

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RICO ELIZAGA, FELIPE LOZADA, JR., AND ELIEZER TOLENTINO, ACCUSED AND APPELLANTS.

G.R. No. L-2487. May 18, 1950

Ponente: TUASON, J.

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TUASON, J.:

This appeal is from a judgment of the Court of First Instance of Cagayan, which found Rico (Uldarico) Elizaga, Felipe Lozada, Jr. and Eliezer Tolentino guilty of robbery with homicide and sentenced them to reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the sum of P2,500, and to pay the costs.

The facts, in so far as they are admitted by the appellants in their brief, are these: On August 9, 1947, Father Narciso Guevara, auxiliary parish priest of Gattaran, Cagayan, accompanied by a helper (sacristan), Antonio Abad, went to barrio Comao, of the same municipality, to officiate in that barrio's fiesta. On the 12th, Father Guevara said a mass in Bangatan, after which he and Abad proceeded to Palagao. From the latter barrio Abad returned to town with a note and P21 in cash for Father Carreon, the parish priest.

At about 1:30 p.m. of August 14, 1947, the chief and the sergeant of police of Gattaran, having received report of the finding of a cadaver at Tabiki river, repaired to the place and recognized the body as that of Father Guevara. Later in the afternoon, Dr. Antonio Nolasco, president of the 3rd sanitary division, with two other doctors, the chief of police and other persons, fetched the cadaver to town where Dr. Nolasco, with the aid of the other two doctors above mentioned, made a superficial examination of the body. His opinion was that the priest had died of asphyxia, possibly by drowning. On September 7, 1947, the body was exhumed and a second autopsy was performed by a representative of the district health officer, an MP doctor and the president of the third sanitary division. With the last mentioned doctor dissenting and reiterating the conclusion reached at the first autopsy, the other two doctors signed a majority report stating the presence of congestion on the right and left cheeks of the cadaver, more marked on the left side, and assigning as the cause of death:

"(1) Asphyxia due to occlusion of the respiratory opening or passage as evidenced by the congestion of both cheeks and the trachea.

"(2) Shock secondary, due to undue manipulation and wounding of the genitalia as evidenced by tear wound of the scrotum at the median raphe and the congestion of the vas deference." (Exhibit C, p. 8, folio of exhibits.)

The MP doctor who participated in the second autopsy declared on the witness stand that the congestion on the right and left cheeks indicated that the deceased was struck in that region.

The important questions for determination are (1) whether the death was caused by accidental drowning or (2) if it was the result of a foul play, who killed the priest? We shall take up the last question first.

The prosecution undertook to prove that the deceased was slain by the three defendants. It introduced two supposed eye-witnesses, only one of whom gave an account of what he claimed to have seen, the other having

backed out from what he had previously stated to the police authorities.

Rafael Calavia testified that he had known Rico Elizaga and Eliezer Tolentino for a long time because he had resided in the poblacion of Gattaran, while Felipe Lozada, Jr. he used to meet in the streets. He said that one day he pulled cogon grass for attorney Alberto Antonio. At about sunset, as he started for the river to wash up, he saw the three defendants on the river bank and Father Guevara coming down the slope toward the river on horseback. The defendants took hold of the reins of Father Guevara's horse and the priest fell down. Elizaga boxed Father Guevara, Lozada pressed his neck and Tolentino stepped on his stomach. He hid behind a tree so as not to be seen. From the tree to the place where the priest was assaulted, the distance was about forty meters. The name of the river was Tabiki and its width at low tide was about fifteen meters. At the time of the commission of the crime, the water was shallow, about knee-deep. After Father Guevara fell off the horse, the defendants dragged him to the river and after that they grabbed his saddle bag. At this point of the attack he ran away because he knew the defendants were coming across the river. He said he did not have any grudge against any of the accused.

Isaac de la Cruz was sworn as a witness but he expressed complete ignorance of Father Guevara's misfortune. While admitting that he was at Tabiki river until six p.m. on August 13, 1947, he said he did not know anything. He admitted that the signature on Exhibit B, a statement sworn to and subscribed before the justice of the peace of Gattaran, was his. He also admitted that on February 16, 1947, he went with the provincial fiscal and Calavia "to the place of the incident" and pointed to the fiscal an elevated place to which, he told the fiscal, he had gone looking for a carabao and from which he had seen Father Guevara being attacked by three individuals. But he explained that those statements he made by order of the military police when in truth he had seen nothing of what happened. He also said that he had been forced to sign the affidavit above mentioned by "those persons who came to get us and maltreated us," namely, Lieutenant Aguilar and Sergeant Pascua. He admitted that he had come to Aparri to attend the trial of this case with the mother of the deceased and promised her that he would go to the convent where she was to stay. He said he did not show up at the convent, as he had promised, because he got a headache and could not get up.

