

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS BAQUINO ET AL., DEFENDANTS, EMILIANO BELTRAN, DEFENDANT-APPELLANT.*G.R. No. L-340. September 30, 1946*

Ponente: PERFECTO, J.

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Emiliano Beltran is accused with Tomas (Tomansing), Venancio and Pedro, all surnamed Baquino, of the murder of Feliciano Lopez, committed in the afternoon of August 9, 1945, in the barrio of Bahay-Toro, Quezon City. His co-defendants being still at large, trial proceeded only against Beltran. On January 21, 1946, Judge Fernando Jiago of the Court of First Instance of Manila sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased in the sum of P2,000.00, and to pay the costs. From this judgment, Beltran appealed.

Victor Lopez, 71 years old, widower, farmer, testified that his son Feliciano Lopez died in a field in the barrio of Bahay-Toro on August 9, 1945. He was attacked by four persons, "although I do not know who actually shot him. They were Emiliano Beltran, Venancio Baquino, Tomansing Baquino, and Pedro Baquino. We lost a carabao and somebody tipped my deceased son that it was Tomansing, who carried away our carabao." Feliciano went to see Tomansing and asked him about the carabao. Tomansing denied knowledge of the, lost carabao. Feliciano hit him. "As I saw Feliciano hitting Tomansing, I went to them and stopped them, telling my son: 'That's enough! Come let us go and look for the carabao instead; the carabao might go away and we may not be able to find it.' After that we left and it was Tomansing's turn to look for us, but he only saw my deceased son and did not see me. Upon seeing my son he and his companions helped each other in attacking him. While I was at a distance-some distance-from them I heard my son shouting, saying that he was being maltreated. So we approached and as we were approaching the four persons fired shots. I don't know whether or not my son was killed because I ducked. I was at a distance of about 200 meters." Witness was with his son, named Jose. "Emiliano Beltran was carrying with him a Garand rifle and his three companions were carrying carbines. After the shots had been fired I saw the aggressors leaving and then I got up and went to Feliciano. He was already dead. I saw that he was hit in the forehead and about the left ear. I removed his body from the water and took him to a rice paddy (pilapil). As some people came to me I asked their favor to help me carry the body of my son to the house. Jose went to an American camp for help. The Americans sent M.Ps." They "took the corpse to the San Lazaro Hospital." The shooting took place "about three or a little past three o'clock in the afternoon. At the beginning I was at a distance of 200 meters from the scene of the incident, but as I have already told you, when I heard the shots I was then going to approach them to give help to my son, and I was at that distance of 20 meters when the firing was over. What I heard at the start was only a soream and it was while we were approaching that I heard shots." The missing carabao was finally found, after some arrangements. "The arrangement was that we both should excuse each other-on the part of Tomansing for taking the carabao, and my son for beating Tomansing after accusing him for taking the carabao." The carabao was recovered from "the forest where it was tied." At the time the arrangements were being

made Tomansing was not present. Only his father was there. The arrangements were made at about 2:30 o'clock in the afternoon at a place about 100 meters away from the scene of the shooting. After the arrangements nwe got a rig and started for home. When we were already at Gulod I heard shots." The witness recognized the four attackers "because I have known those boys since their childhood." (T.s.n., pp. 2-13.)

Jose Lopez, 23 years old, married, farmer, son of Victor lopez, testified that in the afternoon of August 9, 1945, he was looking for a carabao. His brother Feliciano told him that somebody tipped him that it was Tomansing who got the carabao, "thereupon, we went to see Tomansing in the field. My brother struck Tomansing and asked him: 'Where is our carabao? Somebody told me that you got it.' He beat him with a piece of wood. As Tomansing refused to tell us where the carabao was we left him and proceeded to look for the carabao. In the meantime Tomansing ran away. Feliciano went to one part of the field and I went to another part to look for the carabao. Later I found the carabao and led it home. Then I started back for the field to let Feliciano know that I had already found the carabao. When I saw Feliciano he was being attacked by the four men-Emiliano Beltran, Tomansing, Venancio and Pedro, some of them hitting him with fist blows, some pulling him and others striking him with their guns. Emiliano Beltran was holding a Garand." The three others "were holding carbines. Emiliano was saying; 'Let us finish him; let us kill him; here comes his brother.' Then they started firing at him and at the same time firing at me and my father. I saw my father ducking first, and then I ran away to the American camp to inform the soldiers there of what was happening. Emiliano was the first to shoot my brother and when my brother fell Tomansing fired another shot." The witness heard what Beltran said because "there was quiet in that place." The witness knows Beltran and the three Baquino's since childhood. "As I was running toward the camp shots were being fired at me and upon reaching the camp I told the Americans there that some laborers were killing my brother and if possible to send some help. Then I went back to the field. On my way I met my father and several people carrying the body of my brother on a bamboo bed" already dead. The witness was able to identify the four attackers "because I have a good eye-sight. Moreover, I have known them since our childhood. As a matter of fact Emiliano Beltran used to out my hair." (T.s.n., pp. 18-29.)

