

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO BATO, DEFENDANT-APPELLANT.***G.R. No. L-23405. December 29, 1967*

Ponente: CONCEPCION, C. J.

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Defendant Domingo Bato seeks the review of a de-cision of the Court of First Instance of Leyte, convicting him of the crime of murder, with which he is charged, and sentencing him to life imprisonment, with the accessory penalties provided by law, to indemnify the heirs of the deceased, Aurelio Laguna, in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs, one-half of his preventive imprisonment to be credited to him in the ser-vice of said penalty.

While Laguna was with his wife, Emilia Rosales – hereinafter referred to as Mrs. Laguna – their daughter-in-law, Asuncion Cañete, and their children, seated around a table, taking their dinner, in the first floor of their house, in Barrio Bagahupi, municipality of Babatñgon, province of Leyte, on April 3, 1959, between 6:30 and 7:00 p. m., with his back a few inches from a half-opened window, facing the road, someone fired at him therefrom, thereby inflicting upon him a gunshot wound[1] in consequence of which he died the next day.

The only question for determination in this case is the identity of the culprit. In this connection, said Asuncion Cañete testified that, upon hearing the report of a gun, she stood up and looked through the aforementioned window, which was only a little over one meter from the ground; that she then saw defend-ant Bato, together with Justiniano Ballais and Maximo Saldivia, all of whom are well known to her, in a seemingly squatting position, as if prepared to run; that the place where these three (3) persons were was illuminated by the light coming from Laguna's house and, also, from that of their neighbor, Florencio Rosales, aside from a bonfire across the street, in the yard of one Ceferino Lacaba; that Bata was then holding a gun, whereas Ballais and Saldivia had each a bolo; and that, Laguna had, likewise, looked at the window and told Mrs. Laguna, that Domingo Bato was his assailant.

Mrs. Laguna, in turn, revealed that, upon hearing the gunshot, she went to the door leading to the kitchen and saw Bato running away, pistol in hand, followed by Ballais and Saldivia, each holding a long bolo; that when, immediately thereafter, she approached her husband, he said that it was Domingo Bato who had fired at him; that he reiterated this statement to barrio lieutenant Gavino Teñedo, in the presence of rural policeman Pedro Dosar, when these two came soon after the occurrence, and, still later, that same evening, to municipal mayor, Ricardo Ansale, the chief of police, and several policemen.

Gavino Teñedo and Ricardo Ansale confirmed this part of the testimony of Mrs. Laguna. Further corroboration was supplied by Vicente Duallo, who said that, as he was walking towards the house of Laguna, in the evening of April 3, 1959, to borrow a sack of palay, he heard the report of a gun and then saw Bato and two (2) other persons running away, coming from a place close to the house of said Florencio Rosales, which is adjacent to that of Laguna.

Bato would have us believe that, said evening, he was with his family in a camarin of Quinto Bato, in which they

resided and which he did not leave that evening. He, likewise, introduced the testimony of Felicisimo Bacquiano, who claimed to have spent the evening in said camarin, together with Bato.

Testifying for the defense, Ballais and Saldivia averred that they were in their respective houses at the time of the occurrence. Pedro Dosar tried to corroborate Saldivia, in whose house, Dosar said, he was when a gun was fired at the scene of the occurrence. Dosar, moreover, stated that thereupon he went to the house of the Lagunas, where Mrs. Laguna informed him that her husband had been shot by defendant Bato.

It is thus apparent, that this case hinges on the credibility of the testimonial evidence therein introduced. The lower court found the evidence of the prosecution more worthy of credence than that of the defense and the records show that this appraisal is a correct one. Indeed, apart from the circumstance that the eyewitnesses for the prosecution corroborated each other, their version was confirmed by the fact that, immediately after the occurrence, Laguna told his wife that his assailant was Domingo Bato; that Mrs. Laguna immediately relayed this information to Pedro Dosar; that Laguna, in turn, reiterated his statement to the municipal mayor, the chief of police and members of the police force; and that, in fact, Bato was seen near Laguna's house when the shot was fired, as well as running away therefrom immediately thereafter.

Obviously, his version – which can hardly be characterized as an alibi, for the house, in which he alleged he was at the time of the occurrence, was barely 800 meters from that of Laguna, and is inherently weak – cannot prevail over the foregoing circumstances.

Then, again, it appears that, prior to the occurrence, Laguna had reported to the Constabulary that Bato used to carry around a firearm with which he used to threaten him (Laguna); that, as a consequence, Bato was charged with illegal possession of firearms, although this case was dismissed; that, a week or two before the occurrence, the deceased had hand-carried to the provincial health officer a report to the effect that dying carabaos had been indiscriminately slaughtered by Bato; and that, in a number of land cases against Quinto Bato, an uncle of the defendant, Laguna had acted either as plaintiff or as a witness.

We are satisfied, therefore, that appellant is guilty of the crime of murder, qualified by treachery. Although the offense was committed at nighttime, the record does not show that appellant had sought it purposely or taken advantage thereof to facilitate the perpetration of the offense. In fact, the place from which he fired at Laguna seemed to be sufficiently lighted for him to be clearly visible to, as well as recognized by, all of those who happened to be nearby.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with costs against appellant Domingo Bato.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.
Dizon, and Fernando, J., took no part.

[1] To the right of the midvertebral line at the level of the first and second lumbar vertebra, and perforating the small and the large intestines, as well as the stomach.

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