

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORO TAMANI, ACCUSED-APPELLANT.

G.R. Nos. L-22160 and L-22161. January 21, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is an appeal of defendant Teodoro Tamani y Marinay from the decision of the Court of First Instance of Isabela, (a) sentencing him to "life imprisonment" for the murder of Jose Siyang and ordering him to indemnify the victim's heirs in the sum of P6,000 and (b) further sentencing him to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prison correccional to eight (8) years and twenty-one (21) days of prison mayor for the attempted murder of Eduardo Domingo and ordering him to indemnify the victim in the sum of P2,000 (Crim. Cases Nos. II-192 and II-198).

Issue as to dismissal of the appeal. - After the appellant had filed his brief, the Solicitor General filed a motion to dismiss the appeal on the ground that the notice of appeal was forty-seven days late. Appellant's counsel de oficio did not oppose the motion. Action thereon was "deferred until this case is considered on the merits". (Resolution of March 7, 1967). The motion to dismiss is reiterated in appellee's brief. That preliminary question should first be resolved.

The lower court's decision convicting defendant Tamani was promulgated on February 14, 1963. A copy thereof was served on his counsel on February 25, 1963. On March 1, 1963 he filed a motion for reconsideration. It was denied. A copy of the order of denial was served by registered mail on July 13, 1963 on defendant's counsel through his wife. He had eleven days or up to July 24, 1963 within which to appeal (if the reglementary fifteen-day period for appeal should be computed from the date of notification and not from the date of promulgation of the decision). He filed his notice of appeal only on September 10, 1963 or forty-eight days from July 24th.

Silvestre B. Bello, defendant's counsel, filed a sworn statement, accompanying the notice of appeal. In that affidavit, he stated that the trial court's order, denying his motion for reconsideration, although admittedly received by his wife on July 13th, was never brought to his attention and that he came to know of the order only on September 7th when he verified the expediente of the case and discovered that an order of denial had been issued. He averred that his wife must have lost the envelope containing the order.

The trial court opined that the wife's affidavit should have been submitted and that the defendant should have filed a motion praying that the tardy appeal be given due course.

After considering the gravity of the two penalties imposed on the accused and the earnest plea of defense counsel, the trial court gave due course to the appeal without prejudice to the right of the Solicitor General to "raise the question of jurisdiction on the ground of a very much belated appeal".

Rule 122 of the Rules of Court provides:

SEC. 6. When appeal to be taken. - An appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial is filed until notice of the order overruling the motion shall have been served upon the defendant or his attorney.

The word "must" in section 6 is synonymous with "ought". It connotes compulsion or mandatoriness. The clear terms of section 6 leave no room for doubt that the appeal should be effected within fifteen days from the promulgation of the judgment.

The counsel for appellant Tamani must have so understood that import of section 6 (which is confirmed by the practice in trial courts) as evinced by the fact that his motion for reconsideration was filed on March 1st, which was the fifteenth or last day of the reglementary period.

The assumption that the fifteen-day period should be counted from February 25, 1963, when a copy of the decision was allegedly served on appellant's counsel by registered mail, is not well-taken. The word "promulgation" in section 6 should be construed as referring to "judgment" (see section 6 of Rule 120), while the word "notice" should be construed as referring to "order". That construction is sanctioned by the rule of *reddendo singula singulis*: "referring each to each; referring each phrase or expression to its appropriate object", or "let each be put in its proper place, that is, the words should be taken distributively" (76 C.J.S. 175).

Therefore, when the order denying appellant's motion for reconsideration was served by registered mail on July 13th on appellant's counsel, he had only one (1) day within which to file his notice of appeal and not eleven days. That construction is an application by analogy or in a suppletory character of the rule governing appeals in civil cases which is embodied in section 3, Rule 41 of the Rules of Court.

Appellant Tamani's notice of appeal, filed on September 10, 1963, was fifty-eight days late. A rigoristic application of section 6 justifies the dismissal of his appeal, as prayed for by the prosecution.

However, considering that appellant's right to seek a review of his case was lost by reason of his counsel's inadvertence and considering further that the briefs have been submitted, the Court has resolved to review the record to obviate any possible miscarriage of justice (Cf. *Marbury vs. Madison*, 1 Cranch 135, 2 L. ed. 60, where Chief Justice Marshall discussed the merits of a mandamus action although the Court held that it had no power to issue that writ.)

Uncontroverted facts. - There is no dispute that sometime after twilight on the night of June 11, 1953 in the place called Centro at the commercial street of Angadanan, Isabela, Jose Siyang (Syang), the town assistant sanitary inspector, was mortally wounded by gunfire. Death resulted from internal hemorrhage caused by the following four (4) through and through gunshot wounds which followed an oblique direction from the point of entry to exit:

- "1. Entry, chest about 2-1/2 inches from level of the nipple. Exit, at the back level of twelfth dorsal vertebrae to the right side.
2. Entry, above right clavicle (suprasternal notch) middle portion, Exit, at the back at the level of the right angle of scapula.
3. Entry, anterior aspect of left shoulder. Exit, at the back of shoulder about 2-1/2 inches from tip of armpit (left side).
4. Entry, anterior aspect of right forearm middle in slight oblique direction from the point of entry to exit." (Exh. F, Certificate issued by Pablo H. Gaffud, M.D.).

