

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO EVARISTO, PEDRO CARDEÑO AND AGUSTIN MIANO, DEFENDANTS AND APPELLANTS.

G. R. No. L-14520. February 26, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

Francisco Evaristo, Pedro Cardeño, Domingo Balido, Pelagio Camposano, Diosdado Baguiz or Alejandro Baguiz, Restituto Romines, Leoncio Escareal, Eutiquio Dultra and Agustin Miano were charged with the murder of Pastor Moyot on November 4, 1947, in an information which alleges evident premeditation and treachery, as qualifying circumstances and abuse of superior strength and taking advantage of their public positions, as aggravating circumstances. One Marcial Giray was not included in the information because he had since died. Accused Diosdado Baguiz was discharged from the information and utilized as a state witness. After due trial, the Court of First Instance of Samar rendered judgment finding accused Francisco Evaristo, Pedro Cardeño and Agustin Miano guilty of the crime charged, beyond reasonable doubt and imposed the penalty of reclusion perpetua, the accessories of the law, to indemnify jointly and severally the heir of pastor Moyot in the sum of P6,000.00 and to pay proportional costs; the other accused were acquitted. Hence, this appeal.

Culled from the testimony of the state witnesses, Dr. Andres Corpus, Antonio Tingzon, accused Diosdado Baguiz, Marcelo Escalante, Jaime Ballista, Silvestra Balite, Eladio Devora and Roque Dato and other evidence of record, are the following facts:

Accused Francisco Evaristo and Pedro Cardeño were the Mayor and Chief of Police, respectively, on or before November 4, 1947, in the town of Bobon, Samar, while their co-accused were policemen thereof. In the morning of November 4, 1947, the accused, led by accused Evaristo and Cardeño, constructed a roadblock across the provincial road at the entrance to the town of Bobon, coming from Catarman and near the houses of Eleuterio Duran and Jose Orawa. Between 2:00 and 3:00 o'clock in the afternoon, same day, the accused gathered at the parking place for passenger buses in Bobon, in front of the house of Silvestre Balite, in order to intercept the passenger buses coming from Catarman. Accused Evaristo harangued his co-accused, thus: "You policemen, watch the buses from Catarman for Pastor Moyot might come; if you see him in the bus shoot him immediately; don't be afraid because I am responsible for you; the administration is ours, up and down; if you will not shoot him, I will shoot you; this Pastor Moyot is an obstacle to my administration; he is a beast; it was yet in Carangian that I wanted to liquidate him but I had no chance." In similar vein, accused Cardeño told his men that "Pastor Moyot deserves to be killed because he is an obstacle to the administration." The accused then deployed around the parking place.

A passenger bus, on coming to the roadblock, slowed down. Among the passengers of the bus were Pastor Moyot and state witness Antonio Tingzon. On entering the town and before reaching the parking place, accused policeman Eutiquio Dultra boarded the bus at the rear and poked his Thompson on the nape of driver Jaime

Ballista, at whose right side and next to him was Pastor Moyot. Pat. Dultra ordered the driver to stop the bus; the driver slowed down and parked the vehicle in front of Silvestre Balite's house. While the bus was parking, accused Cardeno pistol in hand, with his index finger on the trigger, approached the bus from the rear and inquired whether "Atoy was there" (referring to Pastor Moyot). Pastor Moyot was alighting from the bus and upon reaching the ground, threw his hands off in the air, saying, "Diri aco ma'ato saiyo" (I will not fight against you), addressing Cardeno at whose back were accused policemen Agustin Miano and Marcial Giray. At this juncture, Mayor Evaristo with a .45 cal. revolver in hand came up to the bus running from the store of Chinaman Pablo opposite the store of Mrs. Balite, shouting: "Fire, fire, it was yet before that I ordered to you to fire immediately." Accused Chief Cardeno, seconded the order to fire. Accused Martial Giray fired his carbine hitting Pastor Moyot in the left breast, causing him to spin and to drop slowly to the ground, broaning. While Moyot was thus sprawled, Chief Cardeno again shouted fire and accused Agustin Miano fired at Moyot after making the remark that they had long wanted to get him. Miano's shot hit Moyot on the left shoulder. Pastor Moyot died on the spot.

