

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FRANCISCO MITRA, ADRIANO CARPIO AND PAULINO MANSIT,
DEFENDANTS AND APPELLANTS.**

G.R. No. L-13030. April 29, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Jose Oliva, Francisco Mitra, Juan Malabanan, Adriano Carpio and Paulino Mansit were charged before the Court of First Instance of Batangas with the crime of murder under the following information:

"That on or about the 25th day of January, 1950 during nighttime purposely sought to better accomplish impunity, in the Municipality of Santo Tomas, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together, and helping one another, three of whom being armed with firearms, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously, with the deliberate intent to kill Maximino Maloles, and without any justifiable motive, shoot the latter several times with a carbine, thereby inflicting upon him fatal gunshot wounds on his chest, which directly caused his death; that the said offense was committed with the following other aggravating circumstances, to wit: (1) the use of motor vehicle to facilitate the commission of the crime, and (2) that said crime was committed in consideration of a price, reward or promise."

Juan Malabanan was discharged from the information upon motion of the prosecution so that he might be a state witness. During the trial, Jose Oliva died, and upon the proper petition, the lower court ordered the dismissal of the case as against him.

As to the other accused, the court rendered judgment, to wit:

"WHEREFORE, the Court finds accused Paulino Mansit and Francisco Mitra guilty beyond reasonable doubt as principals and Adriano Carpio as an accomplice of the crime of murder, with evident premeditation as the qualifying circumstance and considering that the crime was perpetrated by using a jeep and with treachery without any mitigating circumstance to offset any one of them, pursuant to Article 248 of the Revised Penal Code, sentences Paulino Mansit and Francisco Mitra to suffer Reclusion Perpetua and in relation to Article 52 of the same code, Adriano Carpio to suffer an indeterminate imprisonment of not less than Eight (8) Years and One (1) Day of Prison Mayor but not more than Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal, to jointly and severally indemnify the heirs of Dr. Maximino Maloles in the sum of P6,000.00, to suffer the accessory penalties prescribed by law and each to pay 1/5 of the costs."

Not satisfied with the decision, accused Mitra, Mansit and Carpio interposed the instant appeal.

The State has sufficiently established that on the night of January 25, 1950, at around 7:00 o'clock, while Dr. Maximino Maloles and his wife Rufina Vda. de Maloles, were taking their supper inside their store and restaurant located in the poblacion of Santo Tomas, Batangas, a person entered to buy apples. Shortly after the person left the store, successive gunshots were fired directed at the doctor. Mrs. Maloles instinctively turned her gaze

towards the window where the firing came from, and from that position, she saw two armed persons, who afterwards ran towards the back part of the store. Dr. Maloles was heard to have exclaimed moments after the shooting, "support me because I am fatally hit, declaring further that he was shot by his political enemies. Dr. Maloles expired from his wounds while on the way to the hospital at Tanauan, Batangas. An autopsy performed on the body of the victim, by Dr. Rosalino V. Reyes of the National Bureau of Investigation the following day, revealed that the cause of death was profuse hemorrhage due to the gunshot wounds sustained on both lungs by the deceased.

The Philippine Constabulary authorities, having failed to overtake the culprits, conducted an investigation that same evening of the incident and also the following morning, at the scene of the crime, the investigators found empty shells, but failed to ascertain the identity of the killers. On January 26, 1950, agents of the National Bureau of Investigation conducted a similar investigation wherein certain suspects, including Jose Oliva, were investigated. However, no sufficient evidence against them was established because, as stated in the progress report of the National Bureau of Investigation, "many of the residents interviewed were reluctant to give all the information they know about the case because of fear of reprisal and bodily harm."

On January 19, 1952, the National Bureau of Investigation was informed by Benjamin Maloles that Mrs. Maloles received a letter from one Pacifico Calinawan, a prisoner of Muntinlupa penitentiary, pointing to Leon Malabanan and Ruben Torres as the killers of Dr. Maloles. A new investigation was conducted but, again, failed to produce results.