By means of the same gunfire, an attempt was made to kill Mayor Eduardo Domingo. He sustained a through and

through wound in the palm of his right hand which caused his confinement in the Isabela Provincial Hospital from June 11 to 22, 1953 (Exh. E, Certificate issued by J.L. Maddela, Sr., Resident Physician).

More than three years from the time that tragedy transpired, or on October 2 and 3, 1956, appellant Tamani signed and thumbmarked two sworn statements before the agents of the National Bureau of Investigation (NBI), wherein he confessed that he was the one who shot Siyang and Mayor Domingo; that his companion on the occasion of the shooting was Domingo Cadawan; that on the morning of June 11, 1953 he and Cadawan were dismissed as policemen and that Vice-Mayor Villamor Tamani, Matias de la Fuente and Rufino de los Santos instigated him to liquidate Mayor Domingo (Exh. A and B). The two statements are in English, a language which Tamani understands (19 tsn II Valencia).

Inasmuch as the crimes, murder and attempted murder, have been proven, meaning that the corpus delicti had been established, and appellant Tamani had confessed having committed the same, there should be an airtight case against him. Rule 133 of the Rules of Court provides:

SEC. 3. Extrajudicial confession, not sufficient ground for conviction. - An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti. (Same as Sec. 96, Rule 123, 1940 Rules of Court).

Tamani's confession is corroborated by the undisputed evidence of the corpus delicti.

However, during the trial, he repudiated his confession. He assailed its voluntariness. He set up the defense of alibi. Through his principal witness, Francisco Siyang, the father of the deceased Jose Siyang, he endeavored to prove that the latter was shot by Policemen Gaspar Ibarra and Melchor Tumaneng. Thus, a simple case where the extrajudicial confession is corroborated by evidence of the corpus delicti, became controversial, complicated and perplexing.

Version of the prosecution. - In addition to Tamani's extrajudicial confession (Exh. A and B), the prosecution offered the testimonies of complainant Domingo, Doctor Pablo H. Gaffud, Juana Vittori Vda. de Ibarra, Emitteria Ibarra, Ilustre D. Mendoza, Mariano G. Almeda, Teodoro Colobong and Martin Caniero.

The prosecution's evidence discloses that Domingo was the mayor of Angadanan since 1947. Prior to June 11, 1953, he was suspended from office by the Governor. During Domingo's suspension, Villamor Tamani, the vice-mayor, functioned as acting mayor. He appointed as policeman his second cousin, appellant Teodoro Tamani who was then twenty-four years old. The vice-mayor used to appoint Teodoro Tamani as policeman whenever Domingo was suspended. Teodoro Tamani resigned as policeman shortly before June 11th. In the afternoon of June 10th, Domingo was reinstated and he reassumed the office of mayor.

The reinstatement of Domingo was obviously resented by Vice Mayor Villamor Tamani because it meant the termination of his tenure as acting mayor. On June 10th Teodoro Tamani and Domingo Cadawan (also a former policeman like Teodoro Tamani) were summoned for a conference by the vice-mayor to his house at Barrio Aniog, Angadanan. Present at the conference were the vice-mayor and his henchmen, Matias de la Fuente and Rufino de los Santos. It was decided at that meeting that Mayor Domingo should be liquidated. De la Fuente handed to Teodoro Tamani a carbine.

Appellant Tamani and Cadawan spent the night in the vice-mayor's house. On the following morning of June 11th, Cadawan was sent on a mission to the poblacion of Angadanan to ascertain the whereabouts of the quarry, Mayor Domingo. At around seven o'clock in the evening, Cadawan returned to the vice-mayor's house and apprised appellant Tamani that Domingo was in front of the store of Pedro Pua at the town's commercial street.

Cadawan and Teodoro Tamani proceeded with dispatch to the poblacion, making shortcuts by passing through the

yards of neighboring houses. Tamani carried the carbine. On entering the yard of the house adjoining Pedro Pua's store, Cadawan stumbled. The resulting noise attracted the attention of the owner of the house, Mrs. Ibarra, who focused a flashlight at Tamani and, on recognizing him, uttered his nickname, Doro. She had known Doro since childhood. She saw that he was carrying a gun.

She had just taken her supper. She and her daughter, Emitteria Ibarra, were sitting on the veranda. It was while chewing her buyo that Mrs. Ibarra heard somebody trip in her yard on the cement floor intended as the base of a tank. Almost simultaneously, she heard the grunting (ngik-ngik) of her pig. When she trained her flashlight on the intruder and recognized Doro (appellant Tamani) with a gun and called him, the latter answered, "Tia" (Aunt).

Mrs. Ibarra saw that Teodoro Tamani passed under the eaves of her house, crossed the bamboo fence separating her lot from the vacant lot of Pedro Pua and proceeded to the corner of the vacant lot near the gate of galvanized iron sheets and the edge of the cemented pavement which was in front of Pedro Pua's store (see sketch, Exh. C). As appellant Tamani passed the fence, he produced a "cracking noise". Emitteria Ibarra testified:

Q. Who say (saw) Teodoro Tamani? - A. My mother and myself, sir.

Q. What was the appearance of Teodoro Tamani when you saw him after your mother lighted him with the light of the flashlight? - A. When my mother flashed the flashlight towards him at the same time my mother called, "Doro" and then he answered "TIA" and he was carrying a firearm, sir.

