

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS.
AURELIO AGSALONA, ALFREDO BARZO, PANFILO APID AND
ROBERTO PAMONAG, DEFENDANTS-APPELANTS.**

G.R. No. L-3959. November 29, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Charged with murder before the Court of First Instance of Iloilo, Aurelio Aagsalona, Alfredo Barzo, Panfilo Apid and Roberto Pamong were found guilty and sentenced each to suffer reclusion perpetua with the accessory penalties prescribed by law, to indemnify jointly and severally the heirs of the deceased Ciriaco Azucena in the amount of P6,000 and to pay one-fourth of the costs. From this judgment all of the defendants interposed the present appeal.

The evidence shows that on February 24, 1949, Ciriaco Azucena filed a complaint against Macario, Ana and Faustina, all surnamed Aagsalona in the Court of First Instance of Iloilo to recover the ownership and possession of a parcel of land. On June 14, 1949, Ciriaco Azucena filed a motion in the same case wherein he prayed that a writ of preliminary injunction be Issued to restrain the defendants from encroaching on the land in controversy.

The defendants herein are all related to the defendants in said civil case. Aurelio Aagsalona is the son of Macario. Alfredo Barzo is the Son of Ana Aagsalona. Panfilo Apid is the son-in-law of Faustina Aagsalona. And Roberto Pamong is the son-in-law of Ana Aagsalona.

Sometime in June 1949, Aurelio Aagsalona and Roberto Pamong, two of the defendants herein, met Juanito Gonzales, chief of police of the municipality of San Dionisio, province of Iloilo, who knew them personally, and told him that should Ciriaco Azucena insist on interfering or working the disputed land, something would happen to him. They gave the same warning to Juanito Gonzales. Upon being informed of this threatening attitude, as a measure of precaution, Ciriaco Azucena on June 8, 1949, sent a letter to the municipal Mayor of San Dionisio, Iloilo, requesting that two policemen be detailed in his place to prevent any untoward act and maintain peace and order in said barrio. This request was indorsed by the Mayor to the Chief of police who accordingly designated policeman Sergio Alborote. On July 13, 1949, early in the morning, Ciriaco Azucena and policeman Alborote, the first armed with a .38 caliber revolver and the latter with a carbine, poblacion of San Dlonislo for barrio Amayong to visit the land in dispute. On their way to said barrio they the night in the house Ciriaco's older brother named Jose Asucena. Early in the morning of July 14, they resumed their trip arriving at around six 6'clock in the house of one where they ate their breakfast. Shortly thereafter, the two proceeded to the disputed land which was still about one kilometer away. After crossing a river which they encountered on the way, policeman Alborote suddenly heard the sound of a shot and Alborote noticed that Ciriaco fell on the ground. Then Alborote turned his head to the left and saw the four defendants herein crouching behind a pilapil about 14 meters away. Pamong had a shotgun in his hand pointed to the victim and the other defendants carried each a bolo. Alborote made an effort to go after the defendants and place them under arrest but they were able to make good their escape. With the help

of some people Ciriaco Azucena was brought to town already dead.

Three hours after the bloody occurrence, the body of Ciriaco Azucena was examined by Dr. Javellana, president of the 6th Sanitary Division of Iloilo, in the presence of the chief of police. Dr. Javellana found that the deceased sustained four gunshot wounds on his left shoulder and side and recovered two pellets from the body. According to Dr. Javellana the victim died from shock and hemorrhage resulting from the pullet wounds. This doctor gave the opinion that only one shot must have been fired and that judging from the location and direction of the wounds, the shot must have come from the left side deceased.

The evidence further shows that early morning of July 14, 1949, shortly before the occurrence, the four defendants were seen by Francisco Regalado, a farmer, near the spot where Ciriaco was fired at. Regalado testified that while he was on his way to a land of the deceased that same morning, he saw the four defendants sitting down near the edge of a banana grove, one of whom, Pamonag, was carrying a gun while the others a bolo each, and that the banana grove where Regalado saw the defendants was only 20 brazas away from the place where Ciriaco Asucena fell.

