

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ARSENIO BANAYAD, DEFENDANT AND APPELLANT.***G.R. No. L-2623. April 26, 1950*

Ponente: REYES, J.

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This is an appeal from a judgment of the Court of First Instance of Quezon, convicting appellant of murder.

The evidence shows that between 9 and 10 o'clock in the evening of October 14, 1946, while Gregorio Reyes Uy Un was asleep on the floor of the house of Siaba, his nephew, in barrio Vigo Kantidang, San Narciso, Quezon province, he was killed by two carbine shots fired from outside the house, one bullet entering the right side of his abdomen near the navel and coming out below the right clavicle, and the other having its entrance an inch below the navel and its exit above the left nipple, the trajectory of the bullets being almost parallel to the body. The other inmates of the house were awakened by the shots but were not able to see the one who had fired them. Notified of the incident the next morning, the chief of police and the justice of the peace of the town repaired to the scene of the crime and made an investigation. On the mat near the cadaver two .30 cal. slugs were found, while on the ground under one of the sidings of the house a police sergeant picked up two empty .30 cal. carbine shells. In the course of the investigation, the chief of police sighted Jose Carbido carrying a carbine, and, his suspicion having been aroused, questioned Carbido about the gun. The latter explained that, by order of his brother Antonio, he had borrowed it from appellant. Examining the carbine, the attention of the chief of police was called to a piece of dried coconut leaf which got stuck between the barrel and the tip of the stock, and noting its similarity to the dried coconut leaves which formed the sidings of the house where Uy Un was killed, he inspected the sidings of said house and there found a little opening into which the barrel of a gun might have been inserted. As the carbine was unlicensed, he had it confiscated and at the same time had appellant summoned for investigation. Questioned by the chief of police on the following day, appellant made a statement (Exhibit 1) to the effect that the carbine was given to him by Gaudencio Medinilla I, mayor of San Narciso) in May, 1946, for hunting purposes but was borrowed from him by Jose Carbido in the morning of October 15, 1946, and that on the night of the crime he was at home in Tala (a barrio adjoining that where Uy Un was killed) and did not go out that whole night. On the strength of this declaration, he was ordered released.

Not satisfied with the result of the investigation conducted by the municipal police, the military police of Quezon province took a hand in the matter and questioned appellant on November 2, 1946. In this investigation appellant made another statement (Exhibit 2) to the effect that at about 9 o'clock in the evening of October 14, 1946, he went hunting in the coconut grove of Gaudencio Medinilla in the aforementioned barrio of Tala and there met Leoncio Hanabaab with a carbine, who enjoined him not to tell anybody of their meeting because he (Hanabaab) had shot Uy Un. But submitted to further questioning five days latter, appellant gave a still different story {Exhibit 5), saying that at about 5 o'clock in the afternoon of October 14, 1946, the Pabon brothers (Bernardo, Antonio, and Lucio) had him accompany them to Uy Un's coconut grove to hunt wild boars, but that once they were there and while waiting for the moon to come out, they confided to him that their real object was to kill Uy

Un, whom they proposed to shoot with the carbine which they now forced appellant to loan to them, their motive being to get even with their intended victim because he once had them prosecuted for the theft of his carabao; that against his will he was made to go along with them until they got to the house where Uy-Un was, which they found lighted; that to have a good view of the people inside the house, two of the Pabon brothers took a big rock and placed it under the window; that thereafter Antonio, who now had appellant's carbine, stood on the rock and poked the muzzle of the gun into the siding under the window, but as the hole thus made did not suit his purpose, he again introduced the barrel of the gun into the siding, took a good aim and then fired twice, thereby killing Uy Un, who was then asleep; and that thereafter the Pabon brothers, on pain of death, warned him not to divulge what he had seen.

Some time thereafter, appellant was questioned by the new provincial commander of the MPC of Quezon province, Capt. Pedro Alcantara. Repudiating his previous statements except the first, appellant now admitted that he was the one who shot Uy Un, but said that he did so by order of Mayor Gaudencio Medinilla, who had a grudge against the deceased, and that Medinilla had promised to reward him with P300 and also to maintain his family if he should get caught. He described the shooting as follows:

"Si, senor, en aquella hora que arriba he mencionado (i.e., about 10 p.m., October 14, 1946) me fui a la casa de Gregorio Reyes (Uy Un) llevando el carbine. Al llegar a la mencionada casa saque una piedra grande y lo lleve hacia la derecha de la casa, y lo utilize para ponerme de pie para alcanzar la venta (ventana) de la casa, Despues abri un buquete en el tabique de la casa para que pueda ver la gente dentro de la casa, y citisve si estaba alli a quien iba a raatar, y corao habia aun luz en la casa pude ver que estaba alli Gregorio Reyes y estaba acostado, el estaba mas cerca del agujero donde escuchaba, lo que hice era meter el carbine en el agujero que habia abierto y apunte la punta del arma a el (Gregorio) y despues estire el gatillo dos veces. Despues de esto me marche apresurado y retire a mi casa."