Q. Why do you know that when you and your mother heard the cracking of the fence Teodoro Tamani went inside the fence? - A. We know it because of the cracking of the fence, besides that we saw him proceeded towards the fence, sir.

Q. After Teodoro Tamani entered that fence as you say, what happened, if any? - A. He proceeded towards the gate of the Chinese, sir.

Q. What happened, if any, after Teodoro Tamani went to that gate? - A. Upon arriving at the gate we heard the gun reports, sir.

Q. How many gun reports, if you remember? - A. Maybe eight (8) or nine (9), sir.

Q. Do you know where the gun reports came from? - A. Yes, sir because I saw the sparks of the bullets when they were fired, sir.

Q. Did you know who fired? - A. I know, sir.

Q. Who? - A. Teodoro Tamani, because he was the only one who entered with a gun, sir. (74-75 tsn Jan. 16, 1959)

Q. Who fired? - A. Teodoro Tamani, sir.

Q. Why do you say that he was the one who fired? - A. Because the gun reports came from the place where he stood at the gate, sir. (77 tsn Jan. 16, 1959)

From the place where Cadawan and Tamani had positioned themselves, they had a good view, through the holes of the gate, of Mayor Domingo and his group standing in front of Pua's store (Exh. A). The mayor was engaged in conversation with a group of persons on the cemented pavement (pasillo or sidewalk) in front of the store in Centro at the town's commercial street. Standing near the wall of the store were Hermoso Alicam, Liberato Tanam, Primitivo Tallog, Martin Caniero, Teodoro Colobong, Gaspar Ibarra, Francisco Siyang and Gonzalo Siyang. Mayor Domingo was standing in front of the group, walking and gesticulating as he talked. Jose Siyang was leaning against a post somewhat apart from the group (Exh. C, 6 tsn March 3, 1959).

Mayor Domingo was recounting his experiences in Manila during his suspension. He was standing on the culvert which bridged the canal separating the pasillo and the street (See Exh. C). As he talked, he gestured and swung his hands up and down with palms open, facing Pua's store and his audience. Jose Siyang, who was apart from the group of listeners, was about two to three meters on Mayor Domingo's right, leaning against one of the posts which supported the roof shading the pasillo or cemented pavement. Jose Siyang was in line with Mayor Domingo while, in contrast, the group of listeners was standing side by side close to the galvanized iron wall of the store, facing Mayor Domingo who was telling stories.

In the meanwhile, Teodoro Tamani and Cadawan were standing on the vacant lot in close proximity to the gate of galvanized iron sheets where the pasillo ended. Cadawan opened a hole in the gate, about three inches in diameter, through which Teodoro Tamani inserted the barrel of the carbine. Tamani fired at Mayor Domingo who was the target. Jose Siyang, a second cousin of Teodoro Tamani, like Vice-Mayor Tamani, "was farther on the right side of Mayor Domingo along the line of fire" (Exh. A). Appellant Tamani fired two volleys. Mrs. Ibarra and her daughter saw from the veranda the flashes of fire emitted by the carbine of Teodoro Tamani. They left the veranda and went inside the house.

At the moment the first volley of gunshots was fired, which was between seven and seven-thirty, Mayor Domingo had raised his right hand. The palm of his right hand was hit. Jose Siyang was also hit. Domingo and his listeners dispersed and sought refuge inside Pua's store. While Domingo ran for cover, a second volley was fired. The volleys came from behind the iron gate on the vacant lot or "from the southwest end" of the cemented pavement behind the gate. While inside the store, Mayor Domingo heard the moaning of someone in an agony of pain. That person turned out to be Jose Siyang who had sustained four gunshot wounds and was hovering between life and death. Siyang died before eleven o'clock that same night.

Constabulary soldiers and peace officers arrived at the scene of the shooting and conducted an investigation. Mayor Domingo was taken to the provincial hospital. Doctor Gaffud conducted an autopsy on the body of Jose Siyang in the municipal building. On the following day empty shells were found by the Constabulary soldiers near the galvanized iron gate (6 tsn. III Calixto).

Teodoro Tamani and Cadawan left the scene of the shooting. They ran, passing the same route that they had taken in coming, and went direct to the house of Vice-Mayor Villamor Tamani in Barrio Aniog. Teodoro Tamani stayed overnight in the house of the vice-mayor. Cadawan, who reported to the vice-mayor that Mayor Domingo was dead, proceeded to Barrio Clakcab and returned the murder weapon to Matias de la Fuente.

The trial court accepted the foregoing version as the basis of the judgment of conviction. It noted that in 1956 when NBI Agent Mariano G. Almeda arranged a confrontation between Teodoro Tamani and Mrs. Ibarra, she identified him as the person whom she saw in her yard in the evening of June 11, 1953. During the confrontation, Tamani trembled, became pale and remained silent.