Some time in November, 1954, Lt. Emilio N. Cea received a confidential information from an informer in Muntinlupa that a prisoner, named Paulino Mansit, knew something about Dr. Maloles' killing. In the early part of December, 1954, Lt. Cea with his men went to Muntinlupa to interview Mansit, but failed to see him because he was then in the Iwahig Penal Colony. On December 14, 1954, Lt. Cea returned to the National Penitentiary and this time, he met Paulino Mansit. After the interview, Mansit admitted participation in the murder of Dr. Maloles, and revealed the identity of others who had taken part in the perpetration of the crime. Mansit's revelations are contained in his extra-judicial confession (Exhibit K, Rec. pp. 5-6). On the basis of said confession and Lt. Cea's report, a complaint in the Justice of the Peace Court of Santo Tomas, Batangas, was filed on March 29, 1955, charging Jose Oliva, Francisco Mitra, Juan Malabanan, Adriano Carpio and Paulino Mansit with murder for the killing of Maximino Maloles.

At the trial, Juan Malabanan, turned state's witness, revealed in detail the plot to liquidate, and the killing of Dr. Maximino Maloles. He testified as follows: In the morning of January 23, 1950, he was invited by Francisco Mitra and his companions to go with them to a certain hut in barrio San Pablo, Santo Tomas, Batangas. While resting inside the hut, Paulino Mansit and Jose Oliva arrived. Whereupon, Mitra and Malabanan were told to come out and confer with Oliva. At this moment, the latter sought the aid of those around him in the liquidation of Dr. Maloles, who, according to Oliva, was an enemy of the Huks and his own political enemy. The date designated for the commission of the crime was January 25, 1950. Oliva gave Paulino Mansit P250.00 as advance partial payment for the execution of the intended crime, with the assurance that the balance would be paid later. After advising that they would meet again on January 25, Oliva left. Out of the P250.00, Malabanan received P50.00. The rest of the group then proceeded to barrio Santa Elena, Santo Tomas, Batangas where they agreed to stay until January 25. In the morning of the fateful date, Malabanan, Mitra and Mansit, all fully armed, went to San Pablo where they waited for Oliva. The latter arrived in due time and during the conference, Oliva was heard to state that in the afternoon a jeep driven by Adriano Carpio would fetch the party from behind the barrio chapel of San Pablo to the town of Santo Tomas. As planned, the jeep arrived, the party boarded it, and they proceeded in the direction of the town. Stopping at the railroad crossing at the outskirts of the municipality (town proper), Mitra

and Mansit alighted from the vehicle and both proceeded to the house of Dr. Maloles, while Malabanan was instructed to remain. Not long after the duo had left, Malabanan heard bursts of rapid gunfire. Soon, Mitra and Mansit arrived, boarded the jeep and hurriedly returned to San Pablo. During the trip, Mitra boasted that he was the one who fired at Dr. Maloles. They spent the night in San Pablo, and in the following morning, they separated. After three days, Malabanan returned to the same place and again met Mansit and Oliva. After Oliva conferred with Mansit, Malabanan asked Mansit about the promised money, but he was told that Oliva had no money at the time; however, Mansit assured Malabanan that he would take care of it. Malabanan visited the place several times thereafter, but failed to contact any one of his companions, and it was only in May, 1955 when they saw each other again at the Constabulary Headquarters.

Malabanan's testimony is claimed by appellants to be biased and suffering from gross inconsistencies and improbabilities. It is argued that what really prompted him to testify the way he did was the promise of his discharge, from the information. It is true that this witness admitted in the trial that he might get free and be relieved from criminal responsibility, if he would be utilized as a state witness; it is equally a fact, however, that even before he consented to be discharged and before testifying in court for the prosecution, he had already executed an affidavit, dated March 30, 1955 (Exhibit "R"), owning his participation in the foul deed and implicating the appellants herein. The records show that his testimony in the trial was just a reiteration of the material facts contained in his affidavit.

