

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FILEMON VOLPANI, ET AL., DEFENDANTS, FILEMON VOLPANI AND
HONORIO LAMBINO, APPELLANTS.**

G.R. No. L-13973. April 29, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from a conviction for murder.

About five o'clock in the morning of April 14, 1956, Peping Adulta found the dead body of his half-brother Rafael Mendoza, 30, beside the railroad track in Barrio Buló, town of Unisan, Province of Quezon. He immediately reported the matter to the authorities. Special policemen Julio Tenorio and Lorenzo Merrer proceeded without delay to the place, and having discovered a knife (balisong) near the foot of the cadaver, Tenorio picked it up with a loop of string made of buri palm (it was sent later to the N.B.I. for fingerprints). Thereafter, he reported to the Chief of Police, who ordered the transfer of the cadaver to the town, where it was subjected to a post-mortem examination by Dr. Priscila Carillo. The latter found, and so certified, that the deceased had sustained (a) a wound extending three and one half inches from the back of the head to the back of the right ear, injuring (without piercing) the skull; (b) a severe contusion and swelling of the left eye; (c) abrasions on the right side, just outside of the right auxiliary fossa, cutting the skin and subcutaneous tissue only. Upon opening the skull, abundant intracranial hemorrhage showed, which in the doctor's opinion produced Mendoza's death.

The corresponding investigation by the authorities yielded no important clue. The knife exhibited no fingerprints.

However, about a year later, on March 18, 1957, a complaint for murder was filed in the justice of the peace court of Unisan against Filemon Volpani, Honorio Lambino, Aniano Amparo, Emilio Verdan, and one John Doe. After the preliminary investigation, the Provincial Fiscal, having found no evidence against Aniano Amparo and Emilio Verdan, filed the information only against Filemon Volpani and Honorio Lambino.

At the trial in the court of first instance, several witnesses testified before Hon. M.M. Mejia, judge, who in a carefully prepared decision setting forth the evidence offered on both sides and discussing it at length, reached a verdict of guilt.

The story of the prosecution was substantially this:

Rafael Mendoza maintained illicit relations with the wife of Filemon Volpani. Aware of it, the latter managed to feign friendship with Mendoza^[1] even as he secretly tried to retaliate in kind, by seducing Mendoza's wife, Felicisima Regencia, 27 years of age. As a matter of fact, he proposed to the latter several times that, as a revenge, they should also sleep together. Felicisima, however, firmly rejected the immoral proposition.

Then the violent death occurred. Suspects were rounded up, specially those persons known to have been with Mendoza the night before: Filemon Volpani, 34, Aniano Amparo, Zosimo Lambino, Alfredo Bondad and Emilio Verdad. But, as stated before, no evidence of sufficient importance turned up, and no prosecution ensued, that is

until March 18, 1957, when Volpani, who renewed his pursuit of Mendoza's wife, in order to convince her of the intensity of his devotion, frankly admitted having killed her husband, with the help of Honorio Lambino and others, so that she may be free to live with him. Faithful to the last, and rising to the occasion, Felicisima promptly informed the agents of the law. Her affidavit was taken, and proceedings began in the corresponding town court.

Now, it turned out, the killing had been actually witnessed by Eusebio Recarte, 31, whose testimony, as summarized by the trial judge showed, "x x x that he had been regularly going to Bulo, Unisan, since 1955 to gather coconuts and to do some clearing work in the coconut plantation of a certain Mr. Romualdo Vargas, a rich proprietor of Unisan, Quezon; that he was in barrio Bulo, Unisan, Quezon, from April to May 1956; x x x that while he was in barrio Bulo, he lived in the house of a certain Fermin Tapero, about one-half kilometer from the railroad track; that he had known Volpani and Lambino in Panaon, and also the deceased Rafael Mendoza, and in fact had worked for him in unhusking coconuts; that about 8:00 o'clock in the evening of 13 April 1956, he and Peping Adulta (half-brother of the deceased) went over to barrio Bulo to serenade a certain barrio lass, Carmen Tapero, a relative of Fermin Tapero and daughter of Eleuterio Tapero, because Peping was interested in Carmen; that at Carmen's place, he played the guitar and sang two "kundimans" downstairs and sang songs upstairs Eleuterio's house, on behalf of Peping (he actually sang quite well for the Court during the trial); that after the serenade, he left Peping in Carmen's house and proceeded on his way home to Fermin Tapero's house; that at about 2:00 o'clock on the early morning of 14 April 1956, after the night Bicol Express from Manila bound for Legaspi, Albay, had long passed Panaon, he found himself on the railroad track, towards Bulo; that while he was walking on the railroad track, he saw a group of persons who were apparently intoxicated because one of them said that he wanted to kill somebody; that in order to avoid encountering the group, he hid himself in the "talahib" grass by the side of the railroad track; that while he was already hidden, the persons coming from the opposite direction passed by in front of his hiding place; that soon after the group had passed him, he heard one of them say, "Dito na lamang Pare" (let's do it here); that he then saw Aniano Amparo, whom he had known in Panaon, stab Rafael Mendoza on the back; that after being stabbed by Aniano Amparo, Mendoza shouted "aray" and turned his face a little backward when thereupon Filemon Volpani swept away Aniano Amparo with his arm and then hit Rafael Mendoza on the back of the head with a piece of wood about one-half (½) feet long; that while Rafael Mendoza was falling to the ground, Honorio Lambino, who had been holding him, released the deceased; that after Rafael Mendoza fell on the ground, Lambino, Volpani and Amparo gathered around the body of Rafael Mendoza and one of them said: "Patay na, tayo na" (Let's go; he is already dead); that Lambino, Amparo and Volpani had two other companions whom he did not recognize; and that after the five individuals had left, he also went out of hiding and proceeded home."

