

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DOMINADOR M. CAMERINO, ET AL., DEFENDANTS. MANUEL
PAKINGAN, CECILIO ESGUEERA AND MARCELINO ESGUERRA,
DEFENDANTS AND AP...**

G.R. No. L-8228. April 29, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

The first information filed by the Provincial Fiscal of Cavite in the Court of First Instance of the province after conducting a preliminary investigation charged Dominador M. Camerino, Nicasio Camerino alias Nicasio Camerino, Alejandro Lacson alias Bernardo alias Andong, John Doe, Richard Doe and Henry Doe with murder. After another preliminary investigation conducted by the same prosecuting officer, as provided for in Republic Act No. 732, an amended information was filed charging Dominador M. Camerino, Nicasio Camerino alias Nicasio Camerino, Alejandro Lacson alias Bernardo alias Andong, Marcelino Esguerra, Cecilio Esguerra, Manuel Pakingan, Antonio Martinez, Arsenio Corcillo alias Artemio, Elias Culitis, Raymundo Advincula, Lucia Yambao and Crisanto Saratan with murder for the death of Jacinto Morales. The Provincial Fiscal prayed for the issuance of a warrant to arrest the defendants which was granted. The defendants, except Antonio Martinez who is still at large, were apprehended. Upon arraignment they entered a plea of not guilty. Arsenio Corcillo alias Artemio escaped from detention and had not been apprehended up to the date of arraignment of his co-defendants, Nicasio Camerino alias Nicasio Camerino asked leave to withdraw his plea of not guilty and to enter a plea of guilty. Leave prayed for having been granted, and upon being arraigned again, he entered a plea of guilty to the charge set out in the amended information. He was sentenced accordingly. Upon motion of the Fiscal for lack of sufficient evidence to support their conviction, on 7 May, 12 July and 16 July 1954 the Court dismissed the amended information against Crisanto Saratan, Elias Culitis and Raymundo Advincula. After trial, on 26 June 1954 the Court rendered a verdict acquitting Dominador M. Camerino, Alejandro Lacson alias Bernardo Lacson alias Andong and Lucio Yambao with costs de oficio, and a judgment finding the—

* * * accused Manuel Pakingan, Cecilio Esguerra and Marcelino Esguerra guilty beyond a reasonable doubt of the crime of murder charged in the same amended information, with the qualifying circumstances of treachery and with the presence of the aggravating circumstance of having committed this offense by a band, and hereby sentences (sentencing) said Manuel Pakingan, Cecilio Esguerra and Marcelino Esguerra to suffer each the penalty of life imprisonment, to indemnify jointly and severally the heirs of the deceased Jacinto Morales in the sum of P6,000.00, with the accessories of the law, and to pay proportionately the costs of this action.

The convicted defendants have appealed.

The evidence for the prosecution shows that at about 11:30 o'clock in the morning of 10 November 1953, Election Day of that year, armed men, about thirty in number, riding in three jeeps stopped at and near the corner of the concrete highway and Niog barrio road opposite the store of Roman Antonio, within the municipality of Bacoar, province of Cavite. After a short while a sedan car arrived and suddenly stopped in front of the house of Zoilo

Morales. Three men in khaki shirt came close to the car and talked to a man in the car who was said to be Governor Camerino of Cavite and reported to him that "the vice is already dead." The Governor, visibly angered, uttered cursing words, ordered the three men who talked to him and the rest riding in the three jeeps to "attack that." Whereupon they fired at the house of Zoilo Morales. After the volley of fire, the Governor said "Let us go that is enough." The Governor, followed by the three jeeps of armed men, left in the direction of Zapote. After the shooting, Briccio de Le6n came down from his house and saw Jacinto Morales bleeding. He came to his succor and with the aid of Elpidio Morales and Zoilo Morales, father of the victim, brought him in a jeep to the Philippine General Hospital in Manila where he expired at 3:00 o'clock in the afternoon of that day. Dr. Ernesto G. Brion, medico-legal officer of the National Bureau of Investigation, who had performed an autopsy on the cadaver, reported the following postmortem findings:

Pallor of integument and mucos surfaces.

Abrasions, 1.2 x 0.7 cm. postero-medical aspect, upper third, forearm right; 0.6 x 0.4 cm. antero-medial aspect, knee, left; 2.0 x 1.2 cm. anterior aspect, upper third, leg right; 0.8 x 0.6 cm. healing, with scab and violet medication, mucosa, upper lip, right side.

Gunshot wound, entrance, 2.7 x 1.4 cm. sutured, lateral aspect, chest right, at level of 8th rib, along mid-axiliary line, 118.5 cm. from right heel, with contusion collar 0.8 wide at inferior border and 0.1 cm. wide at superior border, with extensive hematoma about 13.0 x 12.0 cm. just above said Wound, directed upwards, medially and slightly anteriorly, non-penetrating, pursuing an intramuscular course at the pectoral and axiliary region right, fracturing completely the 5th rib, with spicules inwards, and chipping fractures of 4th and 3rd ribs right and communicating the middle third of right clavicle, where a communicating slit like 2.2 cm. sutured wound is located, at clavicular region right, 7.5 cm. from the anterior median line, 139.0 cm. from right heel.