The claim that Malabanan was made to sign a "ready prepared affidavit" and that the contents thereof were concocted by the Philippine Constabulary investigators through the intercession of Mrs. Maloles is unfounded and unsupported by the evidence. No proof was offered why the prosecution should be bent in implicating these particular appellants. In fact, Malabanan vehemently denied such assertion and explained that it was he who related the contents of his affidavit after admitting his guilt. On the other hand, this affiant's omission in the affidavit (Exhibit 1-Oliva) of the reasons for the killing of Dr. Maloles; the P10,000.00 consideration for the consumption of the foul act; the fact that three (3) days after the killing, he, Mitra, Mansit and Oliva met again at barrio San Pablo; the amount of P50.00 he received from Mansit; the ten (10) huk companions of Mitra; and the amount of P2,000.00 which was to be his total share, details now advanced by the appellants as casting strong suspicion on the veracity of his statements, in our opinion, do not materially impair the credibility of his testimony, considering that his affidavit was prepared on a question-and-answer basis, and it does not appear that inquiry was made on those points by the interrogating officer (*People vs. Tumbang*, 74 Phil., 299).

It is also noteworthy that Malabanan's testimony is replete with details on how the crime was planned and executed which could not have been the product of mere imagination, and more so, because it was corroborated in all its significant parts by the extrajudicial declarations of accused Mansit and Carpio.

Appellants consider as unlikely the claim of Malabanan that in the early morning of January 23, 1950, Francisco Mitra, having ten (10) armed huk companions, should pick him as one of those to kill Dr. Maloles. They argue that Mitra could have indiscriminately chosen any one of his men, instead of Malabanan. The preference for Malabanan may be explained by the fact that both Mitra and Malabanan are from the same town of Malvar, Batangas and they were good friends. As a matter of fact, on some occasions, Mitra even recommended to his huk companions not to bother Malabanan because he is a good man and that he gives anything they wanted as long as it is within his means. The failure of Malabanan to actively join the conversation and make suggestions during the conference between him, Oliva, Mansit and Mitra in barrio San Pablo, also assailed as improbable, may be attributed to the fact that he was not intimate with the group and not personally known to Oliva.

Mrs. Rufina Vda. de Maloles established the following: While taking supper with her husband in the evening of January 25, 1950, she heard successive gunshots. She immediately looked towards the window where the shots

came from and saw two persons whose names she did not know. Describing their relative positions, she stated that one was bending over the window sill and had the muzzle of his gun lifted upward, while the other had his back towards her, but that, before running away, this person first turned sideways and, in that moment, she saw and recognized his face. During the trial, she pointed to accused Mitra as the person who had his gun lifted from the window sill and Mansit as the one whose back was towards her. Mitra was the man she saw before the actual shooting when he bought apples from her store and it was then that she first recognized his face. On the other hand, she was familiar with the face of Mansit because he used to go now and then to her store during the Japanese occupation to buy things. She said she was able to see their faces by the bright electric lights in and outside the store, aside from the one at a post in a nearby store.

In an attempt to impeach Mrs. Maloles' testimony, appellants claim that it was only during the trial that the witness was able to identify the assailants with remarkable certainty; and that, in fact, during the 1950 and 1952 investigations conducted by the Philippine Constabulary and the National Bureau of Investigation authorities, she only declared that her husband was killed by "unknown assailants". Mrs. Maloles, however, satisfactorily explained that what she meant was that, while she was able to recognize the faces of the killers, she did not know them by name, so that she had to be confronted with the persons of the appellants before she could point to them with certainty as the assailants. Assailing further her credibility appellants would like us to believe that in her affidavit, dated February 22, 1952 (Exhibit "2-Mansit"), she pointed to a certain Ruben Torres and Leon Malabanan as the killers of her husband. This is not true; her affidavit only reveals that she merely attested to the execution of an affidavit by Pacifico Calinawan, pointing to Torres and Malabanan as the assailants. In fact, she maintained in her statements therein that her husband was shot by "unknown assailants", who remained up to that time unidentified.

Jose Magcalas, a cashier in the gasoline station of the Maloles, attested to the following: In the evening of January 25, 1950, at around 7:00 o'clock, while on his way to the store-restaurant of Mrs. Maloles in order to hand over the day's sale to the latter, he saw two persons, who came from underneath a chico tree, going at the direction of the window of said store. Noticing the suspicious movement of these armed persons, he took cover behind the wall of the arch leading to the cemetery which stood west of the store. The duo proceeded directly towards the window, and then one of them bent, directed his firearm inside the store, and fired his gun at an instant. This witness declared that he was able to recognize the faces of the two assailants. The next time he saw them was around the end of May, 1955, when he was taken along by a Philippine Constabulary sergeant to the Philippine Constabulary camp at Alangilang, Batangas. There, he singled out Mitra from eight detained prisoners who were lined up before him as the person who bent and pointed his gun inside the store, and Mansit as the person who had his gun pointed towards the street.