Antonio Abad, Father Guevara's boy-helper, testified that the priest had a saddle bag' in which he had about P500 in cash of 10-, 20- and 50-peso denominations, besides, one kodak, one striped pajama, two undershirts, two towels, one pair of trousers and two wrist watches. He saw all these because as the priest's assistant he arranged his belongings.

Tomas Foster testified that between 5 and 6 in the afternoon of August 13, he saw Father Guevara riding on a horse past his house in barrio Tabiki, town bound; that the priest was carrying a saddle bag, and that he and the priest exchanged greetings.

Jesus Endrada, the chief of police, declared that when he saw Father Guevara's cadaver at Tabiki river on August 14, it was lying on its back half submerged in the water and the other half out of the water. He said there was a watch on the left wrist, one cigarette case in the right pocket of the priest's polo shirt, and one chain on the neck. The face was swollen with echimosis and the left cheek was bruised, but the stomach was not distended.

Manuel Torrijos, Captain, MPC, Provincial Commander of Cagayan, testified that in September, 1947, he questioned Rafael Calavia and Isaac de la Cruz in the barracks of the Aparri detachment. He identified Exhibit A as the statement of De la Cruz regarding what De la Cruz said he "knew of the crime. He said that before De la Cruz signed that affidavit, the affiant was apprised of his rights and privileges as a citizen.

The defendants put up an alibi.

Apolinar Siriban testified that in the afternoon of August 13, 1947, Didarico Elizaga came to his house to have h

haircut by one of his employees, Roque Leaño. It was about three o'clock when Elizaga came. The haircut was over at four o'clock but Elizaga did not leave immediately. It was, he thought, after five o'clock when Elizaga left; the sun was about to set.

Roque Leaño testified that he was a tailor in the employ of Apolinar Siriban. About three p.m. of August 13, he gave Elizaga a haircut and got through about five.

Uldarico Elizaga, 20 years old, testified that at three p.m. on August 13, he went to Apolinar Siriban's shop to have a haircut. He got through with his haircut about five o'clock and left the tailor's shop about dusk. He denied having gone to Domon or Tabiki creek. He did not know, he said, Rafael Calavia. The first time he met Calavia was when lit. Aguilar ; "let us stay together in one room in the camp in Aparri."

Florencio Castillo, high school teacher, declared that on August 13, 1947, he was in the Northern Philippine Academy where he taught physics, national language, military drill and physical education. Felipe Lozada, Jr. was his student, taking under him national language, military drill and physical education. Lozada's class in national language was from 9:30 to 10:30 a.m. In the afternoon, he handled military drill, from 4:10 to 5:00. On August 13, there was a military review from 4:00 to 5:00 p.m. followed by a literary-musical program up to 6:00. Lozada was present at both the military drill and program. He said he had three school registers attesting to Lozada's presence. (More of these records will be said later.)

Estanislao Quinagatan said that on the 13th of August 1947, he was at home; that at about 4 o'clock in the afternoon Felipe Lozada came "to invite jus to witness their program;" that at 6 o'clock Lozada came again to get the "fiamblera" for Mrs. Varela's meal fecfc which Lozada's parents furnished; that Lozada used to get the "fiamblera" from his (witness') house at 11 o'clock in the morning and at 6 o'clock in the afternoon.

Felipe Lozada, 16 years old, testified that on the 13th of August, he was in school—from 7:30 to 10:00 in the morning and from 1:30 to 4:00 in the afternoon; that on that date there was a military training and program given in honor of a visiting guest, Rev. Fr. Francisco Galvez; that the program included songs, recitations and speeches and was concluded at 6 p.m.; that from school he went to Estanislao Quinagatan to get the food container.

Macario Melchor testified that he lived in barrio Darat, Barbarit, Gattaran; that Eliezer Tolentino is his son-in-law, having married his daughter on the 28th of the previous month; that on August 11, Tolentino and his wife came to visit him; that upon arrival at his house Tolentino was. attacked by asthma and was in bed for four days without being able to go out.

