

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VALENTIN BAGSICAN, ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. L-13486. October 31, 1962*

Ponente: REGALA, J.

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This review pertains to a judgment of conviction handed down by the Court of First Instance of Zamboanga del Norte over the persons of the accused Culito Bagsican and Valentin Bagsican. The above court found them guilty as principal and accomplice, respectively, of the murder of one Calixto Acorin. Culito Bagsican was, consequently, sentenced to reclusion perpetua and its accessory penalties, and, to indemnify the heirs of the deceased in the sum of P4,000.00. He was also ordered to pay one half of the costs. Valentin Bagsican, on the other hand, was meted an indeterminate prison term of from 4 years, 2 months and 1 day of prison correctional to 10 years, 2 months and 1 day of prison mayor. In addition, Valentin Bagsican was ordered to indemnify the heirs of the victim in the sum of P2,000.00 and to assume one half of the cost. Both defendants appealed from the said judgment. Later, however, Valentin Bagsican withdrew his appeal. This review, therefore, concerns solely the case of Culito Bagsican.

Valentin Bagsican and Culito Bagsican were father and son, respectively. Calixto Acorin, the victim, was their neighbor. These two families—the Bagsican and the Acorins—owned lands adjoining each other. Prior to the incident at bar, there were already differences and disagreements between them regarding the common boundaries of their respective estates.

The case for the government was woven around the theory that the above-mentioned boundary dispute precipitated the commission of the murder here charged.

Accordingly, the prosecution presented two eyewitnesses. Angeles Esmade and Sergio Lorica, who testified to the following facts.

On June 15, 1956, at about 6:30 in the morning, several hired hands were clearing Calixto Acorin's coconut plantation situated at Barrio La Union, Rizal, Zamboanga del Norte. Just about then, defendant Culito Bagsican came over to where the hired hands were working and inquired for the "capataz" or foreman of the group. Culito Bagsican was referring to Calixto Acorin. On being informed that the man he was looking for had not come yet, Culito Bagsican retired to the boundary which separated Acorin's land and that of his father, Valentin Bagsican.

Not long afterwards, Calixto Acorin arrived. He supervised the workmen, prodding them to work a little faster. All that while, he was within the premises of his plantation.

Meanwhile, someone had informed Culito Bagsican of Acorin's arrival. Thereupon, he called for Acorin, requesting the latter to come over so that the two of them might settle the dispute regarding the boundary of their adjoining estates. Acorin accommodated the request and started to walk towards Culito Bagsican. Before Acorin could reach him, however, Acorin saw that Valentin Bagsican, Culito's father, was somewhere in the same

vicinity. That changed Acorin's mind. For instead of proceeding to Culito, Acorin proceeded to where Valentin Bagsican was and there engaged the elder Bagsican in conversation.

While the two elders were thus conversing, Culito stealthily approached Acorin from behind. As he came within striking distance, he unsheathed his bolo and thrust it at the back of the unsuspecting Acorin. As a result, Acorin, face first, fell to the ground.

But he was not dead yet. He stood up and ran, desperately trying to flee from his armed attacker. Yet, even as he fled, Culito and Valentin Bagsican followed in criminal pursuit, with Valentin yelling encouragement to his son to go on and kill Acorin. "Go on, go ahead, kill him!" he shouted. During the chase, and, with the purpose consummating the murder, three more wounds were inflicted upon the victim by the defendant Culito.

The victim was trying to run towards a nearby house owned by one Eufrosina Alarquez. The laborers who were clearing the plantation of Acorin, had, by then, dropped their tools and watched in natural terror. As the victim and the pursuers got beyond the house of Eufrosina Alarquez, however, the trio vanished and the laborers lost sight of the chase.

Some moments passed. Then, though they could see neither the pursuers nor the pursued, the laborers heard two shots fired successively. Thereafter, the two Bagsicans emerged from where they disappeared. The younger Bagsican, herein appellant, was holding a blood-smeared bolo.

From the last scene, Culito went straight to the laborers who were watching. These were the same laborers who, subsequently, testified against the herein appellant and his father. Arrogant and defiant, he warned them not to testify against him. "I warn you not to tell anybody that I was the one who killed Calixto Acorin. If you are asked, you tell that it was my father who killed him, because if you will tell that I was the one who killed Calixto Acorin, I am going to kill you all." Then, together with his father, he proceeded to their house which was not far from the scene of the crime. By the fence, they were met by Culito's mother, who thus rebuked her son, "why did you immediately kill him?"