Teodoro Tamani sometime after the shooting went into hiding at Cabagan and Santo Tomas, Isabela, where he was arrested by Mayor Domingo by virtue of a warrant of arrest issued in Criminal Cases Nos. 245 and 246 of the justice of the peace court of Angadanan (Exh. 3, 4, 5 and 6, 11 tsn March 3, 1959). Appellant went into hiding although his wife was about to deliver her baby.

As to the motive for shooting Mayor Domingo, Teodoro Tamani explained that Vice-Mayor Villamor Tamani, his second cousin, ordered the liquidation of the mayor so that he could not assume office and the vice-mayor would become mayor (Exh. A). Appellant Tamani was chosen to execute that task because he had lost his job as policeman when Mayor Domingo was reinstated (Exh. A, p. 2).

On the other hand, Mayor Domingo said that when Teodoro Tamani was still a policeman, the mayor had scolded him for not reporting for work and for working as cook of Vice-Mayor Villamor Tamani and plowing his field. The other motive was that since Teodoro Tamani is a relative of the vice-mayor, who was a "political enemy" of the mayor, he (appellant Tamani) could act as a policeman when the vice-mayor became mayor after the elimination of the incumbent mayor (11 tsn March 3, 1959).

On the credibility of the prosecution eyewitness, Mrs. Ibarra, the trial judge made the following findings:

"The Court concentrated attention on the attitude and observed the gestures, features, demeanor and manner of testifying and the emphasis, gestures and inflection of the voice of prosecution witness Juana Vittori de Ibarra during all the time she was on the witness stand in the direct and cross-examination, and her answers were prompt, concise, responsive to interrogatories, outspoken, and entirely devoid of evasion or any semblance of shuffling, and her entire testimony was given with calm, self-possession, an erect front, and unhesitating accent. The Court is convinced of her sincerity and credibility and the truthfulness of her testimony, in great contrast with defendant's manner of testifying." (pp. 859-60, Record).

The trial court concluded that the intended victim was Mayor Domingo and not Jose Siyang.

Appellant's version and contentions. - In this appeal appellant's counsel de oficio argues that the trial court erred (1) in disbelieving Tamani's alibi; (2) in assuming that his extrajudicial confession was voluntary; (3) in not giving credence to the testimony of defense witness Francisco Siyang, that his son, Jose Siyang, was shot by Policemen Gaspar Ibarra and Melchor Tumaneng; and (4) in giving credence to circumstantial evidence, and (5) in the alternative, in not holding that appellant Tamani committed the complex crime of homicide with lesiones graves.

Appellant Tamani, having abjured his confession, gave the following version of the case by means of his testimony and the testimony of his other witness, Francisco Siyang (Syang):

Francisco Siyang was the father of Jose Siyang, the town sanitary inspector, who with his wife and four children, resided with Francisco Siyang at his house in Centro, Angadanan. Francisco Siyang is an uncle of Vice-Mayor Villamor Tamani. At around six-thirty in the evening of June 11, 1953 Venancio Respicio dropped at the house of Jose Siyang and invited him for a walk. Francisco Siyang followed his son to the store of Pedro Pua which was around four blocks from their house.

Francisco Siyang noticed that Jose Siyang was in front of Pua's store with Mayor Domingo, Policemen Alfonso Gomez, Gaspar Ibarra, Graciano Manguelod and Melchor Tumaneng, teachers Primitivo Tallog, Teodoro Colobong and Martin Caniero, Mariano Dalodad (a barber) and Juaning Aliangan, a farmer. Jose Siyang was leaning against a post, obliquely at the right of Mayor Domingo. Francisco Siyang allegedly approached Jose and told him that his wife and children were waiting for him so that they could take supper. Jose answered "yes, father".

While Francisco Siyang and Jose Siyang were standing side by side in front of Pua's store, Mayor Domingo made a signal by stretching and raising his hand with open palm and bringing it down. Suddenly, Policeman Ibarra, who was standing in front of Jose Siyang, fired his carbine at the latter, hitting Jose Siyang in the chest. Policeman Tumaneng followed by firing with his carbine successive shots at Jose Siyang, hitting the latter in the breast. Tumaneng was on the right side of Ibarra, obliquely facing Jose Siyang.

After Jose Siyang fell, Francisco Siyang went to his succor and raised him. Jose Siyang told his father: "Father, I am dying, my children." When Jose Siyang was brought to the municipal building, he was breathing feebly. He could not talk anymore. He expired in the municipal building. His body was brought home by Francisco Siyang.

In the morning of June 12th, Vice-Mayor Villamor Tamani with some Constabulary soldiers arrived at the house of Francisco Siyang while the remains of Jose Siyang still lay in state. After the burial of Jose Siyang in the afternoon, a Constabulary sergeant investigated Francisco Siyang and took him to Ilagan, where he was further investigated. He gave a sworn statement accusing Ibarra and Tumaneng of having killed Jose Siyang (Exh. 1).

On the basis of that statement, a criminal complaint for the murder of Jose Siyang was filed on June 20, 1953 by Constabulary Lieutenant Tomas P. Gonzales in the justice of the peace court of Angadanan against Venancio Respicio and Policemen Ibarra, Tumaneng and Manguelod (Exh. 2, Crim. Case No. 244). The complaint was dismissed on August 12, 1953.