Rafael Melchor testified that on togust 11, Eliezer Tolentino, his brother-in-law, came with his wife to witness' father's house; that on the 13th he saw this accused both at noon and in the afternoon, about 5 o'clock; that he called at his father's house "because that was the first time they (Tolentino and his wife) go to that house;" that besides Eliezer Tolentino was sick with asthma and was in bed;; that he left his father's house at about 7 o'clock.

Elizier Tolentino, 21 years old, testified that on August 11 he went to visit his father-in-law; that on that date he had an attack of asthma, and was laid up for four days. Oil August 13 he never went out. He said he did not know Rafael Calavia; that the first time he knew Calavia was when they were in Aparri. He denied knowledge of, much less participation, the killing of Father Guevara.

The defendants presented witnesses directly to impeach Calavia's testimony—to show that this witness had been maltreated by the military police and that he was in another place at the time lie said he saw Father Guevara killed.

Jose P. Amarin, Captain and Intelligence Officer, MPC, Cagayan, was put on the stand for the defense. The gist

of his testimony is that he conducted an investigation of Father Guevara's death and found that Calavia and De la Cruz had been "third-degreed." On cross-examination, he testified that he was a Methodist; that the accused were of the same religion as he professed; that Eliezer Tolentino's father is a pastor and Lozada's father supervising teacher; that he did not know whether Elizaga's father was a protestant; that he did not know, when he made an investigation, that a complaint had already been filed with the justice of the peace; that all he knew was that an investigation had been conducted.

Alfredo Llaga testified that on the 13 th day of August, in the morning, he was taken to the house of Jama, a Chinaman, in Calaoagan Bassit. Among the persons who arrested him was Sgt. Pascua, the only one he knew. He was asked by the soldiers who passed by his house in Tabiki Isaac de la Cruz and Jose Mandac were taken with the witness. He saw Rafael Calavia at Jama's house when they were already eating in the evening. He recognized Calavia's feature because there was a light. Calavia's face was swollen and he was suffering great pains. He said Isaac de la Cruz asked Calavia, "Why are you implicating us, you cannot prevent this suffering we are having? To which Calavia answered, "Brother, you are not the only one who was maltreated, I even got the worst."

Jose Mandac testified that oh August 30, 1947, a soldier searched his house and after-ward took him with Isaac de la Cruz and Alfredo Llaga to Jama's store, where he was asked if he had seen the iffen who killed Father Guevara, and was beaten when he said he did not see anybody; that he did not see De la Cruz maltreated but he heard his cries; that he saw Rafael Calavia in the evening very weak and with a swollen face.

Santos Tobias testified that Attorney Alberto Antonio's wife was his wife's sister; that on August 13, Urdillos and Calavia came to his home to get their money for the cogon they had gathered for Antonio, who lived in his house but who had gone to Tuguegarao; that he went to Antonio's wife, who had had a miscarriage, and received from her P20 with the request that he "please do the favor to give the money" to Calavia, which he did; that from his house Calavia and Urdillos went south; that it was about 5 o'clock in the afternoon.

Eustaquio Urdillos testified that on August 13, in the afternoon, he went to another place, the store of Atty. Antonio in Company with one Calavia, "to collect, I supposed, for pulling cogon;" that Antonio was not at home and they found only Santos Tobias; that Calavia was paid P20.00, after which they bought several bottles of tuba and returned to their respective homes.

The Governments case must stand or fall on the testimony of Rafael Calavia, the only supposed eye-witness to the crime who gave evidence for the prosecution. The trial Judge who saw this witness testify and observed his conduct and demeanor was convinced by his narration.

Judged by the record alone, we are satisfied that Calavia was a truthful witness. We had no motive to invent facts against the accused. That he had kept silent about the crime and had even denied to the authorities having personal knowledge of it would only show his indifference and his reluctance to become instrumental in the prosecution and conviction of the defendants.

We are not impressed by the contention that Calavia was forced through violence and intimidation to testify for the prosecution. It is common practice for law enforcement officers to wring confession from a suspect by torture, but no right-minded man would by this means compel, with any hope or success, an unwilling witness to tell the court what he did not know or what he did not want to say. As the saying goes, although the simile is not exactly parallel, you could lead a horse to the water but you could not make him drink. A man could be forced to make an extra-judicial statement against a defendant but there would be no assurance that he would stick to that statement in court, which is what counts. An extrajudicial statement alone would be useless. The most obvious futility of compelling a witness to testify against his will was that once he was before the court no amount of intimidation could keep him from going back on his promise. And the betrayal need not be open as was De la Cruz; to

exaggerate or to add fantastic details to the story would be fatal.