That same day, Valentin Bagsican surrendered himself to the police authorities of Rizal, Zamboanga del Norte. He admitted killing Calixto Acorin. When he gave himself up to the police, he also surrendered the bolo used in the murder as well as a 38-Calibre pistol, bearing Serial No. 133156.

Contradicting the above prosecution version of the incident, appellant Culito Bagsican offered a different theory. At the trial, he categorically denied having participated in the murder. He insisted that on the occasion of the killing, he was some 40 kilometers away from the scene as he was then in the town of Katipunan on an errand to purchase a carabao for his father. In one word, "alibi."

To support his claim, Culito Bagsican pointed to an entry in the blotter of the Katipunan Police Force on the morning of the incident at bar. The said entry read: "One Culito Bagsican of La Union, Rizal, reported at about 7:00 a.m. in the morning that his pocketbook containing P310.00 was stolen in the house of Emo Bagsican on the night of June 14, 1956." Then too, in the lower court, the Chief of Police of Katipunan testified for the defendant. He acknowledged under oath that it was he who received and entered the above report in the blotter.

The aforecited pieces of evidence relied upon by the appellant for his alibi were most inconclusive. They were insufficient to prevail over the positive evidence presented by the prosecution. Appellant's plea of alibi could not be accepted.

The regularity and authenticity of the entry itself were seriously doubtful. The manner in which it was prepared, together with its phraseology, leads one reasonably to suspect that it must have been made at some "conveniently

later date to corroborate the defense of alibi."

To start with, and, as was observed by the trial judge in his decision, "the phrase 'reported at about 7:00 a.m. in the morning' conveys the idea that the entry was made not on June 15, but, on some subsequent date, otherwise the entry shall be phrased' at about 7:00 o'clock this morning.'

Then too, it is really noticeable that numerous pages in the blotter concerned carry unfilled spaces. With such an entry book, one cannot meet much difficulty if he should attempt to fabricate an entry by taking advantage of one of those unfilled spaces.

One other factor prompted this Court to doubt the testimony of the Chief of Police. He could not have been completely free from bias and prejudice in favor of the herein accused. For as was aptly observed by the trial court, and, which observation was borne out by the record, "the chief of police was appointed by Mayor Lagora who belonged to the political faction headed by Ex-Governor Felipe B. Azcuna, the lawyer for both accused in this instant case. Such being the case, the chief of police appears to be a bias if not perjured witness." (p. 9, decision).

Other convincing circumstances justify the rejection of appellant's alibi. The officer, Bautista Adrias, in charge of the blotter, on the day in question swore on the witness stand that no such entry was entered on June 15, 1956 and no motive whatsoever was attributed by the appellant to the said officer for so testifying.

Moreover, in the monthly report submitted for the month of June 1956 by the same officer to the Provincial Governor, the Provincial Fiscal and the P.C. Provincial Commander, there was no mention made of the alleged robbery when logically the incident should have been so mentioned. In explanation, the same officer charged with preparing the monthly report said that the reason for its omission in the said report was because at the time he prepared the report, there was indeed no such entry in the blotter. Otherwise, he said, the alleged robbery would have been carried in the report.

It is acknowledged that the Chief of Police testified in appellant's favor. He positively confirmed appellant's claim that at the time of the killing, Culito Bagsican was at his office in Katipunan reporting the alleged robbery. This particular testimony, however, is difficult to accept.

The Chief of Police was not the officer incharge of the blotter on the date in question.

Indeed, if Culito Bagsican, on June 15, 1956, presented himself to the Katipunan Police Department to report a robbery, Bautista Adrias would have received it; or, at the very least, Bautista Adrias would have noticed the entry. On that day, he was at his post from 7 a.m. to 5 p.m. and it was he who closed all the entries for that day. That being the circumstance, Culito Bagsican could not have reported the alleged robbery without being known to Bautista Adrias.