Immediately after Moyot's death, Evaristo and Cardeno ordered the search of his body, for any weapon. Accused policeman Pelagio Camposano made the search and found no weapon of any kind in Moyot's inert body. The cadaver was brought to the municipal building upon order of Mayor Evaristo. Driver of the bus, Jaime Ballista, after changing tires, resumed his trip to Carangian, with Evaristo and Miano, among his passengers.

Dr. Andres Corpus, performed the autopsy on the cadaver and found four gunshot wounds caused by a .30 cal. bullet, two entrance wounds and two exit wounds. One entrance wound was above the left nipple, the bullet causing it, came out of the back, right side; the second wound was at the left deltoid region, the bullet causing it, came out also, at the back right side, but on a different spot from that of the first exit wound. Both wounds were fatal because they both involved the heart and the lungs.

The defense presented as witnesses, Calixto Paredes, Santiago Dogan, Agustin Miano, Valeriano Romines, Rufino de Asas, Ramon Paredes, Pedro Cardeno, Eutiquio Dultra, Pelagio Camposano and Francisco Evaristo. Their story runs as follows:

At 9:00 o'clock in the morning of November 4, 1947, Marcial Giray (now deceased) complained to Chief Cardeno that Moyot, carbine in hand, pursued him early that same morning. Pat. Miano was instructed by Chief Cardeno to look for and disarm Moyot or to bring him to office. At about 4:00 p.m. that day, Agustin armed with carbine went to the parking place in front of Mrs. Balite's house. Sometime after, a passenger bus from Catarman came and Moyot was aboard the same. Agustin asked Moyot to come down, telling him that he had something to talk to him. Moyot alighted and Agustin took him to some distance from the bus and informed him that someone reported to the Police Chief that he had a pistol. Moyot denied, whereupon, and coming from behind him (Moyot) Marcial Giray searched the body of Moyot and shouted: "No, don't believe him; he has a revolver, here it is" (Giray feeling the waist of Moyot). Thereupon, Moyot drew his pistol and tried to cock it, but Giray held Moyot's hand that bore the pistol. While struggling for the possession of the pistol, Moyot kicked Giray and Giray was thrown off the front and Moyot immediately cocked his pistol and fired upon Giray but missed him. When Miano saw Moyot drew his pistol, he warned: "Don't do it; I am an authority" and instantly retreated to a distance of 2 meters from Moyot, afraid that pistol would explode." When Moyot was attempting to cock his pistol for the second time, Pat. Miano drew his carbine and fired upon Moyot, causing the latter to twist his body towards him (Miano). In this position, Miano fired a second shot, hitting Moyot on the left lower breast and Moyot dropped to the ground. Pat. Miano picked up Moyot's pistol and brought Giray in the direction of the municipal building. Upon reaching the corner of Sto. Niño and San Ignacio streets, near the warehouse of Chinaman Pablo, they met Chief of Police Cardeno who was on his way to the place of the gunfire, after hearing them in his office. Cardeno inquired from Pat. Miano what the shooting was all about. Pat. Miano informed him: "Sir, I shot Pastor Moyot

and here is his pistol and the man (Marcial Giray) with whom he (Pastor) fought." Miano then delivered the revolver to Chief Cardeño, who locked the chamber thereof with the safety lock, because the revolver was cocked with one bullet in the chamber. The three (Cardeño, Miano and Giray) went back to the scene of the killing. Chief Cardeño ordered policemen Pelagio Camposano and Pastor Cardeño to take the dead body to the municipal building. Chief Cardeño investigated Miano and Giray, putting their statements in writing but not sworn to, after which investigation, he (Cardeño) entered in the police blotter the following: "Municipal policeman Agustin Miano shot to death Pastor Moyot; according to my investigation policeman Agustin is justified for according to my opinion he did it in the performance of his duty". Chief Cardeño, on November 5, 1947, delivered to P.C. Sgt. Santiago Dogan, Moyot's revolver, entering in the police blotter that fact and P.C. Sgt. Dogan signed in the police blotter acknowledging receipt thereof. Lieut. Trimio also investigated policeman Miano, the day following the incident and Chief Cardeño delivered to said lieutenant the written declarations of Miano and Giray.