He stated that it was not true, as he had declared in Exhibit 5, that it was the Pabon brothers who killed the deceased and that if he had implicated them it was because he bore them a grudge because his sister was abducted by one of them before the war. This latest statement of appellant was reduced to writing (Exhibit H) and was signed and sworn to by him before the Clerk of Court of Quezon, Gregorio L. Gonzales.

Because of Mayor Medinilla's alleged complicity in the crime, the Secretary of Justice sent two NBI agents to Lucena to check on appellant's latest statement, and armed with a signed carbon copy thereof, Exhibit C, the agents went to see appellant in the provincial jail of Quezon on February 3, 1947, and questioned him about his confession, but first taking the precaution of freeing his mind from any apprehension by sending out of the cell the provincial guards and the son of the deceased who had come with them, and also telling appellant that he could rely on them because they were representing the Department of Justice and that he was free to tell if there was no truth in what he had said in his confession. And after the agents had read to him the said signed carbon copy of the confession and told him not to be afraid of them, he admitted that the statements therein contained were really made by him and that they were true and correct. He also acknowledged his signature on the document and admitted having affixed it "freely and spontaneously."

The evidence further shows that before 9 o'clock of the night in question, while Simeona Montero, who lived in the same barrio as appellant, was weaving a mat in the kitchen of her house, she heard her dogs bark, and, glancing out of the window to see what it was about, she saw, in the clear moonlight, the appellant passing by mounted on a carabao, going towards the south (which was towards the scene of the crime).

It also appears that in a decision of the Court of First Instance of Tayabas in November, 1938, which was confirmed by the Court of Appeals in August, 1940, appellant was convicted of theft of large cattle upon complaint of the deceased.

Testifying in his defense, appellant denied having been the one who shot the deceased Uy Un, declaring that on the night in question he was in his house. He said that he was, through violence and threat, made to confess what was not true and that if at first he named Hanabaab and the Pabon brothers as the killers of the deceased it was to stop the MPs from maltreating him. According to him, the truth was what was contained in his first statement in which he denied having had anything to do with the crime.

Corroborating appellant's alibi, Maximo Espinosa and Anacleto Requeron declared that they passed the night of October 14, 1946, in appellant's house where they were overtaken by darkness while going home, and that appellant did not leave his house that night.

With the above evidence the trial court found Arsenio Banayad guilty of murder and sentenced him to life imprisonment, with the accessory penalties prescribed by law, and to pay indemnity and costs.

After going over the evidence, we find no sufficient reason for disturbing the judgment below.

This Court should be slow in revoking a judgment of conviction based on confession. Appellant claims that the confession was wrung from him thru threat and violence. But not only is his testimony on this point without corroboration but it is also denied by the agents of the law. Appellant complained to nobody regarding the alleged maltreatment and no signs of violence were noted on his person. Indeed, he informed the clerk of court who read to him the confession before he signed it that the same was voluntary and spontaneous. This is also what he later told the NBI agents after being assured that he could tell them the truth without fear because they were representing the Department of Justice. In the circumstances, the learned trial judge did not err in giving weight to the confession in which appellant admits having himself killed the deceased and retracts his previous statements attributing the authorship of the crime to others.

Corroborative of the statements in the confession regarding the manner in which the killing was done, are the direction of the bullet wounds found on the body of the deceased, the hole or opening produced by the insertion of the barrel of the carbine into the siding of the house where the deceased was shot, the piece of dry coconut leaf that was nipped from the siding of the house and got caught between the barrel and the tip of the stock of the carbine used in the killing, which carbine was admittedly in the possession of the appellant on the night of the crime (October 14, 1946) since, according to his own affidavit, it was given to him in May and was not borrowed from him by Jose Carbido until the morning of October 15, 1946.

As to appellant's alibi, his claim that he did not leave his house on the night in question has nothing to corroborate it other than the testimony of two residents from another barrio, Anacleto Requiron and Maximo Espinosa, who claimed to have passed that night in appellant's house but who gave an unconvincing excuse for sleeping there, and who also contradicted each other in that, while Requiron declared that when, he and Espinosa left the house of appellant they woke up the latter in order to bid him good-bye, Espinosa, on the other hand, testified that he left without bidding appellant good-bye because the latter was then asleep. Moreover, appellant's alibi is entirely discredited by the witness Simeona Montero who, both in court and in the investigation made by the police two days after the crime, gave the information that she saw appellant pass by her house before she went to bed at about 9 o'clock in the night of the crime. There is no showing that this witness had any motive for not telling the truth.

As a possible motive for the crime, it appears that appellant had cause for entertaining a grudge against the deceased because of his conviction for theft upon complaint of the latter.

In view of the foregoing, the judgment appealed from is affirmed with costs against the appellant.

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

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