

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN CAUILAN AND JOSE QUILANG, DEFENDANTS AND APPELLANTS.

G.R. No. L-873. September 18, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an appeal from the judgment of the Court of First Instance of Cagayan finding appellants Juan Cauilan and Jose Quilang guilty of murder and sentencing each of them (1) to suffer the penalty of reclusion perpetua, with the accessories of the law; (2) to indemnify jointly and severally the heirs of the deceased, Vicente Dammay, in the amount of P2,000 without subsidiary imprisonment in case of insolvency; and (3) to pay one-half of the costs.

The two appellants were convicted upon the single testimony of a supposed eyewitness, Jose Dammay, the son of the deceased. This witness testified that on April 28, 1945, in the barrio of Callao, municipality of Peñablanca, Province of Cagayan, the two defendants, at about 7 o'clock at night, came to his house and called for his father, Vicente Dammay. The latter followed them and he, the witness joined his father. Upon reaching the bank of a river, defendant Cauilan ordered the witness to go to Damian Bacud's place, but instead of doing so, he hid himself among guava groves. While thus hiding, he saw the two defendants kill his father. According to him, defendant Cauilan stabbed Vicente Dammay under the right armpit, while Jose Quilang boloed the back of the victim's head. Vicente Dammay died of his wounds on that same night. The two defendants left and the witness returned home to call his mother. He and his mother went to the place where his father was killed and there they found his dead body.

This testimony, however, is contradicted to a certain extent by the witness' answers on cross-examination. He said, on cross-examination, that in obedience to Cauilan's order, he went to the place of Bacud, and when he found nobody there, he came back to the place where he left his father with the two defendants, and upon arriving at that place, the two defendants were about to leave and his father was already dead, meaning thereby that he did not actually see the killing.

The testimony of this witness is also inconsistent with his testimony at the preliminary investigation where he made the following statement:

"Q. Why do you know that he was killed by a person?—A. Yes, because at the time he was killed we were asleep, two persons came to take him, Juan Cauilan and Jose Quilang, that I went with them. When we arrived just east of the gate of the farm of Juan Cauilan, I was sent by them to call for their companion in the house of Roque Bacud. When I returned where I left them, Juan Cauilan, Jose Quilang and my father, I did not meet them anymore. Then I went home to call for my brother-in-law Bartolome Cusipag, so that we would search for my father, and also Jose Quilang and Juan Cauilan, who accompanied my father. That we found the body of my father already dead with so many wounds inflicted on the body caused by bolo cuts.

"Q. Whom do you know who killed your father?—A. The two men Juan Cauilan and Jose Quilang.

"Q. Why do you know that they are the persons who killed your father?—A. Yes, because they were the ones who took my father away at that night, which was the same night when he was killed."

In this sworn statement the witness attributed the crime to the defendants, not because he saw them kill his father, but because they were the ones who took his father that night. The witness admits his having made the above-quoted statement and tried to explain it by saying that he was afraid of the two defendants who were not yet then arrested. It cannot be true, however, that he was afraid for in his statement he was already accusing the two defendants of the murder of his father although he had not seen them in the act of killing.

Immediately upon finding the dead body of his father, he reported the matter to Rufo Apattad, municipal councilor, who testified that on that occasion witness Jose Dammay did not say anything about his having seen the two defendants kill the deceased. What Jose Dammay then told him was that the two defendants had taken his father who was found dead later.

Although the testimony of a single witness may be sufficient ground for conviction when it appears to be persuasive, yet when not only is it self-contradictory but even inconsistent with previous statements made by the witness himself, conviction cannot be made to rest wholly on it.

There is nothing to show that the two defendants had any motive to kill Vicente Dammay. The defendants were members of the guerrilla, and Vicente Dammay was their companion. There is absolutely no proof that Vicente Dammay was a Japanese spy to be the object of revenge on the part of the guerrilleros. Upon the other hand, there is enough evidence to the effect that the two defendants called the deceased Vicente Dammay by order of Sergeant Parasa who requested him to supply food to the guerrilla, which Dammay did; that the food stores of the Japanese army were then raided and the Japanese in turn rounded up and killed almost all male persons in that barrio and in the surrounding barrios, and it is not unlikely that one of them was Vicente Dammay.

For all the foregoing, the judgment is reversed and appellants are acquitted, with costs de oficio.

Paras, Feria, Pablo, Hilado, and Briones, JJ., concur.