Agripino Dumlao, 33 years old, married, detective, Manila Police Department, testified that Bahay-Toro, where the shooting took place, is located in Quezon City, under the jurisdiction of Precinct No. 3, San Juan. He was able to recover 3 clips of Japanese ammunition in a barrel where pa lay was in the house of accused Beltran, who told him that he found them on the way during the Japanese occupation and kept them. She clips contained 15 rounds of ammunition used for Japanese rifles. (T.s.n., pp. 34-37.)

Leonard W. Jarcho, 29 years old, single, Captain, Medical Corps, Manila Police Department, identified Exhibit A as a copy of the official autopsy report in the case of Feliciano Lopez performed by Captain Fuller under his direction. The wounds of the deceased were ttthe result of two gunshot wounds on the head, with considerable extrusion of the brain. The cause of the death of the victim was shook, secondary to multiple fractures of the skull and extrusion of a large portion of the brain." In photograph Exhibit B appears the picture of Feliciano Lopez and Captain Fuller, the officer who performed the autopsy. (T.s.n., pp. 39-44.)

Simon Galfiera, 35 years old, married, farmer, as defense witness, testified that on August 9, 1945, he was in his farm. "I was raking the farmland. We were three." His companions were Emiliano Beltran and Juan Cadaing, "We started to work at eight o'clock on the morning of that day." Beltran arrived at about eight thirty o'clock in the morning. The witness remained in the farm until five thirty in the afternoon. The farm belonged to Apolonio Baitiong from Balintawak. Beltran "was also raking the farmland with me." He left the place at nabout five thirty o'clock in that afternoon." From eight thirty in the morning to five thirty in the afternoon of that day, whe was with -us." On the follow-ing day, the witness, Cadaing and Beltran raked the farmland of Cadaing. Beltran's behavior was natural as on previous days." (T.s.n., pp. 51-55.)

On being asked on cross-examination when he came to learn about the arrest of Beltran, witness answered: "I don't remember the date. I think that was last month-October. I came to know about it only when I received a letter from the police authorities." He received the letter from the police authorities about the first week of October. Questioned as to the last time he met Beltran before the letter's arrest, he answered: "We did not meet anymore after the work was over, as each of us had to work for himself." But immediately after he declared that after August 9, 1945, he used to meet Beltran at stores and "as we know each other, we greet one another whenever we meet. Most of our meetings were on Sundays." But on being asked when was the last time that he met Beltran on a Sunday, he answered? "That was long ago and I cannot now recall the days." Asked to give the approximate days when he met Beltran for the last time, he replied: "Maybe in September. I cannot remember the date." (T.s.n., pp. 63-65.)

Juan Cadaing, 32 years old, married, farmer, testified that on August 9, 1945, he was working in the land of Simon at Salipapa. He was plowing the land with Simon and Emiliano Beltran. They began working between eight and eight thirty in the morning and ended at between five and five thirty in the afternoon. On August 10, 1945, he plowed his own land with Simon and Beltran beginning from eight to eight thirty in the morning and ending at five to five thirty in the afternoon. (T.s.n., pp. 69-75.)

While Galfiera testified that he has been working the farm land owned by Baitiong for the last ten years, and that in the work Beltran has been helping him for the last two years now" (t.s.n., p. 56), Cadaing declared on the other hand that Beltran had worked in said land and in his only on August 9 and 10, 1945 (t.s.n., p. 76.) Furthermore, in Cadaing's testimony, we read:

"Q. Had you the opportunity of seeing accused Emiliano Beltran in the month of October of this year?-A. No, sir.

"Q. When was the last time you saw Emiliano Beltran?-A. The last time I saw Emiliano Beltran was on October 31.

"Q. Of this year?-A. Yes, sir." (T.s.n., p. 79.)