The defense also alleged that Giray alias Marcial Rosita was not a policeman at or before the time of the shooting and accused Dultra was no longer a policeman on November 4, 1947, having resigned in January or February, 1947; the police force of Bobon had only 1 carbine, 1 Thompson and 1 Thompson submachinegun, and the last two on November 4, 1947, could not be used, as they were defective - could not fire - and that Chief Cardeño did not have any .45 caliber pistol, and he would only borrow the colt-revolver of the municipal treasurer, everytime he needed firearm.

Accused Mayor Evaristo asserted that the first time he came to know of the shooting was at about 3:00 o'clock in the afternoon of the day in question, when he went down the municipal building from his office, because the people were talking about it; that he ordered Chief Cardeño to investigate policeman Miano and then went home to San Jose. Accused Evaristo simply branded as false, all the testimonies of the government witnesses in the case against him.

In this instance, appellants submit that the trial court committed error-

- (1) In finding: appellant Agustin Miano guilty of the crime charged, notwithstanding the presence of all elements of self-defense and defense of stranger duly established by the said appellants;
- (2) In finding the appellants Francisco Evaristo and Pedro Cardeño guilty of the crime charged, as co-principals, by induction; notwithstanding the failure of the prosecution to prove their guilt beyond reasonable doubt;
- (3) In considering political persecution as the motive of the killing and discarding the motive in the persecution of defendants-appellants;
- (4) In not believing that Moyot was armed with a .45 caliber pistol when he was shot by Agustin Miano.

All of which boil down to the question of credibility.

It is almost trite to be repeating here, that as far as the credibility and veracity of witnesses are concerned, the conclusions of the lower court command great weight and respect, on the ground that the trustworthiness of witnesses and the merit of the defenses by the accused, are within the peculiar province of the trial court. We are of the firm belief that the incident in question, occurred in the manner as narrated by the witnesses for the State and as found by the trial court. Appellant Agustin Miano, having admitted to have fired the two mortal shots upon the victim Pastor Moyot, it is incumbent upon him to adduce by clear and positive proofs that he acted in his own defense and in the defense of a stranger. (People vs. Ansoyon, 75 Phil. 772-777.) This, in our opinion, appellant Miano has failed to do.

Two questions arise from Miano's defense: (1) Whether or not Moyot had a pistol with which he allegedly used in

shooting Marcial Giray; and (2) Granting in gratia argumenti, that Moyot had a pistol, did he use it in shooting Marcial Giray?

The learned trial court found a paucity of convincing evidence that Moyot ever had a pistol. We share this conclusion. Police Chief Cardeño claims that he entered in his police blotter the fact that he delivered Moyot's revolver to P.C. Sgt. Dogan at about 10:00 o'clock in the morning of November 5, 1947. The police blotter was, however, not presented, for according to the defense, the same is now missing. Sgt. Dogan declared that at 10:00 a.m. of November 4 (not November 5), he received a pistol (not a revolver) from Chief Cardeño, giving him a receipt therefor. The receipt was not also presented in court. Sgt. Dogan further declared that he turned over this pistol to Sgt. Julio Garcia, for delivery to the provincial headquarters at Catbalogan, Sgt. Garcia giving him a receipt for that pistol. Again, the alleged receipt of Sgt. Garcia was not produced, on the explanation of Sgt. Dogan that he lost it. Sgt. Garcia, subpoenaed by the defense to appear November 2, 1957, showed up in court on said date, he was not placed on the witness stand, with the explanation of counsel for the defense, Attys. Del Valle Robadulla, that Sgt. Garcia could not remember whether Sgt. Dogan delivered any pistol to him. This creates the unfavorable presumption that had Sgt. Dogan declared his testimony would have been adverse to the defense. The manifestation of defense attorneys to the trial court that they would produce the records in the provincial headquarters showing the existence of Moyot's firearm, did not pass beyond a mere manifestation. The truth was that, according to Sgt. Garcia's admission to the Provincial Fiscal, he did not receive any pistol from Sgt. Dogan, but that he (Sgt. Garcia) was not in Catarman, Samar, in those days but in Leyte Province. The flimsy explanations of these intelligent witnesses with respect to the vanishing receipts and documents, and material discrepancies found in their testimonies, simply show that the alleged pistol of Moyot did not exist. And, in the face of the clear and positive testimony of the State witnesses Domingo Baguiz, Marcelo Escalante and Silvestra Balite that when Moyot was lying dead on the ground, his body was searched by the policeman, but no weapon was found, the contrary testimony of the above defense witnesses, fizzles into thin air.