The four, appellants put up the defense of alibi. Alfredo Barzo and Aurelio Agsalona tried to prove that on the date of the incident, from early morning to late in the afternoon, they planted rice on a field belonging to a certain Porfirio Bornaes. Panfilo Apid in turn tried to show that on July 14, 1949, he was in his house the whole day in barrio Mandoawang also comprised within the municipality of San Dionisio, attending to his wife who has just been operated on for appendectomy. Roberto Pamonag attempted to prove that in the morning of July 14, 1949, he went to Iloilo to collect from one Francisco Villanueva the price of three carabaos which he had sold to him.

Let us now scrutinize the consistency of this defense of alibi. Beginning with Alfredo Barzo and Aurelio Agsalona, we find that they tried to corroborate their testimony by presenting as evidence in their favor Porfirio Bornaes, the owner of the land where they allegedly worked on July 14, 1949. Bornaes testified that he went to their houses on July 13, 1949, to ask them if they could work in his field the following day and that the two agreed to furnish the labor and of the work of planting the field. But Barzo contradicted this testimony saying that it was Agsalona who asked him to plant on the land of Bornaes. And the testimony is confirmed by agsalona who stated that it was he who engaged the services of Barzo. Another circumstance which weakens this defense is the fact that the place where the two defendants had allegedly worked for Bornaes is not far from the place of the crime and this does not make it impossible for them to have committed it. Maria Capiroy, wife of Barzo bears this out. She testified that she heard shots while she was in her house which is an indication that that house was not far from the scene of the shooting. She also testified that her house was less than one kilometer away from that of Aurelio Agsalona and only about three kilometers from the field of Bornaes. Considering that the shooting took place very early in the morning of July 14, 1949, there is nothing improbable for the two appellants to perpetrate the act and afterwards proceed to the field of Bornaes where they allegedly worked thereafter considering that they were able to make good their escape right after the shooting and were not apprehended except sometime thereafter. And, on top of this all, we have their positive identification by policeman Alborote and farmer Francisco Regalado who assured the court that they are among the four persons who actually took part in ambushing and preparing the ground for the killing of Ciriaco Azucena.

The alibi of Porfirio Apid consists in that on July 14, 1949; he was in his house the whole day in barrio Mandoawang, within the municipality of San Dionisio, taking care of his wife who was then convalescing as a result of a dectomy operation. He said that his wife entered the Mission Hospital in Iloilo city on May 29, 1949 that he with his wife discharge for 18 days; that after his wife's the hospital, they both stayed for 15 days In the house of one Ciriaco Gigato situated somewhere in Iloilo city return to barrio Mandoawang until July 16. But besides the fact that his testimony has not been corroborated, he appeared hesitant about his movement on July 16,

1949. At first he averred that he was in his house in barrio Mandoawang on said date only to affirm later that he was with his wife in Iloilo city until July 16, 1949. Again, he was positive that he and his wife stayed in the hospital for 18 days and in the house of Ciriaco Gigato for 15 days, which means that they stayed in Iloilo city for a total of 33 days. If his wife entered the hospital on May 14, 1949, it would appear that they were already back to their house in barrio Mandoawang within the first week of July 1949, which shows that possibility for this defendant to be present in the place of the crime on July 14, 1949. This defense of alibi, cannot, therefore, hold water face of the testimony of policeman Alborote and Francisco Regalado who pointed to him as one of those who waylaid the victim Ciriaco Azucena.

Defendant Roberto Pamong built up a more elaborate scheme in an attempt to bolster up his defense. He testified that in the morning of July 14, 1949, he and one Hermenegildo Barabona went to Passi, Iloilo, to buy three carabaos; that from there they proceeded to Janiway, Iloilo, bringing with them the three carabaos on the same day, which was a market day; that they offered the carabaos for sale to one Francisco Villanueva, a merchant from Arevalo, Iloilo city; that Villanueva agreed to buy the carabaos for P300, but not having enough money to pay that price, Villanueva merely gave them a receipt for said sum with the understanding that he would pay the money the following morning somewhere at Iloilo city; that after closing the deal, he and Barabona went back to Passi, Iloilo; that at 5:00 o'clock in the morning of July 14, 1949 he boarded a suburban train bound for Iloilo city arrived at about 8:00 o'clock; that after his arrival he immediately proceeded to the public market to look for Villanueva but did not find him there; that after going around and looking for him in several drugstores, he finally met him in the street and then and there Villanueva paid him the sum of P300 that after getting the money from Villanueva, he went home to Passi, Iloilo.