MORAN, C.J.:

Mr. Justice Bengzon concurs in this decision.

DISSENTING

PERFECTO, J., with whom concur PADILLA, and TUASON, JJ.:

Micaela Soriano, 40 years old, widow, resident of Callao, Peñablanca, Cagayan, testified that she knows accused Juan Cauilan and Jose Quilang. She pointed at them in the court room. Her dead husband was Vicente Dammay. On the night of April 28, 1945, she was with her husband and five children at their home. The accused came to call for her husband. The husband went with the accused accompanied by his son Jose Dammay. Only Jose returned. The husband did not return. When Jose arrived he informed his mother that he wanted to look for his father because the same was killed by the accused. The witness, her son Jose and Antonio Tuliao went out to look for the deceased. Bartolome Cusipag went after them. Jose led the party to the place where his father was killed. The party found the body of Vicente Dammay at the bank of the river at the sitio of Fugu, Peñablanca. The body of Vicente Dammay showed wounds in several parts. The witness reported the matter to Councilor Rufo Apattad, who went to the scene to investigate. Apattad called some persons to carry the corpse to witness's house. The dead was later buried. The accused went to the house of the deceased at 11 o'clock at night. The witness recognized

them very well because there was moonlight and there was light inside the house. Because of their having a small child, the witness usually kept the light burning the whole night. The witness recognized the accused by their faces, although they only stood at the batalan of their house. When Jose informed the witness of the death of his father, he returned not long after he followed the accused. Jose returned immediately. The witness found the corpse of her husband that very night in a place about three kilometers from their house. The witness went direct and straight to the place where the body was lying. Besides the dogs were lapping the blood of the deceased and howling. She found in the body of her husband the following wounds: one in the right wrist, one in the right elbow, one in the right forearm, one between the right armpit and nipple, one at the side of the right nipple, one under the right nipple, one under the left nipple and one across the face. There was also one at the occipital region.

Jose Dammay, 20, married, resident of Callao, Peñablanca, testified that he knows Juan Cauilan and Jose Quilang. On the night of April 28, 1945, the accused came to their house to call for his father Vicente. His father and himself went with the accused who told them that they were to go up to a place called Manga, east of Fugu. They did not reach Manga because when they reached the bank of the river, the accused made action already, wanting to kill his father. Cauilan ordered the witness to go to Damian Bacud's place but the witness, instead of going to said place, hid among the guava groves from where he saw the accused actually killing his father. Cauilan stabbed his father under the right armpit. Quilang boloed the back of the head of the deceased. His father died of the wounds he received from the accused. He died that same night. When his father fell, the accused left. He then returned home to call for his mother. Witness and his mother went to look for his father whom they were able to find that very same night covered with wounds. They reported the matter to Councilor Rufo Apattad who made an investigation. After that the body of the deceased was brought to their house. They buried him the following morning. When the accused went to their house they had just finished eating their supper. The accused did not call for anybody but his father, but the latter asked him to go with them. He told his mother of the place where his father was killed. His mother and himself immediately went to the place where they found the body of his father. There was moonlight. The height of the moon was around 10 o'clock. There were no clouds. The witness reached only the fifth grade in school. He does not know how to determine or calculate time. When his mother and himself went to look for the dead body of his father, Bartolome Cusipag also went with them. Nothing was stolen from his father. There was an enmity between his father and the accused, which arose out of driving horses inside a corral. The river at the bank of which his father was killed is named Pinakanawan.

Rufo Apattad, 58, testified that before the Japanese came he was municipal councilor and up to April, 1945, there has never been an election. No one has been appointed in his place as municipal councilor. He knew Vicente Dammay, the deceased. His wife and son sent for him on April 28, 1945, and then the government in Peñablanca was not yet reorganized although there were barrio lieutenants. He saw the dead body of Vicente Dammay. He advised the people to register the dead body of Vicente Dammay but they were afraid of the Japanese. At that time the Japanese were after the male persons. The widow of Vicente Dammay told the witness that Vicente Dammay was taken by the two accused. When Jose Dammay and Micaela Soriano informed the witness that Vicente Dammay was killed, the witness went to the place where the cadaver was. The witness recognized the body as that of Vicente Dammay. The witness gave instructions for the burial of the cadaver. The family buried it. Vicente Dammay died on account of the wounds he received.