Conceding for a moment, that Moyot had a pistol, did he use it in shooting Giray? Miano wanted the court to believe that Moyot drew his pistol; attempted to cock it, followed by the struggle between him (Moyot) and Giray for the possession of the pistol; kicked off Giray; then fired upon Giray; and then attempted to cock his pistol for the second time. If this were true, We are really led to great wonderment to find that Miano and Giray, the latter specially, had not received a single scratch. If, as contended, Giray was not a policeman at the time, then it was not his concern to embrace Moyot from behind, and tell Miano to search him, with his aid. It would appear that the provocation started from Giray and Miano. Knowing, as alleged, that in the morning in question, Moyot had a firearm, it is not explained why a search warrant was not carried by the policeman, in order to effect Moyot's arrest that afternoon. Defense witness Calixto Paredes claim that he saw from his house when Moyot alighted from the bus and Moyot's alleged struggle with Giray. According to Roque Dato, however, he and Calixto Paredes, from 11:00 a.m. of November 4 to the following morning, November 5, were in barrio Rosario, Bobon, to hold a political meeting in the evening of November 4.

As to the motive of the killing, it is worthwhile to reproduce hereunder what the learned trial judge has said about the matter:-

The Court does not doubt that Pastor Moyot was killed because of his political activities. He was one of the strong supporters of the NP and he was outspoken in his attack against the local administration which was then in the hands of defendant Francisco Evaristo then mayor of Bobon with Pedro Cardeño as his chief of police. As a matter of fact government witness Silvestre Balite heard defendants Francisco Evaristo and Pedro Cardeño in front of her house say to their co-defendants that Pastor Moyot was the only obstacle to the administration. It is true that government witnesses Antonio Tingzon, Silvestre Balite are strong leaders of the Nacionalista Party but the Court cannot agree that for this alone they would incriminate defendants Francisco

Evaristo and chief Cardeño in such a heinous offense as that charged against them in the case at bar, if really these defendants were not particeps criminis. If these government witnesses were only politically inspired, they would have incriminated too Eleuterio Duran who was already the LP mayor of Bobon, Samar, and who defeated NP candidate Roque Dato in the elections of 1947. Defense would want to impeach witness Antonio Tingzon by presenting his affidavit Exh. 22 (translation, Exh. 22-a) wherein Antonio allegedly made no mention of Agustin Miano, Pedro Cardeño and Restituto Homines in the commission of the felony, but instead mentioned Froilan Cenera, who was then in Catbalogan. The Court however, believes that the attempted impeachment did not prosper confrontation. And even if the Court were to discard the testimonies of Silvestre Balite and Antonio Tingzon, there remains still sufficient evidence on record showing the participation of Pedro Cardeño and Francisco Evaristo in the commission of the felony. The testimonies of Jaime Ballista, (the driver of the Passenger bus which carried Pastor Moyot) Marcelo Escalante and defendant Diosdado Baguiz (or Alejandro Baguiz) clearly established the participation of Pedro Cardeño and Francisco Evaristo in the commission of the felony. Defense tried to impeach the credibility of Marcelo Escalante, a Bataan Veteran with alleged previous contradictory statements made in his affidavit Exh. 2 but again the attempted impeachment must fail for lack of confrontation. In addition the alleged contradiction refers to a very minor detail. The Court finds no evidence on record sufficient to discredit Jaime Ballista and Eladio Devora and the other government's witnesses and the Court cannot believe that they would incriminate Francisco Evaristo and Pedro Cardeño in such a serious crime as murder if really they did not see these two defendants take part in the commission of the felony. The alibi of Francisco Evaristo and Pedro Cardeño must yield to the positive statements of the government witnesses.