Even if the above observations were inadequate to reject appellant's plea of alibi, still another factor prompted this Court to dismiss appellant's plea of alibi. The transcript of the trial revealed that the Chief of Police could not give the details of the alleged robbery as reported to him. He could not account for the particulars of the report—an undertaking he would have found easy and expedient to do had such a report really been given to him.

A defendant may set up alibi as a defense, but, courts exercise great caution in accepting it because it is easily concocted (People vs. Dalmari and Marudi. 63 Phil. 188; People vs. Bienvenido Umali, 99 Phil, 36., 54 Off. Gaz. 347). That doctrine should find more forceful application in cases like this one here where the evidence for the prosecution is strong. Between a strong prosecution evidence, and, a doubtful alibi, courts naturally shall favor the former. Furthermore, a long line of decisions by this Tribunal has established the rule that positive identification

of the accused either by the victim or eyewitnesses or both, results in the rejection of the plea of alibi. (People vs. Colman, 103 Phil., 6; People vs. Doroteo Bellena, et al., L-13415, December 30, 1961; People vs. Pedro Racca, et al., 113 Phil., 802; People vs. Longenos-Penafield, et al., 113 Phil., 893.)

In other words, when the identification and participation of the accused in the assault has been established by positive and competent evidence, the plea of alibi, even if corroborated, cannot be availed of. (People vs. Portallo, 111 Phil., 315. Alibi has no weight whatsoever if the perpetrators of the offense have been positively identified by witnesses (People vs. Severino Corpus and Luis Ardaniel, 110 Phil., 633; People vs. Fausto Linde and Manuel Prisno, 110 Phil., 637; People vs. Josefino G. Selfaison, 110 Phil., 839 People vs. Manuel Baniega, 110 Phil., 890).

As stated above, there are two witnesses who saw the incident and testified positively that the defendant was the one who killed the deceased.

Great stress was also laid by the defense upon the differences in the narration of details by some of those who testified for the government. And, for these contradictions, the rule in falsus in uno falsus in omnibus was vehemently invoked.

It would be unreasonable for this Court to sustain appellant's position with respect to those differences in details into which, truly, on occasions, some of the prosecution witnesses lapsed. However, going over the records, particularly the transcript of stenographic notes, it is quite obvious that the said contradictions were inconsequential. They did not touch upon any matter of significance. They were such minor differences as naturally were bound to arise from truthful descriptions of things past. Had their testimonies been so perfect, so flawless, so completely accurate in details, would they not only then have offered themselves to serious suspicion that the testimonies they gave were fabricated and rehearsed?

Appellant likewise disputed the credibility of the prosecution witnesses because they were either relatives, tenants or acquaintances of the deceased. He has asked this Court to consider unreliable their affirmations at the witness stand. But this Court is not disposed to sustain appellant in his contention. Oral declarations of interested witnesses are not necessarily biased and incredible. On the contrary, it would be unnatural for such persons interested in vindicating the crime to impute the same to any person other than those responsible. (People vs. Lardizabal, G.R. L-8944, May 11, 1956).

Attention of this Court was called to the fact that some of the witnesses presented at the trial were not among those originally listed in the complaint. Appellant would have this as reversible error. Apparently, appellant is unaware of this Court's ruling in the cases of People vs. Avanzado, 37 Phil. 658 and People vs. Manabat, 100 Phil., 603, where the rule was re-expressed that witnesses not so listed may be called upon to testify.

Lastly, appellant argued that he should be exonerated because at the preliminary investigation, it was ruled that no prima facie case existed against him. This contention can find support neither in law nor jurisprudence. On the contrary, this Court has already ruled that such findings in the preliminary investigation do not bar subsequent prosecution and conviction. Such findings are not final acquittal as would preclude further proceedings (U.S. vs. Banzuela, 31 Phil. 564, 574). As the Solicitor General correctly stated, "the release may only have resulted from hesitation on the part of eyewitnesses to testify on account of the threat made upon them by the appellant. Indeed, fear may have temporarily suppressed the emergence of the truth from their conscience."

In view of the foregoing, the judgment of the lower court sentencing Culito Bagsican to reclusion perpetua and requiring him to indemnify the heirs of the deceased in the sum of P4,000.00 and to pay one-half of the cost is hereby affirmed.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon and Makalintal, JJ., concur.

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