Nor was the witness merely to recite stereotyped passages as if declaiming. He was to convince a discerning if not skeptical court experienced in evaluating the truth. Above all, he was to meet a barrage of questions and cross-questions from hostile attorneys. Yet in this case, Calavia, except for a few seeming contradictions, gave straightforward testimony, reciting complicated details, and successfully stood his ground against rigid and thorough cross-examinations.

Anyhow, Calavia in rebuttal denied that he had been maltreated. He said it was Captain Amorin who spoke to him lengthily in an effort to make him change his statement against the accused. He said on cross-examination, in rebuttal, that Amorin "investigated" him in the house of the mayor after they came from the house of Lozada. He said he was "investigated" from 8 o'clock in the evening until, early the following morning surrounded by the defendants and their relatives. He denied that in the store or house of Chinaman Jama he saw Alfredo Llagas or Jose Mandac. He said that only Isaac de la Cruz was with him.

It is significant that only Isaac de la Cruz and Rafael Calavia made sworn statements. If the military police obtained statements through violence from De la Cruz and Calavia, it is strange that Alfredo Llagas and Jose Mandac, who claimed to have been manhandled also, do not appear to have incriminated any of the defendants. They do not appear to be made of sterner stuff.

There are signs of truth in Alfredo Llagas's, Jose Mandac's and Isaac de la Cruz's statements that they were rounded up and urged, perhaps with threats, promises and intimidation, to tell who killed Father Guevara; but there are as many signs of falsehoods and extravagant exaggerations in their story of torture, especially as regards Calavia. At any rate, Calavia's testimony has to be weighed partly, yes, by what had happened to him but largely by the probability and the details of his story and the way he told it. In both respects Calavia, we think, passed the test successfully.

The appellants rely heavily on several alleged contradictions in Calavia's testimony. It is said that it was about the same hour he was supposed to have witnessed the crime that Calavia said he went to collect from his employer the price of the cogon grass which he had gathered. The truth is there was no contradiction, only misinterpretation or misunderstanding of Calavia's testimony. Upon further cross-examination, this witness declared that it was one week after the death of Father Guevara that he came to get his money from the man who had hired him. And this clarification has the merit of having been made without any thought of adjusting it to any previous testimony. It was his spontaneous answer to an innocuous and direct question as to when he called upon his employer to get his money.

Another supposed discrepancy is between Calavia's statement in Exhibit 1, in which he affirmed that the deceased had been assaulted at the bank of Domon river, and his testimony in court that the assault occurred at the edge of Tabiki river. But the record clearly shows that the river or creek where the incident took place is interchangeably called Domon or Tabiki. It appears that one is tributary of the other.

The last discrepancy cited is between Calavia's statement in the same affidavit and his testimony at the trial regarding the length of time he had known Father Guevara and the clothes the latter was wearing. As to the priest's apparel, the confusion could very well have been due to another misunderstanding or misinterpretation. Having used the generic term "bado", shirt, in his testimony before the court, Calavia very likely used the same word before the police officers who wrote Exhibit 1, and that word was understood to mean "sotana" by the translator, for the obvious reason that a Catholic priest, except on very rare occasions, do not wear shirts. Calavia denied having said "sotana" in his extrajudicial declaration, a denial which is plausible in view of the fact that "sotana" is a term not known to or used by people who have little or no schoolings.

The discrepancy as to the time Calavia had known the deceased is of very slight or no importance. By its nature, the witness' answers could have been based on a mere guess and uttered without reflection. Under the circumstances it is not strange that such answers, given on widely-separated dates, should be at variance with each other. Moreover, the discrepancy was harmless as it was innocent. The time had no bearing on the questions at issue and the witness had no need to lie about it. It made no difference whether Calavia had known the priest five months or three years or had not seen him at all before.

The trial court did not believe the defendant's evidence on their alibi. In quoting the following passage from U. S. vs. Lozada, 21 Phil. 287, the court by inference adopts it as its reason for rejecting this defense; "where the case offers a conclusive proof of the commission of the crime and the guilt of the accused through the testimony of a witness and circumstantial evidence, the accused cannot be held to be innocent simply because counsel sets up an ingenuous defense of an alibi, and alleges but failed to prove that the eye-witness of the crime who testified for the prosecution could not have been present at the place of the occurrence."

