

**PEOPLE OF THE PHILIPPINES, PLAINTIFFS AND APPELLEE, VS.
DIONISIO FRANCISCO, ET AL., DEFENDANTS, TIBURCIO ASUNCION,
FEDENCIO FRONDA, PEDRO TABBAL AND CARITATIVO DASALIA,
DEFENDAN...**

G. R. No. L-4258. May 15, 1953

Ponente: TUASON, J.

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TUASON, J.:

Prosecuted for kidnapping with murder and found guilty of murder, the appellants—Tiburcio Asuncion, Fedencio Fronda, Pedro Tabbal and Caritativo Dasalia—were sentenced by the Court of First Instance of Isabela to reclusion perpetua, to indemnify the heirs of Anacleto Fajardo, the subject of the murder, in the amount of P6,000, and each to pay 1/5 of the costs. Dionisio Francisco who headed the list of defendants was acquitted after the trial "for lack of evidence," and Lorenzo Saraus and Teodoro Gubaya, also formerly included in the information, were discharged on motion of the Provincial Fiscal before arraignment and on the same ground.

The facts which led to this prosecution and on which the parties are in substantial agreement are these:

On the evening of January 3, 1948, Anacleto Fajardo, a barber in the municipality of Santiago, province of Isabela, and immigrant from Nueva Ecija, went out for a walk and never returned. Investigations by the authorities upon complaint of Fajardo's widow proved fruitless until August, when Cornelio Feliciano, special agent of the Department of the Interior, was dispatched to Cordon, neighboring municipality of Santiago, to investigate the kidnapping or disappearance of one Enriquez. On the 23rd of that month Feliciano "received a reliable information" of a man killed and buried in the yard of Pablo Bugarin in barrio Taringsin, Cordon; and organizing a search party, he probed the place indicated and came upon what looked like a grave, a point about 200 meters from the national highway and about the same distance from the house of the newly elected Mayor, Dionisio Francisco, the acquitted defendant. While waiting for the Justice of the Peace and the president of the sanitary division to whom a request was sent to come over, Feliciano and some members of his party moved to the house of the Mayor. According to Feliciano, whose testimony was denied, he asked Francisco if he knew anything of what Feliciano now suspected to be a case of foul murder and the Mayor looked pale and trembled. On the arrival of the Justice of the Peace and the health officer, the party, with Francisco, who was requested to come along, went back to Bugarin's place and removed the earth from the suspected grave. The operation yielded human bones, a piece of rope, clothes and shoes which were identified by Fajardo's widow as her husband's. From that place, so Feliciano stated, the agent and Corporal Tiburcio Cortez of the Philippine Constabulary went to the Mayor's office in the municipal building with Francisco and told the latter to tell the truth. The Mayor, said Feliciano, replied that he would tell what he knew on condition that his name would not be divulged until he was called to testify in court. (The mayor had been a law student.) Assured that his wishes would be respected, Francisco according to Feliciano, related: That Lorenzo Saraus and other men came one night in a jeep with a man with a swollen face whose hands were tied; that when he (Francisco) invited Saraus to come up, Saraus declined, saying, "No more, because we have already brought the cow that we are going to slaughter;" that walking with

Saraus to the jeep which was parked near the house of Fedencio Fronda's sister, Francisco saw through one of the vehicle's windows the man to be slaughtered; that Tiburcio Asuncion, Dasalia and Fronda, who happened to be in Francisco's house at the time, went with Saraus to the yard of Pablo Bugarin; that Fedencio Fronda and others dug the grave and Asuncion did the killing with a bolo.

Following this development, Tiburcio Asuncion, Fedencio Fronda and Pedro Tabbal were picked up and taken to the Philippine Constabulary quarters in Cordon, where they are said to have made and signed written confessions.

Excerpts from Tiburcio Asuncion's statements are: He is 25 years of age, resident of Taringsing, Cordon. He knew the man whose remains had been exhumed but not his name. They had buried him where the bones were recovered, and he was the one who did the killing. He killed the man because he was forced to do so by Mayor Franciso Dionisio under threat of being killed himself if he disobeyed. He did not remember the date of the killing but remembered the hour, 9:00 p.m. His companions were Fedencio Fronda, Caritativo Dasalia, Pedro Tabbal and Mayor Dionisio Francisco. Francisco delivered the man to him, Fedencio Fronda and Caritativo Dasalia near Francisco's house and told them to kill the said person. From there he, Mayor Francisco, Dasalia, Fronda and Tabbal took the victim to Pablo Bugarin's lot which was about 200 meters from the national road. In that yard, the mayor ordered them to get tools for digging the grave, and Fronda went out to get a spade while he, Tiburcio Asuncion, got his bolo from his home. The grave was about knee-deep. After killing the man he pushed the body into the grave and covered it with earth. From there they went home.