Other complaints for the murder of Jose Siyang and for frustrated murder perpetrated on Mayor Domingo were filed in the justice of the peace court against Villamor Tamani, Teodoro Tamani, Domingo Cadawan, Rufino de los Santos and Matias de la Fuente but they were later dismissed (Exh. 3 to 6, Crim. Cases Nos. 245 and 246).

In October, 1956 Mariano G. Almeda of the NBI headed a team of agents that investigated the shooting of Jose Siyang and Mayor Domingo. Francisco Siyang was investigated orally in Ilagan by Almeda. The investigation was interrupted by former Congressman Samuel Reyes. It was not finished.

Appellant Tamani, in support of his alibi, testified that Jose Siyang was his second cousin. Tamani was a resident of Centro in the poblacion of Angadanan. At around three o'clock in the afternoon of June 11, 1953 he was in the house of Vice-Mayor Villamor Tamani in Barrio Aniog. He wanted a recommendation for a job in the Angadanan Sawmill. The place known as Centro in the poblacion, where Pedro Pua's store is located, is around two kilometers from Barrio Aniog. Vice-Mayor Tamani gave to Teodoro Tamani the recommendation between four and five o'clock. The vice-mayor prevailed upon Teodoro Tamani to stay and they agreed to go to town on the following day.

So, Teodoro Tamani slept in the house of his cousin, the vice-mayor, on the night of June 11th. On the morning of June 12th, Vice-Mayor Tamani and Teodoro Tamani went together to Centro in the poblacion. When they reached Centro, they learned of Jose Siyang's death, for which reason they viewed his body in the house of Francisco Siyang. They arrived at Siyang's house at around eight and eight-thirty in the morning. They learned that Jose Siyang was shot in front of Pedro Pua's store.

Teodoro Tamani did not go to the Angadanan Sawmill on June 12th. He delivered the letter of recommendation on June 13th to the manager of the sawmill. He worked in the sawmill as laborer for two weeks only. He resigned due to the heavy work. He could not remember the name of the manager of the sawmill.

He denied that he shot Jose Siyang and Mayor Domingo. He did not participate in the commission of the crime. He said that he was in the house of Vice-Mayor Tamani on the night of June 11th.

On October 2, 1956 NBI Agent Almeda picked him up from his house for questioning in connection with the shooting of Siyang and Mayor Domingo. Almeda was accompanied by Alfonso Salvador, a Constabulary soldier. Tamani was brought to the municipal building. From there, he was taken to Ilagan. He was brought by Almeda to the provincial Jail at Calamagui, Isabela, where he (Tamani) was delivered to Pedro Tamayo, a prisoner who acted as mayor of the cell (brigada). Tamani was formally received by the provincial guard from Almeda at around six and six-thirty in the evening of October 2nd.

Upon delivering Tamani to Tamayo, Almeda allegedly told Tamayo: "Bahala kayo rian, Tamayo, at ako ang bahala saiyon". Twenty minutes later, Pedro Tamayo, Juanito Dassig, Juan Pecano, Ernesto Castañeda and other convicts started maltreating Tamani. The alleged maltreatment consisted of the following:

"First, they ordered Tamani to squat on the cemented floor inside the cell (brigada).

"Second, after squatting on the cement floor, they ordered Tamani to stand and then started boxing him for one hour.

"Third, they removed all his clothings and put Tamani inside a drum where prisoners dropped their human waste. He was required to stay inside the drum for five minutes, after which they brought him out and poured on him water to wash his body from the human waste.

"Fourth, they made Tamani pulverized pepper and they placed the pulverized pepper in his anus, penis and testicles."

Tamani was maltreated because the tormentors wanted him to admit that he was the one who shot Jose Siyang and Mayor Domingo. As he could not endure the maltreatment, he admitted he had shot Siyang and Domingo. The maltreatment was stopped after he made the admission.

Around ten to ten-thirty on that same night, Almeda returned to the jail and asked Tamayo: "Does he admit now?" Tamayo answered in the affirmative. Almeda then took Tamani out of the jail and brought him to the second floor of Puring's Restaurant. Almeda called for NBI Agent No. 101 who came out of a room with a typewriter. Agent No. 101 placed his typewriter on a table. Almeda told Tamani: "Now, I am going to take your statement that you shot Jose Siyang and Mayor Domingo."

At first Tamani told Almeda that he knew nothing about the shooting because he was in Barrio Aniog when Domingo and Siyang were shot. Thereupon, Almeda told Tamani not to deny the shooting because Juana Vittori Vda. de Ibarra recognized him when he stumbled before the shooting at a place near the fence between the lots of Pedro Pua and Mrs. Ibarra. Tamani maintained his innocence about the shooting.

Thereafter, Almeda and NBI Agent No. 101 slapped the face of Tamani. They brought him to a toilet. They pushed his head into the toilet bowl (iniodoro). They held his hair and pushed his face toward the mouth of the toilet bowl for five minutes. When Tamani could not endure the torture anymore, he told Almeda that he would admit the crime. Almeda and Agent No. 101 brought Tamani to the table on the second floor of Puring's Restaurant. Almeda told Tamani: "You better admit now that you shot the two victims, that you took the gun from Matias de la Fuente and that Villamor Tamani and Rufino de los Santos are the masterminds".