This testimony of Jose Magcalas is urged to be unworthy of belief because it is allegedly improbable for Mansit and Mitra to have executed the crime when Magcalas was only 10 meters away from the two, whose presence could have been easily noticed by the assailants; that he never told anybody about what he saw except to the Philippine Constabulary investigators; that he only described the height and stature of the killers and not their faces; and that, in spite of his suspicion that the assailants were going to do something, wrong, he did not call for help to his companion who was only 5 meters away from him. We cannot give much weight to the above assertions. It was not at all improbable for Mitra and Mansit not to have noticed Magcalas, who, seeing that the two gun wielders were lurking suspiciously around the store, immediately sought cover near a wall leading to the cemetery west of and opposite the store of Mrs. Maloles. Relying the assertion that this witness failed to tell anybody except the Philippine Constabulary investigators about what he saw, Magcalas declared on cross-examination that he narrated and revealed what he witnessed to Mrs. Maloles. And although this witness only described the height and stature of the bodies of appellants Mitra and Mansit, he declared that he could

recognize their faces ("Namumokhaan"). He assured the Philippine Constabulary investigator Captain Colocado that if he would be confronted with these persons, he could identify them right away, stating further that "he could not forget the memory of (sic) their faces because, that was the only incident of the kind he had ever seen in his life". Mistaken identity of the appellants becomes more remote if we consider the fact that when Magcalas was asked to identify the appellants at the Philippine Constabulary camp at Alangilang, Batangas, among the eight lined-up prisoners, he readily pointed to the accused. The reasons given by Magcalas for not shouting for help were his fears of reprisal from the dissidents around the municipality of Santo Tomas and, more convincingly, that, at the time he saw the two armed assailants, he was completely unarmed. Prudence dictated that he seek cover and hide to avoid detection, lest he invite a similar fate to that of the deceased Maloles.

Again, appellants pointed to certain contradictions in the testimonies of Juan Malabanan, Rufina Maloles, and Jose Magcalas, as to the color and nature of the clothes worn by Mitra and Mansit on the evening of January 25, 1950, the exact spot, where the shots were fired, and other insignificant details. It is not uncommon that people who witness an incident give different versions as to their impression on some trivial matters; we have enough experience that not all those who witness an incident in relating their impressions agree on the minor details.

Besides the testimonies of the state witnesses, we have the extra-judicial confession of Paulino Mansit admitting his individual participation in the commission of the crime and confirming in material points the State's version of the foul deed. The regularity with which this confession was executed is sufficiently established. Pfc. Neofito Torres, one of those who helped prepare Mansit's affidavit (Exhibit "K"), declared that all the answers therein were spontaneously and voluntarily furnished by Mansit himself (t.s.n. p. 705). After the interrogation, the declarant was allowed to go over his statements and upon being asked whether the same were true, he replied in the affirmative.

Thereafter, he was brought to Assistant Director of Prisons Misa before whom Mansit subscribed and sworn to his affidavit. At the witness stand, Director Misa testified that he recognized the signature of Mansit appearing in Exhibit "K" because it was affixed in his presence and that all the formalities of law required were duly complied with at the signing.

The claim of Mansit that Exhibit "K" was already prepared when he signed it, is uncorroborated and his repudiation came only for the first time when he took the witness stand in July, 1956 or 1 ½ years after its execution. As we said in one case:

"The repudiation made by the accused of their affidavits of confessions for the first time only during the trial in the court of first instance is afterthought born of an eleventh hour attempt to escape criminal responsibility."
(People vs. Viernes, et al., 47 Off. Gaz. 123)