We do not think the trial Judge erred in giving no credence to the defendants' and their witnesses' testimony. These witnesses were in one way or another bound to the accused Toy ties of friendship or family relation. There is nothing by which the truth or falsity of their testimony can be checked other than its inherent credibility. At the best, their statements are far from convincing; at the worst they sound positively untrue in many particulars.

There is one aspect which to our mind is important but has escaped the attention of the parties. We refer to the lack of fixed guide by which the witnesses could assure that the 13th day of August and the hour of 5 or 6 were the date and the part of day when Elizaga had his hair trimmed and Eliezer Tolentino had an attack of asthma. The witnesses could not make use of Father Guevara's death as basis of recollection because the defendants were arrested or implicated for the first time several weeks afterward.

In behalf of Lozada, three supposed school registers, identified by Florencio Castillo, were introduced—Exhibits 10, 11 and 12. In Exhibit 10, kept by Angel Mandac as instructor, Felipe Lozada's name is No. 6 in the list of first year students. This exhibit purports to show that in the month of August Lozada was never absent from class. Captain Amorin initialed on September 15, 1947, the line corresponding to this accused.

Commenting on this record, the trial Judge said:

"* * * It is surprising to note that the way the instructor marked this book is different in every month; like that of July those present were marked with the letter "p"; (for the month of August, present is marked with the sign of check; and for the month of September, the letter "t" and "b" marks are visible.

"The initialing by Captain Amorin of the register for the morning session calls the attention of the Court as to why witness Isaac de la Cruz was again investigated in the way he was investigated as it was stated above on September 5, 1947, two days after having already been investigated by Captain Torrijos making these two activities reinvestigating and initialing to be of suspicious character.

"The explanation given for the school register Exhibit 10 noted some twenty days after the death of Father Guevara was to assure that the same is not changed, but there was no explanation why the two other registers Exhibit 11 and 12 were not also initialled by Captain. Amorin. Twenty days makes, enough time for anybody to change his register."

Exhibit 11 was, according to Castillo, kept by himself. It purports to be the register of cadets, and to show that Felipe Lozada Jr. was a member of the third platoon and was present on all the school days in the month of August, 1947. Castillo testified that he was acting principal of Northern Philippine Academy on August 13. In Exhibit 12, supposed to have been kept by Eugenio L. Fernandez, Felipe Lozada appears to have been marked present on August 13.

Exhibits 10 and 12 were riot admitted in evidence on the ground that the teachers who were supposed to have kept them did not testify. At any rate, these two registers even if authentic would not prove or disprove Lozada's alibi, for these teachers' classes were dismissed at four o'clock. Furthermore, Exhibit 2 is of very doubtful genuineness, to say the least.

As to Exhibit 11, the lower court found that it, as well as Exhibit 12, is "very new as if the same had never been used," in marked contrast to Exhibit 10 "which is pretty well worn out." Our own: examination of Exhibits 11 and 12 confirms the trial court's belief that they were not in use in August, 1947.

Calavia testified that sometime after the crime in question was committed, he moved to Solano, Nueva Vizcaya, for fear of the accused, and that in Solano he stayed with the brother of the deceased priest. It would also appear that shortly before and throughout the trial he was with the deceased's mother in Aparri apparently being taken care of by her. The appellants would impeach Calavia's veracity because of this association between him and Father Guevara's relatives.

We do not take the solicitude shown by Father Guevara's mother and brother toward this witness as sufficient cause for suspicion of their and Calavia's intentions and good faith. It is natural and common for a party to a case to attend to the needs and comforts of his witnesses, specially if these have no independent means of defraying their own expenses or are lukewarm. In this particular case there was the additional consideration that there was the menacing risk that Calavia might be weaned to the opposite side precisely because of this witness' uncertain attitude. Isaac de la Cruz' shift gave reality and justification for the fear. It should be noted that defendants belong to prominent and influential families in Gattaran, as counsel for the defense emphasize in another connection;; that Father Guevara's family was stranger to that town, and that, as a matter of fact, the defendants and their relatives, with the aid of a military officer had been doing their best to dissuade Calavia from becoming a prosecution witness.

