common law wife, who happened to be the mother-in-law of the accused, is quite unbelievable because during the hearing, the accused gave his age as 29 while his mother-in-law was 67. Aside from the fact that it is uncommon for a son-in-law to fall in love with his wife's mother, more so in this case where the latter is more than twice as old as her son-in-law.

The testimony of the accused that Arnesto wanted to get his protegee from him would also impute improper motives upon the latter. But again, this cannot be seriously taken in favor of the accused-appellant since the said Arnesto, on rebuttal, denied having had any grudge against him.

Evidently, the defense would want the Court to believe that it was not the accused who killed Antonio Rios inasmuch as he was somewhere else when the crime took place in Picazo's store. It is not, however, difficult to imagine the accused to have left the novena and gone to the store for a while and then returned unnoticed because there were quite a number of people in the house of Marcelino David at that time. It was the accused himself who stated that the house of Marcelino David was only about 150 meters from the store of Napoleon Picazo.

It is noteworthy that the defense did not present as witnesses any of the persons who, as alleged by the accused-appellant, brought the victim in a hammock to the poblacion after he was hit, so that the statement that

the accused helped or assisted in bringing him to the poblacion was not at all corroborated.

Verily, the defense of alibi is generally weak since it is so easy to concoct. For this reason, courts have to view it with caution and accept it only when proved by positive, clear and satisfactory evidence (People vs. Bautista, 116 Phil. 830; cited in People vs. Dayday, 122 Phil. 263).

This Court, after a thorough review of the evidence, concludes with the lower court that the accused Felizardo Pasiona is guilty beyond reasonable doubt of having killed Antonio Rios and that the crime was attended with treachery which qualifies the killing to murder. As a rule, this Court desists from disturbing the conclusion of the trial court concerning the credibility of witnesses for that court, having seen and heard the witnesses themselves and observed their behavior and manner of testifying, is in a better position to appreciate the evidence. (People vs. Dayday, etc., et al., supra, citing People vs. Lumayog, 121 Phil 474).

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed in toto.

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

Judgment affirmed.

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