Pedro R. Tabbal said that he was fast asleep at home one night in January, 1948, when the Mayor of Cordon, Dionisio Francisco, came to call for him. Francisco "just requested me to go downstairs and when I was on the ground of our yard, he ordered me to go with him," and from the Mayor's house they walked eastward. When they stopped, he, Fronda and Asuncion were ordered by the Mayor to make a pit; the place was about 150 meters from the Mayor's house. After digging the grave, Dionisio Francisco, Saraus and others together with a man who was tied arrived. Then the Mayor commanded Tiburcio Asuncion to kill the man with a bolo, and because Asuncion was afraid of the Mayor, Asuncion struck the victim three times. After the third blow the man fell into the grave and "Francisco ordered us again to cover the dead body in the hole." Afterward they were warned by Saraus and others that if they revealed what had happened that night, Francisco and Saraus would kill them.

The declarant said that he was a barrio lieutenant. Asked why being barrio lieutenant, and it being his duty to report any case like this to the authorities, he kept quiet, he answered that he was afraid because of the threats.

Fedencio Fronda said that he did not know Anacleto Fajardo. He knew of the death of the man whose bones were bieng shown to him. He said, "While we, Tiburcio Asuncion, Caritativo Dasalia, Mayor Dionisio Francisco and I, were conversing in the house of the mayor at about 7:00 o'clock, sometime in the month of January this year, suddenly a jeep stopped, someone called for the mayor which I recognized to be Lorenzo Saraus, head of the Santiago defender. Then we all went down the stairs and have a short conversation. The Mayor, Dionisio Francisco, and Lorenzo Saraus went about five meters from us, and they talked secretly together. After their secret (conversation), they returned to us and we all went to the jeep that was stopped (parked) and saw a man who was tied on his hands. Then the Mayor, Dionisio Francisco, and Saraus and company (about six men all armed) ordered the man in the jeep that was tied to alight. When the said tied man alighted from the jeep we all went eastward of the house of the Mayor, Dionisio Francisco, about 200 meters away from his house. The Mayor, Dionisio Francisco, ordered me to go and get a spade in our house, so I went because if I will not comply with his order he will shoot me. When I was able to get a spade, he, the mayor, ordered us, Caritativo Dasalia, Tiburcio Asuncion, Pedro Tabbal and I and other men of Saraus, to dig a hole. After digging a hole they took the man that was tied on his hands and ordered him to sit beside the hole. The Mayor, Dionisio Francisco, called for Tiburcio Asuncion and told him that he was to kill said man but because Tiburcio Asuncion refused to kill said man the

mayor pointed his pistol so he (Tiburcio) was at last forced to kill the said man. Tiburcio Asuncion killed him with a bolo. He (Tiburcio) struck him several times and at last I saw the tied man was already dead. When the tied man was already dead, Lorenzo Saraus pulled the body of the dead man to the hole and they ordered us to cover it. After it was covered we all went home with a promise of Lorenzo Saraus and company plus the Mayor, Dionisio Francisco, that if we will reveal the unusual incident that had happened that very night they will kill us including our families."

The above three statements were made in August, between the 26th and the 30th. They were not sworn to before any officer authorized to administer oath but the first was witnessed by Macario Mina and Tiburcio Cortez, and the second and third by Macario Mina and Domingo Cayot.

Subsequent to the execution of the said statements, Asuncion, Tabbal and Fronda were brought to the Constabulary barracks in Ilagan, capital of the province, and at the instance of Captain Artemio Bahia, Provincial Commander, they made new declarations of the same tenor which later they subscribed and swore to before the Justice of the Peace of Santiago. Dasalia, who was arrested for the first time after his codefendants had been transferred to Ilagan, made substantially identical declarations to Captain Bahia which he likewise subscribed and swore to before the Justice of the Peace.

These written declarations are the only evidence on which the appellants were convicted by the court below, and the same having been repudiated at the trial on the grounds, among others, of violence and intimidations, the decisive question has to do with their validity and admisibility.