Emiliano Beltran, 33 years old, married, farmer and barber, denied having assassinated Feliciano Lopez on August 9, 1945, and declared that on said date he was in the land of Simon, plowing in the company of Juan and Simon. He arrived at the place at eight thirty in the morning. Simon was already there, and he and Juan arrived at the same time. He remained until five thirty in the afternoon. The next day he worked on the land of Juan upon invitation of the latter. He knows Victor Lopez, and Jose and Feliciano Lopez, the latter two since their childhood. He did not meet them on August 9. He was arrested on the 24th of September. His wife, Filomena Deigo, is a cousin of Tomas Baquino. He knows Tomas, Venancio, and Pedro Baquino. Recognizing exhibit C as his statement, where he appears to have declared that he retired to his house at 7 o'clock p. m. on August 9, 1945, and not at 5:30 o'clock as he had testified in court, he said that he made the declaration "because I was afraid, as it was the first time I have appeared before the authorities, and on that occasion, that Pepe (pointing to Jose Lopez) and others gave me fist blows." (T.s.n., pp. 81-90.)

Agripino Dumlaog, the detective who took the statement of the accused marked Exhibit C, belied the accused's declaration to the effect that he was maltreated when the statement was taken. (T.s.n., p. 93.)

Upon the evidence presented by both parties in this case, we are convinced that Beltran was among the four assailants who attacked and killed Feliciano Lopez, the motive for whose killing being his having beaten with a piece of wood Tomas Baquino, also known by the name of Tomansing. Tomansing had strong reasons for taking revenge, he having been twice offended by Feliciano Lopez, first by imputing upon him the theft of the carabao, and second by beating him with a piece of wood, without any chance on his part of immediate retaliation due to

the fact that he was alone while Feliciano was accompanied by his brother Jose. Smarting under such a strong resentment, it is but natural for him to summon the help of Venancio and Pedro Baquino, with whom he must be related-although the records do not disclose the grade of relation-and Bmiliauo Beltran, the husband of his cousin. And Tomansing was able to summon the immediate help of his relatives because of the well-known clannish solidarity prevailing among kins. Beltran, since his childhood, is an acquaintance of Victor Lopez and his son Jose. As a barber, he used to cut the hair of Jose. No reason or motive was shown why Victor and Jose Lopez should falsely implicate Beltran in the heinous crime of murder under our consideration. Their testimonies bear the earmarks of truthfulness: natural, logical, straightforward, given with all candor. The fact that for some moment they were at about 200 meters from the scene of the shooting can not affect their assurance of having identified Beltran among the killers. The distance of 200 meters is just a mere estimate. They were approaching the scene. Farmers usually have good eyesight for great distances, much better than city dwellers. Although Victoria 71 years old, it is a well-known fact that nearsightedness generally afflicts persons leading a sedentary life, not those living in the farm.

The defense of alibi interposed by the accused is not convincing. The testimonies of the two witnesses presented by the defense to the effect that from 8:00 a.m. to 5:30 p.m. on August 9, 1945, the accused was working the farmland of Simon Galfiera belong to the class of evidence that some well-intentioned people are wont to offer because, while helping a friend, they do not assume much responsibility, it being difficult to contradict or belie them. Although they categorically testified that on August 9 they had Beltran in their company, both witnesses appeared on cross-examination not so sure as to their recollection about dates. Simon Galfiera, as an instance, could not mention the date of his last meeting with Beltran, and there is no convincing special reason why he should recollect August

The penalty imposed by the lower court being in accordance with the provisions of Article 248 of the Revised Penal Code, punishing the crime of murder committed by the appellant, is affirmed, with costs against said appellant.

Moran, C.J., Bengzon, Padilla, and Tuason, JJ., concur.

DISSENTING

FERIA, J.:

I dissent from the majority and vote for the reversal of the sentence and acquittal of the appellant for the following reasons, besides those set forth in the other dissenting opinions.

The guilt of the appellant in the present case depends entirely upon whether it was possible for the witnesses for the prosecution Victor and Jose Lopez, father and brother, respectively, of the deceased, to have properly identified the appellant at the time and place of the commission of the offense

The judgment of conviction of the lower court is based on the conclusion that, "at a distance of 20 meters, Victor heard other shots and saw four men beating his son Feliciano. He recognized them, as he was very familiar with their faces." But there is nothing in the record to warrant such a conclusion. What the two witnesses testified was that they heard shots and recognized the assailant of the deceased at a distance of 200 meters. For that reason, the majority, in discussing this cardinal point on which the sentence of conviction rests, does not rely on said unwarranted conclusion of the court a quo. It says the following: "No reason or motive was shown why Victor and Jose Lopez should falsely implicate Beltran in the heinous crime of murder under our consideration. Their testimonies bear the earmarks of truthfulness: natural, logical, straightforward, given with all candor. The fact that

for some moment they were at about 200 meters from the scene of the shooting can not affect their assurance of having identified Beltran among the killers. The distance of 200 meters is just a mere estimate. They were approaching the scene. Farmers usually have good eyesight for great distances, much better than city dwellers. Although Victor is 71 years old, it is a well-known fact that near Sight edness generally afflicts persons leading a sedentary life, not those living in the farm."