On the immediate cause of Father Guevara's death, the evidence, as the Solicitor General points out, is inconclusive. The Solicitor General has made a critical and impartial analysis of the proofs in the light of the facts revealed by the doctors who examined or performed an autopsy on the deceased's body. His analysis and conclusions, with which we agree, are as follows.

"It must be admitted that neither of the two autopsies satisfactorily establishes the true cause of death.. The first autopsy was only partial, and rather superficial at that. The doctors performing the autopsy limited themselves to looking for external signs of violence and to examining the bone structure to determine the presence of fractures. The abdomen was not opened for an examination of the internal organs, specially the heart, to determine whether the drowning was post mortem or ante mortem (see De los Jingeles, Legal Medicine [1934] PP. 386-388.) The face was livid (p. 54, t. s. n.), which is a manifestation of asphyxia by drowning (De los Angeles, op. cit., p. 383). On the other hand, it does not appear that the doctors found the characteristic corrugated skin (goose flesh), which is also another external sign of death from drowning (De los Angeles; op. cit., p. 383.) And there was no report of fine froth on the mouth of the cadaver (Gonzales, Vance and Helpern, Legal Medicine & Toxicology, [1940], p. 281.) The presence of congestion in the face is not conclusive of the application of violence, for apparently the neck and face became swollen in cases of drowning (see De los Angeles, op. cit., figures 113 and 114, opposite, p. 384)

"The fact that the second autopsy was per formed only three weeks later, when the cadaver was already in an advanced stage of decomposition (p. 60, t.s.n.), necessarily made the results inconclusive (see Gonzales, etc.,op. cit., p. 282). The putrefaction of the internal organs prevented their examination. Post-mortem changes make it difficult to differentiate post-mortem lesions from ante-mortem ones (Gonzales, etc., op. cit., p. 283.) For proof of violence, little reliance can be placed on the finding of the two doctors signing the majority report at the second autopsy that there was congestion of the two cheeks, for, as already pointed out, congestion of the

face and neck is not unusual in drowning cases. Furthermore, according to the president of the third sanitary division, testifying on the first autopsy, there was no disintegration of the epidermis and when the face was incised on both sides, no signs of violence were found (pp. 57, 59, ts.n.) In this connection, it should also be stated that bruises and slight congestions found on the bodies of drowned persons are sometimes caused by the grating of the body against the mud or sand or other articles in the water (see De los Jingeles, op. cit., pp. 383, 385-386). Still less can the tear in the scrotum found at the second autopsy be entitled to any importance because no such tear was found at the first autopsy (pp. 59» 61-62, t.s.n.) and therefore it is not improbable that the tear, in view of the advanced stage of decomposition, was caused by a mishandling of the body, however slight.

"Actually, in view of the circumstances of the killing, the most careful autopsy performed after the discovery of the body might still have failed to reveal anything that would conclusively support the theory of the prosecution. According to the lone eyewitness, the deceased received only one blow in the face from the appellant Rico Elizaga and when the deceased fell into the water the appellant Tolentino stepped on his stomach while the appellant Felipe Lozada, Jr., choked him in the neck. These acts were not sufficiently violent to have caused definite impressions on the body. As we have seen, the congestion found on the face of the victim is inconclusive of violence. A blow on the stomach hardly leaves any mark because this part of the body is soft and yielding (Peterson, Haines & Webster, Legal Medicine and Toxicology [2nd. ed.], Vol. I, p. 288.) Imprints of the fingers on the neck in cases of throttling are not always left (Gonzales, etc., op. cit., p. 269.) There could have been therefore but little expectation of finding conclusive marks on the body of the deceased, specially after it had been immersed in the water for about twelve hours;. Nor would a finding that the cause of death was asphyxia by drowning, together with the absence of; external signs of violence, be conclusive that no violence was in fact used. Father Guevara was choked while he lay in the water. It is entirely possible that the pressure on his neck, applied as it was by a boy of only 16 years and 5 days (Exhibit 12, p. 122, folio of exhibits), was insufficient to strangle him, but enough to keep his face under water and so drown him. Consequently, a conclusive demonstration that Father Guevara died of asphyxia by drowning, not by throttling, would not be necessarily incompatible with the version of the eyewitness. Eventually, therefore, in view of the inconclusive results of the two autopsies, the conviction of the appellants must have to rest entirely on the testimony of Rafael Calavia who claimed to have seen the assault and the robbery."