Tiburcio Asuncion stated that he was on the date in question in the municipality of San Manuel, Pangasinan, whither he went in December, 1947, to sell a piece of land and help his brother plant palay. Referring to his confession, he said: On the afternoon of August 26, 1948, Manuel Gandia, a constabulary soldier, armed with a carbine, and two others, came to his house in barrio Taringsing and, levelling his carbine at this accused, Gandia told him to come along to the PC barracks at Cordon. Upon arriving at the barracks, he said, Sgt. Mina asked him if he knew Lorenzo Saraus, Anacleto Fajardo and one Sani, to which he replied in the negative. Thereupon, Mina kicked him on the ribs, as a consequence of which he fell on the floor. After eating his supper which he was allowed to take at home, he was taken back to the barracks and on the way met Cornelio Feliciano, Domingo Enriquez, both armed, and one Cortez. When he denied that he had killed Anacleto Fajardo, Enriquez and Feliciano hit him with closed fists on the stomach, and when he was lying flat on the floor, Cortez and Enriquez kicked him. No longer able to withstand the maltreatment, he signed Exhibit "HH" without knowing its contents.

In connection with the execution of his second confession, Asuncion stated that Captain Bahia "punched" him in the stomach and kicked Fronda and Tabbal. Afterward Captain Bahia made him sign Exhibit "A". He could not refuse because of the maltreatment to which he had been subjected and because of the Captain's assurance that he should be excluded from the case. Five days later, he declared, he and his co-accused were taken back to Santiago, escorted by Constabulary soldiers, where he was maltreated by Lt. Panis, Cortez and other soldiers. Afterward he was conducted by Lt. Panis to the Justice of the Peace of Cordon before whom he acknowledged Exhibit "A" and raised his hand.

Pedro Tabbal testified that he was in barrio Paddad, municipality of Angadanan, Isabela, on January 3, 1948, having gone there on January 1st to spend the new year and borrow palay from a friend in whose house he stayed for six days. Referring to the execution of his affidavit, Exhibit "II", he, like Asuncion, claimed having been beaten up by Feliciano, and forced to sign the said exhibit without being apprised of its contents. The only things he was asked, he said, were his age, personal circumstances and whether he was a barrio lieutenant. Having reached Ilagan on the afternoon of the next day, he said, he and his two companions, Tiburcio Asuncion and

Fedencio Fronda, were taken to the office of Captain Bahia and thence to the provincial jail. The next morning they were brought back to Captain Bahia's office where he was forced to sign Exhibit "C". He had refused to sign that paper but the Captain "punched" him in the stomach, and to save himself from further punishments he had to stamp his signature thereon without bothering about its contents. A week later, he went on to say, he was taken with Asuncion and Fronda to the office of Justice of the Peace Nazario Abaya in Santiago where he was made to swear to the contents of said Exhibit "C" in the presence of Lt. Panis and three armed soldiers.

Fedencio Fronda declared that on the 3rd day of January, 1948, he was at home from which he never went out until the next morning because his son was sick. He said that on August 27 while he was planting palay, someone came to inform him that he was wanted by the Philippine Constabulary in Cordon, and about 9:00 o'clock he presented himself at the barracks and found Asuncion there being guarded by constabulary soldiers. Corporal Barcena asked him if he was the assistant barrio lieutenant of Taringsing and he said yes. Then Barcena told him that he was one of those who buried a body in a lot near his elder sister's house and then "boxed" him. Thereafter, Feliciano took him behind the barracks, hit him in the stomach with his fist and kicked him. The maltreatment lasted for an hour, he said. On the following morning he, Tiburcio Asuncion and Pedro Tabbal were taken to the constabulary quarters in Santiago where he was kept for two days, during which Lt. Panis threatened him with a pistol unless he told the truth and admitted having killed Fajardo "so as to put down Mayor Francisco and Saraus." From Santiago he and his two companions were brought to Ilagan, and in the office of Captain Bahia the latter asked him if he was "a man of Mayor Francisco" and when he said no, Bahia showed him Exhibit "B" which he had been made to sign in Cordon and whose contents he did not understand. Next day he was made to sign another paper the contents of which he did not know, either. He asked Bahia what it was but the Captain kicked him in the stomach for answer. Having signed many papers he was not sure if Exhibit "B" or Exhibit "JJ" was the one he signed by order of Captain Bahia. The statements in Exhibit "B" are not true. After having been kept in the provincial jail, he, Asuncion and Tabbal were taken to Santiago where they were kept for not less than two months. During that time Lt. Panis instructed him, Tabbal, Asuncion and Dasalia to re-enact the crime or else all of them would be shot. In compliance with Panis' instruction he and his three companions reconstructed the crime. Photograph of the reconstruction is Exhibit "MM", he admitted.