Little need be added to the above illuminating exposition, except to state that the same is fully supported by the evidence of record. Motive or no motive, the stubborn fact remains that reliable eye-witnesses testified to the circumstances of the killing. They saw the actual killing. The defense admitted the killing, only that it imputes the same upon one only, (Miano) who, like the biblical and good Simon of the Cyrene, offered to shoulder the cross alone, in an endeavor to save the skin, so to say, of the other accused. Truth to tell, these days, there is such a decay in civic and moral virtues, that even in broad daylight, people shoot and kill others, as if they are shooting wild duck in the swamps, just for the fun or sake of killing.

Anent the conclusion and inference that the delay in the prosecution of the crime is unreasonable and reflects insincerity of the witnesses against appellants, it was explained that the affidavit of Antonio Tingzon was taken in 1949 only, because he was afraid of the threat to him that if one would tell the truth, he would get hurt; that in the preliminary investigation of the case, first instituted in 1949, appellant Evaristo entered the court room and issued a threat that: "Anyone who will make foolishness, shoot him, don't be afraid", which threat cowed and imposed silence upon the government witnesses; that Marcelo Escalante who is a Bataan veteran did not testify until 2 years after the incident, because of the prevailing intimidation against anyone who would expose the appellants; that Jaime Ballista who was investigated on the following day of the incident and witness Eladio Devora who was only 14 years at the time of the incident, did not come out in the open because they were also afraid of the threats of Evaristo and Cardeño who during those days in said town were according to them, the owners of the administration "up and down"; the most powerful and the factotum, in their tiny bailiwick. "These witnesses shove off their fear only when President Magsaysay became the President of the Philippines and under whose administration protection could be availed of speedily by those who wanted to serve justice." These circumstances satisfactorily explain the delay in the prosecution of the instant case. (People vs. Belendrez, et al., 47 Off. Gaz., 5134; People vs. Alupay, 85 Phil., 688; 47 Off. Gaz., 4574.)

Of course, after the rendition of the sentence, the appellants filed an amended motion for new trial dated July 28, 1958 which was denied by the trial court because the appeal was already perfected. Another petition for new trial was presented in this Court on March 9, 1961, which was ordered to be taken up when the case is decided on the merits. The alleged newly discovered and material evidence consists of (1) Affidavits of Nicolasa Baylon, widow

of Pastor Moyot (Annexes A and A-1, motion for new trial dated March 8, 1961); (2) Letter of Eladio Halite (Annex B); (3) Affidavit of Eleuterio Celespara (Annex C); (4) Letter of Pascual Samoray (Annex D); (5) Ante-Mortem Statement of Pastor Moyot (Annex E); and (6) Police Blotter (Annex F).