Pamong presented as exhibit "1" the receipt issued by Villanueva. Explaining his possession of this exhibit notwithstanding the payment made to him of its money value by Villanueva, Pamong said that after he was charged with offense and was released on bail, he looked for Villanueva and secured from him the return of this receipt to be the present offense in this case. His testimony appears corroborated by that of Hermenegildo Barabona and Francisco Villanueva.

The story regarding the purchase and sale of the three carabaos seems to have been a fabrication. While Pamong and Villanueva testified that the animals mentioned in exhibit "1" were carabaos, however, Hermenegildo Barabona, partner of the accused, said that the animals they sold to Villanueva on July 14, 1949 were cows and not carabaos. Both Barabona and the accused Pamong could not mention the names of the persons from whom they bought the animals.

Another flaw we find is in connection with the place where payment of the price of the carabaos has allegedly been made. According to Barabona, Villanueva agreed to pay said price on the morning of July 14, 1949, at the Philippine National Bank in Iloilo city. This is confirmed by Villanueva, who asserted that he gave the amount of P300 to Pamong at said bank. Pamong, however, contradicted this testimony when he said that the money was paid to him by Villanueva in the street near the public market of Iloilo city. Both Pamong and Barabona affirmed that they came to know Villanueva only on July 1949, on the occasion when he bought from them the three carabaos involved in the transaction. If this is true, it is strange that both Barabona and Pamong had agreed to accept from Villanueva a mere vale or receipt for the carabaos instead of pressing for their payment outright. This is a circumstance which casts doubt on their claim regarding the sale of the carabaos.

Another flaw we find concerns the alleged registration of the animals bought by Francisco Villanueva in his name in the office of the municipal treasurer of Janiway, Iloilo. Pamong and his partner Barabona testified that when they sold the three carabaos to Villanueva at Janiway, Iloilo they simply turned over to him the certificates of ownership after signing their names in behalf of the registered owners. Villanueva said that said certificates were

turned over to him without the signature of the registered owners because such was not necessary under the practice followed by the municipal authorities of January. This point, however, was contradicted by Jose Silva, clerk in charge of issuing certificates of ownership of large cattle in that municipality, who said that the standing practice of his office has always been to require the owners to sign the certificate of ownership before its transfer can be effected. And it finally appears that Jose Silva knew well Francisco Villanueva to be an old buyer of large cattle unless and his practice has always been not to purchase any large cattle unless the owner himself signs the transfer. And this testimony of Jose Silva appears to be supported by the record brought by him to the court (Exhibits 1-2H and "1-4") which discloses that on July 14, 1949, Villanueva purchased carabaos coming from Janiuay, Iloilo, but not one of them came from either appellant Pamonag or Barabona. Another significant fact is that the signatures of Francisco Villanueva appearing on this record do not bear any resemblance to that appearing in the receipt exhibit "1".

There can, therefore, be no doubt that the four defendants herein are the ones who planned and carried out the killing of Ciriaco Azucena as they intimated, to chief of police Juanito Gonzales days before the fatal day in case Ciriaco Azucena would insist on his attempt to work the land disputed between him their elders. Considering this warning, borne out by the case concerning the land bitterly between Ciriaco Azucena and the parents and in law of the defendants there is every reason to believe that the waylaying of Ciriaco is but the result of conspiracy or of a design plotted by said defendants. Direct proof is not essential to show conspiracy. The existence of a common design may be inferred from facts and circumstances which, taken together, would indicate that they are but parts of the whole scheme. Nor is it essential that each conspirator should take part in every act, or should know the exact part to be performed by the other conspirators in the execution of the conspiracy. Conspiracy implies concert of design and not participation in every detail of execution. (*People v. Carbonel*, 48 Phil. 868).

Alfredo Barzo and Panfilo Apid should be given the benefit of the mitigating circumstance of lack of instruction as found by the lower court, in the case of Barzo, such mitigating circumstance is so off set by the aggravating circumstance of recidivism, it appearing that he had been previously convicted by final Judgment of the crime of serious physical injuries.

With the modification that appellant Panfilo Apid be sentenced to suffer an indeterminate penalty of not (10) years, eight (8) months, and one (1) day of prison may or more, than eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, the Judgment appealed from, is affirmed in all other respects, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, JJ., concur.
Feria, Tuason, and Reyes, JJ., did not take part.

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