Caritativo Dasalia declared that he too was at home on January 3, 1948 in Taringsing, from the afternoon to the following morning, because he had a severe toothache. He said that Domingo Enriquez arrested him in his house without any warrant and took him to the constabulary barracks at Cordon where Sgt. Cortez asked his name and other personal circumstances and whether he knew Teodoro Gubaya and Saraus; that when he replied in the negative he was cursed and told that he was a companion of Saraus, Mayor Dionisio Francisco, Asuncion and Tabbal in the execution of Fajardo; that thereafter Sgt. Cortez wrote something on the typewriter, swearing at him while typing, asking why he refused to admit, and remarking that if he did, he would not meet with the same fate as Asuncion and Fronda. Shortly thereafter, he continued, Panis arrived and at dusk took him to Cordon where he was confined in a cell with Fronda, Asuncion and Tabbal. He was in the barracks for more than a month. He said he did not know anything about Exhibit "CC" although, he said, probably he had signed it two days after his arrival at the barracks of Santiago. He was ordered, he testified, by Lt. Panis to sign this exhibit under threat that if he did not he would be punished in the same manner as Asuncion, Fronda and Tabbal. He further said that this Exhibit "CC" was not read to him, and disclaimed any knowledge of the facts stated therein. He denied that Judge Abaya was present when he signed it.

The alleged torture had no other evidence to support it than the appellant's assertions at the trial. These assertions were denied by Captain Bahia, Gregorio Panis, Tiburcio Cortez and Cornelio Feliciano. We are inclined to give more credence to these denials. The defendants not only ratified their confessions on oath before the Justice of the Peace but they did not disavow them or make any complaint of maltreatment at the preliminary investigation.

What is more important, they reconstructed the crime in the presence of people, including the photographer, who had no connection with the police or the prosecution, and there is no allegation that they went through this process under compulsion. Other circumstances worthy of note are: Dasalia, admittedly was not subjected to punishment of any kind, neither was any of the defendants discharged before the trial or acquitted after the conclusion thereof; the two sets of confessions, although taken by different officers at different times and in different places, are similar to each other in their essential features; and some of the statements are exculpatory in nature and some cite plausible facts which only actors in the crime could have known.

We are, therefore, satisfied that the disputed confessions were spontaneous free from undue coercion; and, confirmed by the finding of human remains which were undisputably those of the deceased Fajardo, they constitute ample warrant for the verdict of guilty rendered by the trial court.

But what is the degree of appellants' penal responsibility? Of the appellants, only Asuncion struck the death blows, the others only helping in digging the grave or doing nothing but look on. However, scattered bits of inferential evidence on record, pieced together, unerringly point to the appellants as members of Saraus' gang, and that the killing at bar was one of the series of kidnappings and murders that had been perpetrated in the province. It is clearly transparent from Saraus' remark, "We have brought the cow that we are going to slaughter," and from the even and smooth tenor of the whole operation and the clearly unhesitating manner in which the appellants joined the newcomers and went with them to the place of execution, that Saraus' arrival with Fajardo was anticipated or expected and Fajardo's execution a pre-arranged affair. Note, for example, that three of the appellants were already in Francisco's house as though waiting when Saraus showed up and that Tabbal although already asleep had to be awakened to come along. Why did Saraus and his companions in the jeep take the trouble of bringing their victim to Cordon instead of disposing of him in Santiago where he was snatched? And what was the need for having the appellants, one of whom was a barrio lieutenant and another a sublieutenant, come along to the place of execution if they were not in the conspiracy; if not to be on hand to help, as at least three of them did help, in the furtherance of a common enterprise? Murderers do not allow, much less force, unwilling persons, let alone public authorities, to witness their crimes. Let it be noted also that Fajardo was securely bound, his face swollen, absolutely helpless to put up any resistance, and that Saraus already had more than enough men to do the simple task of cutting off Fajardo's head and making a shallow pit to cover up the corpse, men who by their aliases seemed to be experienced in the game.

Upon all the foregoing considerations, the appealed judgment will be affirmed, with costs against the appellants.

Paras, C. J., Feria, Pablo, Bengzon, Montemayor, Reyes and Jugo, JJ., concur.

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