Tamani admitted that version for fear that he would again be maltreated. His affidavit, Exhibit A, was signed at Puring's Restaurant on the night of October 2, 1956. The contents of Exhibit A "are all the versions of Director Almeda". Tamani admitted his signatures and thumbmarks in Exhibit A. On the following morning of October 3rd, Almeda and Agent No. 101 brought back Tamani to the jail.

Tamani admits that he signed Exhibit B also, his supplementary confession. However, he insists that he signed it on the night of October 2nd and not on October 3rd. He said that he never excluded Domingo Cadawan and that he never incriminated himself as the triggerman. He might have signed Exhibit B in connection with his signing of Exhibit A on the night of October 2nd because when he signed Exhibit A, there were several sheets of paper which he signed and thumbmarked. He allegedly did not know the contents of Exhibit B when he affixed his signature thereon. He says that the incriminatory statements in Exhibits A and B are not true. (See pp. 3-4, 17-28, Appellant's Brief).

The trial court rejected the foregoing version of the defense after noting the improbabilities in Francisco Siyang's testimony and after concluding that the appellant had not overcome the presumption that his confession was voluntarily executed.

The shooting incident was undoubtedly another episode in the political rivalry between Mayor Domingo and Vice-Mayor Tamani. That circumstance has given a political complexion to these two cases. It may explain why

the evidence has become muddled, if not baffling. It was to be expected that, to suit the ulterior motivations of the contending parties, there would be some insidious manipulation of the evidence.

Thus, on June 12th, the day following the shooting and before Jose Siyang was interred, Constabulary soldiers, accompanied by Vice-Mayor Villamor Tamani investigated Francisco Siyang (51-52 tsn Aug. 26, 1960). On June 14, 1953, or four days after the shooting and while Mayor Domingo was in the hospital, Francisco Siyang (the uncle of Villamor Tamani and the star witness for the defense and the father of the victim, Jose Siyang) executed an affidavit in Ilagan about the shooting. He made it appear in that statement that Patrolmen Ibarra and Tumaneng, two followers of Mayor Domingo, were the killers of Jose Siyang and that they commenced to shoot Siyang when Mayor Domingo made a prearranged signal (Exh. 1).

As already noted, on the basis of that affidavit, Constabulary Lieutenant Tomas P. Gonzales filed in the justice of the peace court of Angadanan a complaint for murder against Policemen Ibarra, Tumaneng and Mangelod and one Venancio Respicio, an alleged nephew of the mayor (Exh. 2, Crim. Case No. 244). According to Francisco Siyang's affidavit, Respicio, a compadre of Jose Siyang, acted as decoy in bringing Jose Siyang to the place where he was assassinated. Domingo repeatedly denied that Respicio was his relative by consanguinity or affinity. Francisco Siyang made it appear that his son was murdered because he testified against Domingo in the case where the latter was charged with theft. Because of that theft case Domingo was suspended. That murder complaint (Exh. 2) against the followers of Mayor Domingo was dismissed.

After the mayor was released from the hospital, he and the chief of police investigated the shooting. The chief of police filed a complaint for murder dated July 8, 1953 against Vice-Mayor Tamani, Teodoro Tamani, Rufino de los Santos, Matias de la Fuente, Arsenio Dayang and Medardo Tamani. The complaint was amended by including Domingo Cadawan as a defendant and excluding Dayang and Medardo Tamani (Exh. 3 and 4, Crim. Case No. 245). For the shooting of Mayor Domingo, a complaint for frustrated murder was filed by the chief of police against the same persons (Exh. 5 and 6, Crim. Case No. 246).

Both complaints were dismissed apparently for lack of evidence. As the shooting was an unsolved crime, the intervention of the NBI became necessary.

On June 4, 1956 Francisco Siyang executed an affidavit in Ilagan before NBI Agent No. 39. He deviated from his 1953 affidavit by naming Melchor Tumaneng alone ("Melchor Tomines") as the assassin of his son, Jose Siyang. He stuck to his original theory that Mayor Domingo masterminded the assassination of his son (Exh. G).

As already noted, four months later, or on October 2 and 3, 1956, an NBI investigating team headed by Mariano G. Almeda, a lawyer and an assistant to the NBI Director, secured a confession from appellant Teodoro Tamani that he, with the assistance of Domingo Cadawan, shot Mayor Domingo and Jose Siyang (Exh. A and B). It may be assumed that the NBI was asked to handle the case so that political considerations would not color and influence the course and outcome of the investigation.

Before Tamani executed his confession, Almeda and his agents, assisted by Constabulary soldiers, interviewed several persons in Angadanan and made an ocular inspection of the scene of the crime. They investigated Mrs. Ibarra and her daughter. They learned that Teodoro Tamani had entered Mrs. Ibarra's yard and was recognized by her and that, immediately thereafter, she heard gunshots from the direction where Tamani had posted himself. Thus, Tamani became a prime suspect. He was apprehended and brought to the house of Mrs. Ibarra for a confrontation. Almeda testified:

Q. What did you do, if any, when Teodoro Tamani was brought to the house of Juana Vittori Vda. de Ibarra? -

A. In the presence of Juana Vittori Vda. de Ibarra and her daughter I confronted them and asked Juana Vittori Vda. de Ibarra and her daughter whether they knew Teodoro Tamani and both claimed that he is the very same

fellow who entered the yard that night with a gun and also they heard shots from the direction of the said accused Teodoro Tamani after which Teodoro Tamani was trembling and he became pale.