The fact that the deceased may have died of drowning would not absolve the defendants. Drowning can occur in a shallow river or in a bathtub. Father Guevara's head could have been pressed down under the water or allowed to remain in the water while still breathing but too weak to pull the victim was out of water. Calavia went off the scene before the defendants left Father Guevara, and, nothing is known have done after Calavia's departure.

Accidental drowning is out of the question. The of what they may river was low and the weather calm. The deceased was only 30, strong and in the prime of health, without any known sickness, a point which counsel stress in an endeavor to establish that the three accused unarmed could not have overpowered a young and sturdy man. The fact that only part of the body was in the water is another circumstance which discards the possibility of fortuitous suffocation in water. Granting then that the priest was drowned, there is no escaping the conclusion that his drowning was caused by criminal hands.

In the light of the facts at hand one possible motive for the crime was religious. The three accused were Protestants and Eliezer Tolentino's father a Protestant minister. Two of them, Elizaga and Lozada, were attending Northern Philippine Academy, a Protestant school, while Gattaran Institute, a Catholic and rival institution, was patronized by Father Guevara. There is no proof regarding the attitude towards each other of the people connected with those schools. But militant hostility between Catholic and Protestant schools as well as between religious leaders of different faith and their adherents is, in the provinces, rather the rule than the exception.

The other possible motive was robbery. The loss of Father Guevara's bag containing money and other personal

property might be cited to sustain this charge. That the wrist watch and the chain which the priest was wearing and the cigarette case in his shirt pocket were not stolen would not in itself prove the contrary. Extreme fright born of inexperience could be summoned as reason for the defendants' flight before they had cleaned the victim of all his personal belongings. Still, considering the defendants' social position, robbery may have been only an incident conceived after the priest had been murdered.

The uncertainty as to the motives does not however lessen the conviction that the defendants¹ slew the deceased. It does not shake Rafael Calaviai's testimony. Its only effect is to change the qualification of the crime from the complex crime of robbery with homicide, as charged, to two separate, simple crimes of homicide and theft. Giving the appellants the benefit of the doubt, we find them guilty of the latter crimes independent of and unrelated to each other.

The evidence is too uncertain to justify conviction for murder. There is not enough evidence to show that the killing was carried out with treachery. Even if we assume that the commencement of the attack caught the offended party unawares, an assumption which is purely hypothetical, yet the initial assault does not appear to have tended specially and directly to overcome his resistance and to incapacitate him to put up a fight and defend himself against the subsequent blows. The defendants were unarmed, one of them was a youngster barely 16 years of age, and the party assaulted was still young and strong.

This ratiocination also disposes of the charge of superior strength. It is only necessary to make the additional remark that superiority in number does not necessarily mean superiority in strength. It is necessary to prove, besides, that the attackers "cooperated in such a way as to secure advantage from superiority of strength." (U.S. vs. Trumata, 49 Phil. 192; Albert's Commentaries on the Revised Penal Code, New Edition, p. 126.) Such proof is lacking.

The taking of the deceased's bag constitutes either robbery or theft, according as force was used in the taking, distinct from the force employed in the killing, or the intent to carry away the bag² was formed after the priest was killed. The evidence on this feature of the case is also uncertain with the result that, again, we have to adopt the theory which is more favorable to the defendants.

The value of the money and property stolen is undetermined. The testimony on the amount of the cash is based on a guess, and the value of the bag and its other contents was not given. We doubt that Father Guevara carried P500 cash in a short, [missionary trip to rural communities where he had no use for so much money. The fact that he sent ahead through his helper to Father Carreon, his superior, the proceeds of his collections can be cited as confirmation of the belief that Father Guevara did not need or want to have much cash with him. We fix the value of the bag and its contents at P100.00 in the absence of a definite proof relative to their value.

The crimes were not attended by aggravating or mitigating circumstances and the penalties will be imposed in their medium degree. Felipe Lozada, Jr. was only 16 years and 5 days old on the date of the perpetration of the crimes and is thus entitled to the mitigating circumstance of Article 68 of the Revised Penal Code. (People vs. Eugenio Garcia y Madrigal, G. R. No. L-2873, 47 Off. Gaz., 4188, 4191.)

