

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ATANACIO FIGUEROA, DEFENDANT AND APPELLANT.***G.R. No. L-1607. January 12, 1949*

Ponente: PARAS, J.

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This is an appeal from a judgment of the Court of First Instance of Samar, finding the appellant, Atanacio Figueroa, guilty of murder and sentencing him to reclusion perpetua, with civil interdiction for life and perpetual absolute disqualification, to indemnify the heirs of Felicisimo Abellar in the sum of two thousand pesos, and to pay the costs.

The theory of the prosecution is to the following effect: In the evening of May 25, 1945, a dance was held in Calbiga, Samar, in the house of the municipal mayor, Luciano Ty. Among those present in the affair were Felicisimo Abellar, Jose Daradal, Tirso Ocenar, Doroteo Labro, Baldomero Daradal, Vicente Abellar, and the appellant, Atanacio Figueroa. Shortly after these had left the house of Mayor Ty, at one o'clock of the following morning, May 26, 1945, Baldomero Daradal and Doroteo Labro quarreled about a certain girl who also attended the dance. As Baldomero even tried to box Doroteo, Felicisimo Abellar intervened by asking them not to fight over a trifle. Whereupon Antonio Figueroa remarked, "Why, who are you? Leave them alone." The appellant followed with the comment, "That is always the trouble with you. You intervene. Wait and you will see." Nothing, however, happened and the group merely dispersed.

No sooner had Jose Daradal and Baldomero Daradal, on their way home, seen Felicisimo Abellar and Tirso Ocenar, than Jose Daradal observed the appellant draw a weapon with which he stabbed Felicisimo Abellar on the leg as the latter had his back towards the appellant. Felicisimo turned around and thereafter accused the appellant in this wise, "Tanting, why did you wound me?" Jose Daradal wanted to help Felicisimo, but he was prevented by Rafael Figueroa (brother of appellant) who pointed his pistol at Jose with the warning, "You also?"

Returning to his house, Felicisimo Abellar was asked by his wife, Adela Figueroa, as to who wounded him, to which Felicisimo answered that it was the appellant. Vicente Abellar, who was informed by Honorio Abellar of the occurrence, rushed to Felicisimo's house and there inquired about the identity of the assailant., whereupon Felicisimo revealed that it was the appellant. Notwithstanding the medical aid given by Dr. Sixto Gaborni, who was summoned by Adela Figueroa, Felicisimo Abellar died at about four o'clock in the same morning as a result of severe hemorrhage produced by the leg wound inflicted by the appellant, but not without saying to his brother Vicente Abellar, "Good-bye, I am going to die."

The appellant set up the defense of alibi, in that, on the night in question, he did not attend the dance in Mayor Ty's residence as he was in his father's house, watching the game of monte then being played therein and collecting the house fee commonly called "arriba"; that during the progress of the game, hearing a noise outside, he looked out of the window and saw Felicisimo Abellar wounded, notwithstanding which, however, he remained in the house; that the game lasted until morning after which he slept, waking up only about noon.

Appellant's brief is lengthy and evidences the zeal and industry with which his attorney has handled the case on appeal. The first point stressed in appellant's behalf is that the intervention of the deceased Felicisimo Abellar in the quarrel between Baldomero Daradal and Doroteo Labro could not have been resented by the appellant to such a degree as to have driven the latter to the commission of the heinous crime of murder. In our view of the case, namely, that the theory of the prosecution is supported by the proof and that, accordingly, appellant's identity as the author of the fatal assault against Felicisimo Abellar has been satisfactorily established, the alleged insufficiency of motive becomes unimportant. Not only was the appellant seen in fraganti by prosecution witness Jose Daradal, but his identity was revealed by Felicisimo to Adela Figueroa and Vicente Abellar before he died. Moreover, the question of motive is always relative, and no fixed norm of conduct can be said to be decisive of every imaginable case.

To discredit the principal witnesses for the prosecution, attention is directed to their relationship to the deceased: Jose Daradal, Adela Figueroa and Vicente Abellar are respectively the nephew, wife, and brother of Felicisimo Abellar. We have examined their testimony carefully, in the light of the various criticisms contained in appellant's brief, and we have found no sufficient reason for not believing then and for reversing the findings of the trial Judge who had the benefit of hearing and observing the demeanor of the witnesses for both sides. Indeed, the fact remains that said, witnesses were not shown to have had any reason for falsely incriminating the appellant.

There can be no doubt as to the presence of Vicente Abellar in the house of Felicisimo after the latter had returned already wounded, since Dr. Sixto Gaborni, admittedly a disinterested witness, when asked on cross-examination as to whether he remembered having seen Vicente Abellar, answered, "I saw him around the house." But it is vehemently insisted for the defense that Vicente Abellar lied when he testified that Felicisimo Abellar was able to name his assailant before he died because Dr. Gaborni observed that Felicisimo was unconscious when said doctor arrived for the first time at Felicisimo's house and when he returned for the second time not long after the first visit. Appellant's counsel invokes the presumption that "a thing once proved to exist continues as long as is usual with things of that nature." (Rule of Court 123, section 69, par. [dd].) It is noteworthy, however, that Dr. Gaborni came to the house much later than the arrival of Felicisimo therein, and the revelation not only to Vicente Abellar but to Adela Figueroa was undoubtedly made before Felicisimo became uncounscious. At any rate, the presumption relied upon is merely disputable, and in this case that presumption cannot prevail over the positive testimony of two witnesses.

In view of what has been said, it is unnecessary for us to inquire into the admissibility of Exhibits "3" and "3-1" to "3-4" which were rejected by the trial court, or to comment on the failure of the appellant and his family to attend the funeral of Felicisimo. The defense of alibi is likewise necessarily disposed of adversely to appellant who has not proved that it was physically impossible for him to be at the place of the crime which was not far from the house of his father.

The appellant was correctly found guilty by the trial court of the crime of murder. But as suggested in the Brief for the Government, the aggravating circumstance of nocturnity is absorbed in treachery, and the appellant is entitled to the mitigating circumstance of lack of intention to commit so grave a wrong as that committed, as the wound inflicted was merely on the leg.

It being understood that the appellant is sentenced to an indeterminate penalty of from 10 years and 1 day, prision mayor, to 17 years, 4 months and 1 day, reclusion temporal the appealed judgment is affirmed.

So ordered, with costs.

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

PERFECTO, J.:

We concur except that the indemnity should be raised to P6,000 in accordance with the doctrine laid down in *People vs. Amansec*, L-927.

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