Q. And did Teodoro Tamani say anything when he was pointed out by Juana Vittori Vda. de Ibarra and her daughter? - A. He did not utter anything. He simply became pale and trembling. (16 tsn June 12, 1958, II Valencia).

Tamani's confession (Exh. A and B) was the basis of the information for murder and frustrated murder against him in these two cases.

Findings: Appellant Tamani's defense of alibi, which can be fabricated with facility, cannot be given serious consideration. Assuming that he was in Barrio Aniog in the afternoon and night of June 11th, it was physically possible for him to be at the scene of the shooting at the time that it was perpetrated and return to the house of Vice-Mayor Tamani in Barrio Aniog. That place was only two kilometers from the store of Pedro Pua. The victim were shot in front of the store.

The settled rule is that an alibi, to be tenable, must be such as to preclude the possibility of the presence of the accused at the scene of the crime or its immediate vicinity at the time of its commission. "The accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission" (People vs. Lumantas, L-28355, July 17, 1969, 28 SCRA 764, 768).

Appellant's alibi does not satisfy that basic requirement. Moreover, it was not corroborated by Vice-Mayor Tamani or by any other person. Its concocted character is manifest.

Appellant Tamani argues that he signed his confession, Exhibit A, because he was tortured or maltreated. He claims that he does not remember having signed his supplementary confession (Exh. B) although he admits the authenticity of his signature and thumbmark therein.

NBI Agents Almeda and Mendoza testified that Tamani's sworn statements were freely executed. Tamani's testimony on the alleged maltreatment was not corroborated. As correctly noted by the Solicitor General, certain details in the confession, which only Tamani could have supplied, are indications of its voluntariness and give it spontaneity and coherence.

Those details are (a) that Teodoro Tamani and Cadawan conferred with Vice-Mayor Villamor Tamani in the latter's house at Aniog at three o'clock in the afternoon of the day preceding the shooting; (b) that Matias de la Fuente and Rufino de los Santos were present at the conference and it was decided to liquidate Mayor Domingo to enable the vice-mayor to act as mayor; (c) that De la Fuente handed to Tamani and Cadawan the carbine to be used in the killing; (d) that Cadawan and Tamani slept in the vice-mayor's house on the night of June 10, 1953; (e) that Cadawan went to the poblacion in the morning of June 11th in order to ascertain the whereabouts of Mayor Domingo; (f) that Cadawan returned in the afternoon and informed Tamani that Domingo was at Pua's store; (g) that Cadawan stumbled in the yard of Mrs. Ibarra; (h) that after firing the shots, the two returned to the vice-mayor's house; (i) that Teodoro Tamani slept in the house of the vice-mayor after the assassination; (j) that Jose Siyang was standing on the right side of Mayor Domingo "along the line of fire"; (k) that Jose Siyang was his second cousin and the second cousin of the vice-mayor and (l) that the hole in the gate was three inches in diameter.

Those circumstances might not have been known if the confession had been executed under duress. NBI Agents Almeda and Mendoza could not have manufactured all these details.

There is one significant inconsistency in appellant Tamani's testimony on March 26, 1962 which impairs his

credibility. He claimed that his supplementary confession, Exhibit B, was translated to him in Tagalog but that he did not understand Tagalog on or before October 3, 1956 (117 tsn I Valencia). However, when he testified on January 11, 1962 and he was asked to repeat what NBI Agent Almada told in Tagalog to the prisoner, Pedro Tamayo, Tamani was able to repeat verbatim the words: "Bahala kayo rian Tamayo at ako and bahala saiyo" (83 tsn II Calixto). He repeated the same Tagalog words in the later part of his testimony (86 tsn) and at the hearing on April 5, 1962 (127 tsn I Valencia).

Agent Almada testified that appellant Tamani understands English, being a former policeman, and that Tamani read Exhibit B, which is in English and which NBI Agent Mendoza translated to him in Ilocano. Tamani did not deny that he knows English. His petition to this Court that he be granted bail, which petition bears his signature, is in English (See Rollo).

There is no merit in appellant Tamani's contention that the trial court erred in not giving credence to the testimony of Francisco Siyang (Syang) that Jose Siyang was shot by Policemen Ibarra and Tumaneng, the latter being allegedly a houseboy of Mayor Domingo. The inconsistencies on vital details in Siyang's two affidavits and in his testimony signify that he deliberately perverted the truth. His testimony exhibits the earmarks of untrustworthiness. It was squarely refuted by Martin Caniero and Teodoro Colobong. It should be underscored that Francisco Siyang is the uncle of the vice-mayor (58 tsn Aug. 26, 1960).

In his 1953 affidavit (Exh. 1) he declared that Policemen Ibarra and Tumaneng shot his son, Jose Siyang, whereas, in his 1956 affidavit (Exh. G) he alleged that only Tumaneng (Tomines) shot his son.