Jose Quilang, 27, testified that on April 28, 1945, he was at home. A sergeant and nine soldiers of the Philippine Army, came to call for him. They wanted him to lead their way. He was in Sisim. He went with them to Lagum at about twilight. The soldiers went to Juan Cauilan's house. They asked permission to be allowed to rest in his house. The purpose of the soldiers was to raid Japanese bodega. Before that occasion he did not know Juan Cauilan. The sergeant sent Juan Cauilan to take Vicente Dammay. They wanted to talk to him. Cauilan went with the witness and one soldier to call for Vicente Dammay, but only Cauilan and himself reached Dammay's house

because the soldier stopped in a place quite far from the house. Cauilan talked with Vicente Dammay. Cauilan said: "Lieutenant come with us. The sergeant calls for you." According to Cauilan, Vicente Dammay was the barrio lieutenant. Vicente followed and they went direct to Juan Cauilan's house. The soldiers requested Vicente Dammay to donate one carabao for the camp. The soldiers were guerrillas, they were soldiers of the American Army. Dammay answered: "I can give if it is for you." Afterwards the soldiers sent him away. Vicente Dammay left immediately. And then they went to raid the Japanese bodega in Dabba in the western part of Manga. One Japanese died during the raid. He was killed by the soldiers. Three soldiers fired at the Japanese. The Japanese was actually raiding them. Two Japanese were killed. The soldiers ordered the civilians to get all the provisions in the bodega. After taking the goods they went direct to Sisim. Juan Cauilan returned to his place. It is not true that Jose Dammay came along with his father and the accused.

Basilisa Pauig, 36, widow, testified that she is a resident of Lagum, Peñablanca, Cagayan. Her husband, Francisco Lim, died on April 29, 1945. He was killed by the Japanese. That was the time when the Filipino soldiers attacked the Japanese in Dabba, which was three kilometers from her place. The attack took place at night. On the morning of April 29, 1945, her husband and other men were taken by the Japanese and were brought to Fugu. His companions were Vicente Dammay, Juan Ligutan, Pio Fuggaban and others. Her husband is a Chinese. There were three Chinese who were taken by the Japanese. The other two were Antonio Lim and Kiawa. Antonio Lim died while Kiawa is still alive. She never saw her husband again after April 29, 1945. Her husband and the other persons were taken by the Japanese between 8 and 9 o'clock in the morning. She was able to find the bones of her husband one or two weeks after he disappeared on April 29, 1945. She saw Vicente Dammay on the morning of April 29, 1945. She went with her husband.

Juan Cauilan, 22, testified that on April 28, 1945, he was at his home in Manga, Peñablanca, Cagayan. On that day, nine soldiers and a civilian arrived at his place. The head of the group was Sergeant Paraza. They arrived at twilight. Witness entertained them and they ate supper at his home. On that night they sent him to call for Vicente Dammay. They were three sent to call for Vicente, he, a soldier, and Quilang. He himself talked with Vicente Dammay. They talked at the latter's door because they had already spread their mat. It took place at about 7 o'clock. The witness saw Micaela Soriano, the wife, and talked with her. There was light. Jose Dammay did not go with them. When Dammay was taken to the house of the witness, the soldiers asked him to donate a carabao for them. Dammay did not stay long. The soldiers sent him away. The soldiers went to Dabba to raid the place. Upon reaching that place, they saw two Japanese whom they attacked by surprise. They took some of the provisions of the bodega and brought them home. The witness brought what he could carry. He returned to get the things from the bodega. Pio Fugaban, Juan Ligutan, Joaquin Mole, Terio Tirungan and Vicente Dammay went with them. On the morning of April 29, 1945, the Japanese went to take all the civilians of Fugu, Peñablanca. They took all the male persons. The reason for taking them was because of looting the bodega. The persons taken by the Japanese were Vicente Dammay, Pio Fuggaban, Terio Turingan and Joaquin Mole. The Chinese taken were Kiawa, Francisco Lim and Tek Seng. Francisco Lim is the husband of Basilisa Pauig. The witness was not taken by the Japanese because he was able to run away. He hid himself. When the witness went to get Vicente Dammay, the sergeant also went with him. Dammay promised to give the carabao requested by the soldiers as soon as he could be able to catch one. The carabao was supposed to be brought to the camp at Dalanak. The Japanese came to Lagum. The witness did not run right away. He saw the Japanese going from house to house to get the men mentioned. Before he could run, he could see the getting of the men. The witness was the only one who was able to run and hide. He does not remember how many Japanese came because they came one after the other. When Vicente Dammay was taken by the Japanese he was about 200 meters from the witness. The witness immediately ran away. The Japanese caught Vicente Dammay inside his house, so with the other arrested persons. They were arranged in rows when they were caught. The witness does not know how to read and write.