But a cursory analisis of the above grounds or reasons set forth in the majority decision will clearly show that they fall by their own weight.

(a) Lack of motive to testify falsely.—The fact that "the record does not show any motive why Victor and Jose Lopez should falsely implicate Beltran (the appellant), in the heinous crime of murder under consideration," can not be adduced as an argument or reason that the testimony of these two witnesses for the prosecution should be given more credence. It is true that where the evidence shows that there is reason or motive for a witness to testify falsely against an accused, such showing affects adversely the witness testimony; but it is also true that, aside from psychological circumstances which may hamper a correct perception of an event and motivate a person to perceive or believe to be true a thing which is not true, the mere absence of s uch evidence or motive does not add a iota to or enhance the credibility of a witness, for a person is presumed to tell the truth; unless the contrary is shown, or the impossibility or improbability for a witness to have been able to correctly perceive the fact to which he is testifying necessarily makes his testimony unbelievable.

(b) Physical impossibility, of identifying, a person and hearing what he says at a distance of 200 meters.—It is of common experience, and therefore of judicial notice, that it is physically impossible to recognize or identify a person, or hear and understand what he is saying even in a loud voice, at a distance of 200 meters. The witness Jose Lopez has repeatedly stated in the course of his testimony (pages 23, 27, 29, 32 and 33), that at a distance of about 200 meters he recognized the appellant in sleeveless undershirt, salmon color holding a garrand, and his companions carrying a carbine each, and heard him say in a loud voice "Let us finish him, let us kill him;" and added that at that distance, "they started firing at him referring to his brother, the deceased and at the same time started firing at me and my father, I saw my father ducking; first and then I ran away to the American camp to inform the soldiers there of what was happening" (pp. 22, 23, t. s. n.; italics ours).

The other witness, Victor Lopez testified also that he recognized the appellant Emiliano Beltran at a distance of 200 meters, on pages 5, 9, 13, and 15; and declared "I was at a distance of 200 meters from the scene of the shooting when I ducked because shots were fired at me" (p. 13); that "while the shots were being fired I was ducking and I could not have seen who actually shot him," his son Feliciano (page 14); and that "after the shots had been fired saw the aggressors leaving and then I got up and "went Feliciano." (P. 6, t.s.; italics ours.)

This witness has mentioned the distance of 20 meters only twice in the course of his testimony, but did not say that he recognized the appellant at that distance. The first time, in answering the query: "My question is were you at that distance of 200 meters when you saw your son being shot?"; but it is apparent that he meant to say 200 meters, otherwise his very answer would be contradictory with itself; for his answer is as follows "I said that I was at that distance when I heard shots, and after hearing the shots we hesitated to approach my son, and as we were approaching and at a distance of 20 meters from them I heard shots" (p. 13, t.s.n.; italics ours).

And the second time, when in his answer to the question: "Why did you state before that you saw the shooting when you were at a distance of 200 meters, and not 20 meters as you have just stated now?" he said: "At the beginning I was at a distance of 200 meters from the scene of the incident, but as I have already told you, when I heard the shots I was then going to approach them to give help to my son, and I was at that distance of 20 meters (page 9). But this is an explanation which does not explain, for he testified a short while before (page 6) that when

they were firing at him and his son Jose, he ducked, and "after the shots had been fired I saw the aggressors leaving and then I got up and went to Feliciano" (the victim). If he got up and went to where Feliciano was shot after the firing had ceased and the aggressors or assailants had left the place, he could not have been nearer to the appellant and companions than the original distance of 200 meters. Besides, it would have been highly incredible if the witness had testified that he had approached the scene while they were firing at him.