Francisco Siyang, a farmer, was already seventy-six years old when he testified in 1960. On direct examination he testified that his son was shot in the breast by Gaspar Ibarra, who was immediately followed by Melchor Tumaneng. Tumaneng allegedly hit Jose Siyang in the left part of the breast below the clavicle (48 tsn I Valencia). That was also Francisco Siyang's declaration in his 1953 affidavit (Exh. 1): that Ibarra fired first.

However, Francisco Siyang on cross-examination testified differently. He declared that Tumaneng fired first and that the second shot was fired by Ibarra. Francisco Siyang said that he was sure that Tumaneng fired first at his son (89, 92, 93 tsn I Valencia). The following is an example of his confusing testimony:

Q. How many shots did Gaspar Ibarra fire at your son? - A. Only one, sir.

Q. Who fired the two first shots, if you know? - A. Melchor Tumaneng, sir.

Q. Did you actually see or not the two successive shots at your son? - A. I saw him, sir.

Q. Who fired the other two shots which according to you your son was hit by five (5) gunshots? - A. Gaspar Ibarra, sir.

Q. Do you mean to say that Gaspar Ibarra fired first one shot and then two shots, all in all three shots? - A. Gaspar Ibarra fired only one, sir. (93 tsn I Valencia).

Q. Who was the first who shot your son, according to you? - A. Melchor Tumaneng.

Q. Where was Melchor Tumaneng at the moment he shot you? - A. He was at the gate of the fence.

Q. But he was inside with the group of persons at the media de agua of the store of Pedro Pua. Is it? - A. Yes, sir (21 tsn I Calixto).

NBI Agent Almada, after investigating Francisco Siyang, found his theory incredible. Almada did not believe that Francisco Siyang could have seen or identified the assailant who was behind the fence. According to Almada, Francisco Siyang merely suspected certain persons as the killers of his son. He could not identify positively the

killers.

Other grave inconsistencies in Francisco Siyang's affidavits and testimony are discussed in the trial court's decision.

Appellant Tamani further contends that the trial court erred in relying on thirteen circumstances in order to convince itself that Tamani was the culprit. Among those circumstances are that Tamani went into hiding sometime after the shooting and that the motive for the attempted murder of Mayor Domingo was to prevent his reinstatement and to enable the vice-mayor to become permanent mayor and insure that appellant Tamani would again become a policeman.

Judge Pedro C. Quinto's painstaking analysis of the evidence and his conscientious scrutiny of the discrepancies in the testimony and affidavits of Francisco Siyang demonstrate that the guilt of Tamani has been proven beyond reasonable doubt. A thorough perusal of the record leads to the conclusion that the trial court did not commit the errors imputed to it by the appellant.

The act of shooting Siyang at a distance, without the least expectation on his part that he would be assaulted, is murder because of the attendance of the qualifying circumstance of treachery (*alevosia*). Appellant Tamani deliberately employed a mode of execution which tended directly and specially to insure the consummation of the killing without any risk to himself arising from the defense which the victim could have made (Par. 16, Art. 14, Revised Penal Code). Siyang, unarmed and without any intimation that the gunshots intended for Mayor Domingo would hit him, was not in a position to defend himself against the unseen assailant. Treachery may be appreciated even if there was a mistake as to the victim (*People vs. Mabug-at*, 51 Phil. 967; *People vs. Guillen*, 85 Phil. 307).

As to Mayor Domingo, the accused was not able to perform all the acts of execution which would consummate the killing (Art. 6, Revised Penal Code). The accused was not able to do so, not because of his spontaneous desistance, but because he failed to inflict on the mayor a mortal wound. The mayor was able to avoid the second volley by taking refuge in the store of Pedro Pua. But there is no doubt that the accused was animated by the intent to kill and that the shooting was perpetrated in a treacherous manner. Hence, the offense against the mayor is attempted murder (*People vs. Kalalo*, 59 Phil. 715).

The alternative contention of appellant Tamani that he should be convicted of the complex crime of homicide with *lesiones graves* is not well-taken. As already pointed out, the killing of Siyang cannot be characterized as homicide. It was qualified by treachery. There was intent to kill in the shooting of the mayor. So, the wound inflicted on him cannot be regarded as a mere physical injury. It was an overt act manifesting the willful design of the accused to liquidate the mayor.

The infliction of the four fatal gunshot wounds on Siyang and of the wound in the palm of the mayor's right hand was not the result of a single act. The injuries were the consequences of two volleys of gunshots. Hence, the assaults on Siyang and the mayor cannot be categorized as a complex crime.

To convict the accused of the complex crime of murder with attempted murder would result in the imposition of the death penalty. That eventually would be worse for him.

There being no mitigating nor aggravating circumstances, the penalty of reclusion perpetua should be imposed on the appellant for the killing of Siyang. (Arts. 64 [1] and 248, Revised Penal Code). The use of the term "life imprisonment" is not proper (*People vs. Mobe*, 81 Phil. 58).

WHEREFORE, the appeal is dismissed with costs against the appellant. So ordered.

Zaldivar, (Chairman), Fernando, and Fernandez, JJ., concur.

Antonio, J., concurs in the dismissal of the appeal on the ground that the judgment of the lower court became final after the lapse of the period for perfecting an appeal. (Sec. 7, Rule 120.)

Barredo, J., took no part.

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