Under the Indeterminate Sentence Law, the appellants are sentenced as follows: For the crime of homicide, Eliezir Tolentino and Uldarico Elizaga are sentenced to from six years and one day of prision mayor to 14 years, eight months and one day of reclusion temporal, and Felipe Lozada, Jr. to from two years, two months and one day of prision correccional to eight years and one day of prision mayor, all with the accessories of law; and for the crime of theft, Tolentino and Elizaga are sentenced to six months of arresto mayor and Lozada to one month of arresto menor. The three appellants will further be sentenced to pay the heir's of the deceased an indemnification of P6,000 for the crime of homicide and P100 for the crime of theft, with the corresponding of theft, with the

corresponding subsidiary imprisonment in the case in the event of insolvency. With these modifications, the conviction of the appellants is affirmed with proportionate shares of the costs of appeal.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J.:

I hereby certify that Mr. Justice Padilla concurs in this decision

MORAN, C. J., dissenting:)

I have serious doubts as to appellants' guilt. The only evidence against them is the single testimony of Rafael Calavia which is not satisfactory. This witness kept silent about the crime and had even denied to the authorities having personal knowledge about it. Although there are no serious contradictions in his testimony, yet there is nothing in it that is persuasive.

Upon the other hand, the alibi presented by, at least, appellant Lozada is supported by strong evidence.

He is a young student of 16 years of age and his presence at the Northern Philippine Academy from 4 to 6 o'clock in the afternoon of August 13, is strongly proven not only by witnesses, one of them being a high school teacher (Florencio Castillo), but also by the school registers, which on their face appear to be genuine.

I cannot find in the majority decision or in the argument of counsel or in the decision appealed from or in the evidence of record, anything that can dispel my doubts as to appellants' guilt.

RESOLUTION

July 20, 1950

TUASON, J.:

This case was thoroughly discussed, and the testimony was carefully reviewed and the exhibits, specially the supposed school registers, examined. No important detail of the evidence escaped our attention or was overlooked in reaching a decision. We do not believe it necessary therefore to enter into a new discussion of any of these matters. This resolution will be confined to straightening a few misconceptions regarding the meaning and effects of some of our findings and pronouncement.

When we said that one possible motive for the crime was religious, no disparagement to any religion or religious belief was intended. In pointing to differences of religion between the deceased and the accused and the possible motive, we endeavored to show that robbery was not necessarily in the mind of the accused when they committed the crime, as the lower court had found. The result of the possible existence of a motive other than robbery was the reversal of the trial court's opinion that the accused were guilty of robbery with homicide, which is one of the gravest and most heinous crimes known to law. Our surmises, which were evolved out of facts lighten the defendants' responsibility and save them from the stigma of a almost dishonorable offense. Reasonable speculations are justified when indulged in the interest of accused because they are entitled to the benefit of reasonable doubt, and the appellants in this case should be the last ones to object when we cast for and brought out a theory that changed for the better the legal qualification of the killing and considerably reduced the penalty imposed on them.

Uncertainly as to the motive, however, does not operate to entitle the appellants to absolute acquittal. Proof as to motives is important or essential when the evidence on the commission of the crime is purely circumstantial or

inconclusive. It is otherwise, as this Court has repeatedly held, when there is direct testimony of eye-witnesses whose credibility is found to be beyond question. Motive is a subjective matter which cannot always be proved. A murder committed for a price may fail to exhibit any motive when the connection between the murderer and the inductor is not discovered. Yet no thinking men would plead for the murderer's acquittal on that ground in the face of positive testimony by credible eye-witnesses.

Similarly, the uncertainty as to the immediate cause of death is unimportant in the face of Calavia's evidence that the accused attacked the deceased who was later found dead at the place of the assault. One set of expert witnesses said the priest died from strangulation and another set said from drowning. One or the other theory is possible but not certain, as we have stated, but neither is inconsistent with the hypothesis of guilt, neither destroys or weakens Calavia's statements. If Father Guevara's death was caused by strangulation, the defendants choked him; if he died from drowning, his head must have been submerged in water purposely or otherwise when he was still alive but too weak from beating to pull out of it. For accidental drowning, as we have carefully pointed out, was out of the question, and so was the idea that others were the aggressors.

As to the money contained in the bag Antonio Abad testified that it was P500. The trial court accepted this testimony entirely. While agreeing with the court that the bag contained cash and that the bag was carried away by the defendants, we thought that the amount was exaggerated, intentionally or through honest mistake, and for the benefit again of the defendants, we fixed it at what we deem the lowest possible amount for lack of surer basis.

The motion for reconsideration are therefore denied.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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