(c) Witness did not approach, and, reorganized appellant at less than 200 meters distance.—None of the two witnesses, Jose and Victor Lopez, testified that they recognized the assailant, at a distance less than 200 meters, while they "were approaching the scene." They repeatedly asserted that they recognized him at a distance of 200 meters, and according to their own testimony just fluoted they did not and could not get nearer while the appellant and his companions were at the scene of the crime

(d) In case of doubt, testimony, should be considered in favor of accused.—The reasoning or argument of the majority that "the distance of 200 meters were a mere estimate," and therefore, by implication, it may and must have been less than said distance so as to enable the witness to recognize the appellant, can not be legally adduced, because it runs counter to the presumption of innocence in favor of an accused in a criminal case. As a corollary to the presumption of innocence in favor of the accused, should there be any doubt as to the correctness of the testimony of a witness, it should be resolved in favor of, and not against, the defendant. Therefore, if there is any doubt as to whether the distance was more or less than 200 meters, it must be decided in favor of the appellant, that is, that it was not less than 200 meters.

(e) No ground for taking judicial notice that farmers have good eyesight.—There is absolutely no ground for taking judicial notice that "farmers usually have good eyesight for great distances, much better than city dwellers." Although Victor is 71 years old, it is a well-known fact that near-sightedness generally afflicts persons leading a sedentary life, not those living in the farm." As we have already stated, it is a physical impossibility for a human being to be able to identify or recognize a person or hear and understand what he says in; a loud voice from a distance of 200 meters. Besides when Victor was asked during the trial by the fiscal Where the accused was, he answered "He is there (pointing out Emiliano Beltran), I have a poor eyesight." (p. 4, t.s.n.)

>When Victor Lopez was asked: "I remember you having stated a while ago that you were complaining about your sight when you were asked to identify the accused Emiliano Beltran. Can you tell us positively that you could distinguish a garrand from a distance of 200 meters?" He answered: "Because the sun-light in this room is in front of me and my sight is glared by the light." And lastly, upon being asked again "If you are now placed at a distance of 200 meters from an object, or, let us say, a man, are you sure you can identify the man?" Victor Lopez testified. "Yes, especially when I know the person to be identified, because although at times my eyesight is poor and I find some difficulty, yet at other times my eight is alright." (page 5 t.s.n). It is evident that these explanations of Victor Lopez admission that he had a poor eyesight does not explain away at all said admission, because a poor eyesight has nothing to do with the glare of the sun light; and although it may be relatively better sometimes, it can never be as good as a natural one.

DISIDENTE

PABLO, M.:

Disiento. Una decision que condena al acusado, a una pena tan grave como la de reclusion perpetua debe fundarse en el testimonio de testigos que no sean de dudosa veracidad.

Victor Lopez de mas de 71 años de edad, que se quejaba de tener mala vista cuando se le mandaba identificar al

acusado Emiliano Beltran durante la vista, aseguro que estaba a 200 metros de distancia cuando vio a su hijo Feliciano gritar diciendo que le estaban maltratando; que conocio a los que maltrataban a su hijo a la distancia de 200 metros, especificando sus nombres y las armas que llevaban; que estaba a 200 metros cuando oyo el primer disparo; que se acerco a su hijo corriendo para ayudarlo y estaba ya a la distancia de 20 metros cuando terminaron los disparos. Este mismo testigo aseguro que los cuatro acusados disparaban tiros contra el yu hijo Jose, y por eso el escondio como un pato. ¿Como podia llegar el testigo a 20 metros de distancia del lugar en que cayo muerto su hijo, si el se escondio? Como el terreno era palayal, no habia nada que podia escudarlo fuera de los diquos (pilapiles). Para esconderse tenia que zambullirse: no podia correr. Pero desmintio a si mismo cuando, a una pregunta, contesto: "while we were running toward them I saw Emiliano Beltran getting hold of Feliciano and his three other companions were attacking my son Feliciano."

Jose Lopez, hermano del occiso, declaro:

"Q. How far were you from the place where your brother Feliciano was being dragged by the four men named by you, including Emiliano Beltran?-A. About 200 meters.

"Q. How were you able to hear those words 'Utasin na, utasin na,' uttered by Emiliano Beltran, at that distance of 200 meters?-A. Because he was saying those words in a loud voice and there was quiet in that place, so I could hear distinctly the words 'Let us finish him; let us kill him.'"

Si el acusado estaba sujetando a Feliciano mientras sus compañeros atacaban a este, ¿que necesidad tenian de decir en voz alta, pregonando su deseo de matar, si cada uno estaban al lado de los demas? ¿Sera porque querian seroidos por los testigos para que puedan declarar contra ellos ante el Juzgado?

La distancia de 200 metros ha sido declarada muchas y repetidas veces por ambos testigos, padre e hijo. Su repeticion insistente da lugar a graves dudas.