In truth, Mansit even reenacted the commission of the crime, from the initial stage of the conspiracy to liquidate Dr. Maloles to the consummation thereof. The defense's claim that he was merely instructed to pose for the pictures Exhibits "B" to "I" deserves scant consideration. Captain Segundo Quintans and Lt. Emilio Cea, who were both present in the reenactment, vigorously denied appellants' imputation. The captain testified that when, asked if Mansit could point the place where they had a conference with Oliva and, reenact the crime, the latter, without hesitation, agreed. He (Mansit) then guided the party and indicated to the investigators a spot less than a kilometer from the chapel in barrio San Pablo surrounded by coconut groves as the place of the conference. He remarked that the hut which was supposed to be standing at the place was no longer there. Nevertheless, he pointed to the spot where the culprits stood during the conference, placing himself where he was supposed to be that time and Malabanan in his relative position. Two enlisted men were placed by Mansit in the position of Mitra and Oliva. Upon request if he could reenact the delivery of money by Oliva to him (Mansit), the latter consented. Mansit thereafter went to the extent of inviting the group to the house of a relative where they took their lunch.

Then they proceeded to the scene of the shooting at Santo Tomas where the killing was reenacted. These facts negate the pretention of involuntariness on the part of Mansit, in the reenactment of the conspiracy and the killing.

Equally meaningful is the circumstance that no attempt appears to have been made to coerce Mitra into confessing, notwithstanding that he was one of the triggermen while Carpio merely drove the murder car.

It is pointed out by the appellants that January 25, 1950 was the feast day of San Pablo, and that, therefore, the conspirators would not have chosen the chapel of the said barrio as their meeting place preparatory to boarding the vehicle that would take them to Santo Tomas town, considering that they must have wanted to conceal their plot. It is precisely in crowds that individuals easily escape notice.

During the trial, all the defendants-appellants denied participation in the killing or in the conspiracy to commit the imputed felony and set up the defense of alibi.

Paulino Mansit tried to show that he was in barrio San Pablo, Santo Tomas, Batangas, on January 25, 1950. He testified that he was in the barrio chapel decorating the float of the patron saint on the night of January 25, because there was a barrio fiesta. He claimed that when the procession started at about 6:00 o'clock that evening, he stayed in the "tuclong". His own witnesses, however, made conflicting assertions. Sotero Mansit attested that he saw the appellant pushing the float of the patron saint during the procession; while Vicente Carlepio testified that he saw Mansit "arranging the persons who were with the procession". Moreover, the bias and prejudice of the above witnesses are readily noticeable from the entirety of their testimony, and this may be explained by the fact that Mansit is a relative of both Sotero Mansit and Carlepio.

On his part, Francisco Mitra attempted to prove that he was in Maraoy, Lipa City, on the date of the killing of Dr. Maloles. Octavio Alcantara and Alfredo Caraan were presented to corroborate the alibi of Mitra. It is, however, noteworthy that they could not say with certainty whether or not they saw Mitra at Maraoy on the night of January 25, 1950.

It is to be noted that the places mentioned by the appellants are contiguous to the town of Santo Tomas and linked to it by well-paved roads. This fact, considered with the contradictory versions of the appellants and their witnesses, only attests to the improbability of appellants' claim of alibi.

Considering the testimony of Juan Malabanan which was corroborated in all significant details by the eyewitnesses to the killing (Mrs. Maloles and Jose Magcalas), and the voluntary extra-judicial confession of accused-appellant Mansit and his reenactment of the crime, the conclusion is inescapable that Paulino Mansit and Francisco Mitra criminally participated in the crime of murder charged against them, characterized by premeditation, treachery and use of motor vehicle. However, on the part of Adriano Carpio, no evidence was offered to prove that he participated in the conspiracy to kill Dr. Maloles; the only evidence against him was the driving of the jeep where Mansit, Mitra and Malabanan boarded from barrio San Pablo to the outskirts of the town of Santo Tomas and in taking them back to barrio San Pablo. Since there is no reliable evidence of his knowledge of the plan to commit the murder, and because of the likelihood that his posterior acts were dictated by fear of his armed passengers, we find error in his being convicted as accomplice by the Court below.

Wherefore, the judgment appealed from is modified by acquitting the appellant, Adriano Carpio, and affirming the conviction and sentence of Paulino Mansit and Francisco Mitra, who alone shall answer, jointly and severally for the civil indemnity. In all other respects, the judgment is affirmed. Costs in this instance against appellants Mansit and Mitra.

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

Padilla, J., took no part.

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