(a) Baylon would have testified that she was instructed to file a complaint against Evaristo, Cardeño, and Baguiz by Atty. Eladio T. Balite, but she was not interested because she knew that Evaristo and Cardeño had nothing to do with the killing of her husband. Her testimony can not alter the decision because she would be merely giving her own conclusion or opinion. How could she know that Evaristo and Cardeño had nothing to do with the killing, when she was not present during the incident? (b) The letter of Atty. Balite addressed to Cardeño seems to imply that Balite had instructed Cardeño to go to Catubig at a political rally and work for his (Balite's) candidacy, otherwise, he would request the P.C. to file any frivolous charge against him (Cardeño), including Evaristo. One should not stretch his imagination, far and wide, to visualize that the letter is in itself "frivolous" and unbelievable, for, normally, no lawyer, like Balite, would write such a letter and incriminate himself, so flagrantly. It is addressed to one "Edring" and signed by "Elad". Who these persons are, or whether Atty. Balite had ever written this letter, one is really left to conjecture. At any rate, the letter, if true, can not alter the conclusions already reached by this court. (c) The affidavit of Eleuterio Celespara was offered to show that Atty. Balite was bent on prosecuting the appellants, so much so that Balite had sent affiant to fetch Ireneo Rodriguez, then Chief of Police, whom Balite reprimanded for not having filed immediately the complaint against the appellants; that Rodriguez was hesitant in filing the complaint because he believed the killing was justified; and that the P.C. Sgt. Dogan had acknowledged receipt of the pistol, as shown by a police blotter in his office, which said Rodriguez delivered to Balite who brought it to Catarman. This is not a newly discovered evidence; it is merely a forgotten or Corroborative evidence, if at all, and could not serve as a factor to change the result of the case. (d) It is stated that Celespara Voluntary to testify after the sentence was promulgated. Celespara is one of those heroes, when the war is over. And one can easily see that his propose testimony, if true, is tailored to rebut the vital issue: existence or not of a pistol allegedly belonging to Moyot. It is an impeaching evidence, (e) This is addressed to "My dear Asang" signed by "Pascual Samoray." Appellants want to show that Nicolasa Baylon, wife of Moyot was instructed by Samoray, by orders of Atty. Balite, to see the latter at Catarman, for the purpose of filing "the frivolous charge" against the appellants. Who is Asang and who is Samoray and whether or not Samoray had written this letter, only appellants can know. One thing is evident, however, and that is: this letter falls under the same pattern as letters Annexes A and A-1. (f) Appellants want to show that in this supposed ante-mortem statement, Moyot resisted the arrest made by Miano; because Moyot believed that it was Domingo Miano together with Agustin Miano (appellant) and Roberto Miano who shot him in the night of September 18, 1946 at about 7:00 p.m. If this so-called ante-mortem statement of Moyot ever existed and it was taken before the Chief of Police then, (appellant Cardeño), it was not explained why the same was not presented by the appellants at the trial. This is again a forgotten evidence. Moreover, there is no showing of the circumstances under which the statement was made and signed; who were present; who took it; who witnessed it; whether it was marked or signed. And if We should, as We do, take into account, that immediately after he received the shots, Moyot, fell to the ground, lifeless and speechless, it is indeed extending Our credulity to the breaking point, if this belated move of the appellant to introduce this so-called ante mortem statement of Moyot should be allowed. (g) It appears from the police blotter that Agustin Miano had admitted the shooting of Moyot by him, thus corroborating Miano's testimony that he was the one who shot Moyot, without receiving an order from anyone, and that Moyot was armed with a .45 cal. pistol. Come now the appellants and claim that after the rendition of the sentence-"a third party contacted the accused appellants and their counsel to offer this important piece of evidence". Who is this party? It is not shown. Who signed the blotter is not also indicated. And knowing, as they did, that this important piece of evidence existed, appellants should have left no stone unturned, to locate it. They only exercised diligence after the conviction, after gambling with the evidence for the prosecution. At any rate, the existence or

not of this blotter, has already been fully treated in the early part of this opinion; and even if the same is presented now, it would not alter the conclusion reached by Us, on the matter.

In view hereof, the motion for new trial, is denied.

Newly discovered evidence.-In order that a new trial may be granted on the ground of newly discovered evidence, the following requisites must be present: (a) that the evidence was discovered after the trial; (b) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence, and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, it will probably change the judgment. Accordingly, where the evidence was known to the movant and was obtainable at the trial, or if not known, it is not satisfactorily shown why it was not available at the trial, or that due diligence was not employed in securing it, the motion for new trial should be denied. So, also, where the evidence consists merely in improbable or unreasonable testimonies of witnesses, or is merely cumulative or corroborative, and will not thus alter the results, the motion will be denied. Forgotten evidence is not a ground for new trial, pp. 297-298.)

IN VIEW HEREOF, We hold that the appellants are guilty to that effect, the appellants Francisco Evaristo and Pedro Cerdano, who are now in the national penitentiary, have asked to withdraw the appeal interposed by them; while appellant Agustin Miano had since gone to the Great Beyond. Considering these circumstances, therefore, this Court has decided to affirm, as it does hereby, affirm the sentence appealed from, with respect to Francisco Evaristo and Pedro Cardeno, with proportional costs; and dismiss the case, with cost de officio, with respect to Agustin Miano.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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