This witness revealed his knowledge of the affair, only in August 1957, to Ricardo Mendoza, brother of the deceased, because at that time "the accused were already arrested."

Testifying in corroboration of Ricarte's account, Ireneo Lat swore that that evening he stood near the railroad bridge of the same Barrio Bulo, watching his fish-trap; that early in the morning, a group of six men passed by him at a distance of 2-½ meters, coming from Barrio Panaon; that among those persons he recognized Honorio Lambino, Filemon Volpani and Rafael Mendoza; that about fifteen minutes later, Volpani and Lambino returned hurriedly on the way to Panaon with three other companions — without Rafael Mendoza; that in the morning about six o'clock, he received information about Rafael Mendoza's death; and that he went to see the cadaver which lay near the railroad track about 176 meters from the bridge.

Thus, the case for the People appears to be complete, convincing. The adulterous relations constituted a sufficient incentive to kill; Volpani's revelation to Felicisima was plausible in the circumstances, and the credibility of the eyewitness was not successfully impeached.

Indeed, as the defense itself admits, Volpani and the deceased were together drinking tuba up to eleven o'clock that night, and Volpani was not far away from — he could have been present at — the scene of the crime at the time of its commission.

And the alibi offered by Lambino proved to be unlikely. He said he made a trip to Mangaldan, Pangasinan, on April 7, 1956, stayed there until April 13, 1956, when he took the Ilocos Express at about midnight, arriving in Manila at six o'clock in the morning of April 14, 1956. "I went there," he added, "because I was called by the lawyer who was representing me and my brother in a certain civil case; however, because the hearing was postponed, I returned to Unisan."

Yet the prosecution proved by the records of the case that on February 2, 1956, his case was set for hearing, (Exh. C) on April 25, 1956, and on the last date it was postponed on April 13. Moreover, his attorney could not have called him on April 7, 1956, "for conference before the trial" (119 s.n.) — eighteen days in advance of the hearing April 25, 1956. No wonder His Honor gave no credence to this defense, explaining,

"If any conference was required, the same could have been called a day or two before the trial, as is the customary practice among lawyers. This should be more particularly true in this case, taking into account the distance between Unisan, Quezon, and Mangaldan, Pangasinan, which requires one whole day's travel and in view of the further fact that the clients obviously were not in a financial position to afford various trips between Quezon and Pangasinan."

Besides, as often judicially declared, alibi can not prevail in the face of positive identification by eyewitnesses. And Volpani and Lambino were definitely indicated by the two witnesses, Ricarte and Lat.

These two could not have recognized the accused, insists their counsel, because there were no lights in the place, and the moon was not shining. This point was brought to the attention of the trial judge, who stated that by the light of the stars in the clear nights of April, the persons could be recognized at a distance of three meters or more. It being a fact that the party of the accused passed the witnesses at three meters[2], or less, and that these previously were acquainted with the herein accused, we are not inclined to dispute the factual finding on the point of identification, remembering that it is not only by sight, but by the voice, that the persons in the group could be singled out.

On the whole, we discover no valid reason to doubt the testimony of Ricarte and of Lat. And so, like the trial judge, who saw the witnesses testify and who wrote a more extended opinion, we believe these appellants to be guilty of murder, treachery[3] having attended the act of slaying. The place was uninhabited, (p. 10-Appellants' Brief) but as defendants had been under the influence of liquor (13, 33, 62, s.n.) the medium penalty should be imposed: life imprisonment. The appealed decision correctly imposed it, even as the two defendants were required to pay, jointly and severally, to the heirs of the deceased the amount of P4,000.00, and to satisfy the costs.

Judgment affirmed, with costs. So ordered.

Paras, C .J., Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] He went drinking with Mendoza; used to take him home when intoxicated. [2] The group of persons passed in front of Ricarte at about three meters, while he peered among the bushes. (48 s.n.) [3] Three armed persons against one, during nighttime.

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