Si los testigos, padre e hijo dijeron ya a las autoridades policiacas quienes fueron los autores del crimen, ¿quenecesidad tenia el policia Dumlaog de hacer investigaciones? Lo mas probable fue que los policias no estaban satisfechos de los informes dados por ellos.

Si los testigos presenciales del crimen, padre e hijo estaban ya a disposicion de las autoridades desde la tarde del 9 de agosto, en que presenciaron el asesinato, por que solo se presento la querella en 27?

En mi opinion, las pruebas presentadas no establecen, fuera de toda duda, la culpabilidad del acusado apelante. La querella debe ser sobresefia.

DISSENTING

HILADO, J.:

For the same reasons set forth in the dissenting opinion of Mr. Justice Briones, with the sole qualification presently to be stated, I dissent. Although, as I construe the evidence, Victor Lopez, father of the deceased, seems to have merely ducked instead of actually hiding when the supposed assailants of his son, Feliciano, were firing shots at him and his son Jose, when they were at a distance of two hundred meters from the scene of the shooting (t.s.n., pp. 5, 6), I concur in all other respects in the reasons upon which the said dissenting opinion is based. I, therefore, vote for the reversal of the judgment appealed from and the complete acquittal of the appellant, with costs de oficio.

BRIONES, M., disidente:

A nuestro juicio, la culpabilidad del acusado no se ha probado fuera de toda duda razonable; así que procede su absolución.

a) Los principales testigos de la acusación son Victor Lopez y Jose Lopez, padre y hermano del occiso respectivamente. Frente a sus testimonios, algunos tanto obscurecidos por el interés natural del parentesco, tenemos las declaraciones de dos personas desinteresadas, Simomn Galfiera y Juan Cadaing, quienes aseguran positivamente que a la hora en que tenía lugar el crimen el acusado estaba con ellos arando en el campo. Las declaraciones de Galfiera y Cadaing aparecen en autos llenas de candor y naturalidad, como de testigos bien avenidos con la verdad. Creemos que la coartada ha quedado bien establecida.

b) Resulta de las pruebas de la acusación que poco tiempo antes del incidente Victor y Jose Lopez habían tenido una especie de conferencia con los parientes del acusado Tomas Baquino (alias Tomansing), al parecer para dar explicaciones y satisfacción por el maltrato que este sufrió en manos del occiso. Pues bien; el acusado y apelante, Emiliano Beltran, no estaba en aquella conferencia; Victor y Jose no mencionan, al menos, su nombre como uno de los presentes. Así que nos parece extraña, y hasta inverosímil, la aserción de que Beltran participó subitamente en el asalto, sobre todo teniendo en cuenta que este hombre vivía en esto no hay discusión a 5 kilómetros de distancia del sitio de autos.

c) Nos parece inverosímil que Victor, un hombre de 71 años de edad, que admite tener una pobre vista, haya podido distinguir bien las facciones del apelante, máxime si se considera que psicológicamente no existía un dato antecedente inmediato, pues ya sabemos que Beltran no estaba en la citada conferencia. Nos parece igualmente inverosímil lo declarado por Jose Lopez de que a 200 metros de distancia él vio a Beltran hacer el primer disparo acertándole al occiso, teniendo en cuenta la excitación del momento y la probable confusión tumultuaria (según la acusación, había cuatro asaltantes, todos armados), y considerando, además, que, según el testigo, la maleza en el lugar era bastante crecida, tanto que él no pudo distinguir la clase de pantalones que llevaba el apelante.

d) Nos parece más inverosímil lo declarado por Jose Lopez de que a dicha distancia de 200 metros él oyó a Beltran hostigar en voz alta a sus compañeros para finiquitar al occiso. El que trata de probar demasiado, a lo mejor no prueba nada. Por que Beltran había de dar voces de mando, gritando con toda la fuerza de sus pulmones? No se ha demostrado en autos que Beltran tuviese algún motivo particular para ensañarse contra el occiso: El no es más que un pariente por afinidad de los Baquinos, casado con una prima de estos, y no sabemos que él tuviese algún agravio personal que vengar contra los Lopez.

(e) Otra circunstancia que nos inclina a dudar de la culpabilidad del apelante es que mientras sus coacusados los tres Baquinos se pusieron a la fuga y parece que no han sido aprehendidos hasta ahora, Beltran se quedó tranquilamente en su casa, como un hombre a quien no le remordía la conciencia y no temía enfrentarse con la justicia. Esta conducta riñe con el papel de cabecilla del grupo que las pruebas de cargo le atribuyen.

Se revoca la sentencia apelada.

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