Antonino Arugay, 46, widower, testified that on April 28, 1945, he was in Cabasan, Peñablanca, in his home when nine soldiers arrived headed by Sergeant Paraza. The witness was a barrio lieutenant. Paraza asked him the way to Lagum. After feeding them, the witness called somebody to guide them to Sisim. On the morning of April 29, 1945, the soldiers came again to his house. They came from Lagum. They carried five sacks but the witness did not know what their contents were. After eating their lunch, they left. They ate salmon and gave the witness five cans of it.

Testifying in rebuttal, Micaela Soriano said that it is not true that on the morning of April 29, 1945, her husband was still alive as declared by Basilisa Pauig and Juan Cauilan. It is not true that the Japanese went to barrio and took her husband and the others. She did not see any Japanese that morning in the place. Her husband was never arrested by the Japanese any time during the month of April, 1945. Jose Dammay, also testifying on rebuttal, said that it is not true that the Japanese came to arrest his father on the morning of April 29, 1945. His father was no longer alive on that morning.

Recalled again by counsel for the defense, Jose Cauilan testified that he reached the sixth grade in school and is able to read and write.

The above recital of the substance of the testimonies both of the witnesses for the prosecution and for the defense shows that appellants' guilt has been proved beyond all reasonable doubt.

The enmity between the deceased Vicente Dammay and the two accused, testified to by Jose Dammay, has not been denied by either one of the two accused. No one of their witnesses belied it. There was, therefore, a clear motive why appellants may want to kill the deceased. Jose Dammay testified also that in the night of April 28, 1945, he saw the two accused stab his father until the latter fell down dead. No one of the two accused dared to deny having stabbed and killed Dammay at the bank of a river where the corpse of the deceased was found and recovered in the same night of April 28, 1945. Micaela Soriano and councilor Rufo Apattad testified that they went to the place and they have seen the cadaver of the deceased, whose blood were being lapped by the dogs, under the moonlight. That same night the dead body was brought to the Dammay house, and the next morning was buried. There is no scintilla of evidence showing why the witnesses for the prosecution should offer perjured testimonies to impute a heinous crime to the two accused and desire that they be meted a heavy punishment. Their narration of facts rings with truth.

The evidence for the defense was not able to shake the credibility of the witnesses for the prosecution. That Vicente Dammay was taken by the two accused only to be requested later to contribute a carabao, which seemed a matter of course, Vicente Dammay being a guerrilla, appears to be incredible. Could not the accused themselves have asked Dammay if he was willing to give the contribution? What was the purpose of the trouble of taking him from his house and compelling him to make the trip to Cauilan's house? There was no other except to offer an explanation for the taking of Dammay from his house, but the explanation does not tally with the normal course of human affairs.

Lacking the courage to belie Jose Dammay's testimony to the effect that he saw his father being killed by the accused, the latter tried to prove that between 8 and 9 on the morning of April 29, 1945, the Japanese arrested all the male persons of the place, including Vicente Dammay, and executed all of them, except a Chinese, named Kiawa. The testimonies of Basilisa Pauig and accused Cauilan to said purpose appear to us to be unbelievable. Pauig said that the three Chinese taken by the Japanese were Francisco Lim, Antonio Lim, and Kiawa, while Cauilan said that they were Francisco Lim, Tek Seng, and Kiawa. The underlined names show an unexplained contradiction. Cauilan testified at first that when the Japanese came to Lagum to make the arrests he did not run right away, but in a later part of his testimony he said that he immediately ran away. He declared that he saw how

the men were being taken in their homes, and he was the only one who was able to run and hide. If this is true, he failed to give any explanation how Jose Dammay and Councilor Rufo Apattad were able to appear and testify in person at the trial of this case. If all the men of the place were caught and killed, excepting only Kiawa, the Chinese, then Jose Dammay and Rufo Apattad must have also been caught and killed. Were they resurrected just to belie Cauilan?

For all the foregoing, we vote to affirm the appealed decision, with the sole modification that the penalty imposed upon appellant Juan Cauilan should be one grade lower than reclusion perpetua, as the mitigating circumstance of lack of instruction must be considered in his favor.

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