Hematoma extensive, intra-muscular, right axiliary and pectoral regions; second to fifth intercostal spaces, right.

Hemothorax right—800 cc.

Contusion lung right.

Stomach filled with partly digested food material, mixed with dark-brown material.

CAUSE OF DEATH: Hemorrhage secondary to gunshot wound. (Exhibits B, C, C-I, D, D-I, E.)

Eulogio San Jose testified that at about 11:30 o'clock in the morning of 10 November 1953 while he was at the corner of the concrete highway and Niog barrio road, Bacoar, Cavite, waiting for a bus bound for Las Piñas, a group of armed men riding in three jeeps arrived. Two of the jeeps were parked on the concrete highway facing Zapote and the third on Niog barrio road (Exhibit F). A few minutes later, a car arrived and stopped on the right side of the highway going to Manila. Three of the armed men approached the car and talked to a man inside the car. Then he heard a shot, and the passengers of the jeeps, about thirty in number, alighted and fired at the house of Zoilo Morales for about a minute. Among the armed men that fired at the house of Zoilo Morales were Marcelino Esguerra, Manuel Pakingan and another whose name he (the witness) learned later on is Cecilio Esguerra. On cross-examination, he declared that he knew Manuel Pakingan and Marcelino Esguerra but he did not know the name of Cecilio Esguerra then although he knew him by face; that he came to know Manuel Pakingan at Carmelita's Place, a bar in Las Piñas where he (the witness) used to work as bartender from 1952 to August 1953; that he used to meet him at Zapote; that he knew Marcelino Esguerra for a long time already in Zapote where he often met him while visiting with his parents who were living there; that they used to nod at each other everytime they met although they never talked to each other; that during the shooting incident Pakingan was

armed with a carbine; that Pakingan, Marcelino Esguerra and Cecilio Esguerra was near each other while firing (Exhibit 0) and that he saw Cecilio Esguerra firing at the house of Zoilo Morales.

After the prosecution had rested its case, the defense presented Eulogio San Jose as its witness. On the witness stand he repudiated his previous testimony and denied that at about 6:20 o'clock in the evening of 26 April, 1954, he and Roberto Calinisan went to the house of the judge hearing the case, Hon. Antonio G. Lucero, and in the presence of the Judge and his wife, wrote the following letter in his own handwriting addressed to the Judge:

April 26, 1954

Hokum Antonio G. Lucero

Sinior Juez noong ako ay magdiklara sa inyo ay hindi maamin ng aking kunsencia sapagkat walang katotohanan ang aking sinasabi sa inyo sapagkat ako ay nasa bahay noong magputukan.

Gumagalang

(Sgd.) Eulogio San Jose

(Exhibit 1—Esguerra & Pakingan.)

which he handed to the Judge personally and later on confirmed under oath; that he was asked by Zoilo Morales, whom he owed some favors, to testify for the prosecution and it was only upon his insistence that he yielded to his request; that Zoilo Morales and Captain Adamos taught him what to say at the witness stand; that he was afraid of Captain Adamos; and that his previous testimony in court was "not his true testimony," because he was not present when the incident took place.

The appellants now contend that by giving "two opposing and conflicting testimonies, one of which is necessarily false," Eulogio San Jose's previous testimony alone cannot be relied upon to support a verdict "that they are guilty of the crime charged."

When there are two contradictory testimonies given by a witness who retracts or recants his previous testimony and swears that his previous testimony is not true because he was not present when the incident or event took place, the Court, taking into consideration all the circumstances and the probable reason or reasons that prompted the witness to repudiate his previous testimony, may rely upon what it believes is true and correct given by the witness freely and voluntarily and disregard the other. The witness disavowed his former testimony in court because he was afraid of reprisal from the appellants who were all out on bail. Not only was he apprehensive about his own personal safety but also he was afraid that his mother would be harmed. In his second testimony, he said that his mother did not want him to be a witness in this case. He claimed that he was compelled to testify in the manner he did for the prosecution because he was harassed by army men and afraid of Captain Adamos. There is no evidence tending to show that Captain Adamos and his men were interested or had a motive to send innocent men to jail upon perjured testimony. Moreover, while on the witness stand for the prosecution, although the witness was subjected to rigorous cross examination by the respective counsel for the appellants and their-co-defendants, he did not waiver in his testimony.

The appellants' identical defense is alibi. Manuel Pakingan[1] claims that from 11:00 o'clock to 12:00 o'clock in the morning of 10 November 1953 he was at his house in barrio Anabu, Imus, attending to his sick wife who suffered a relapse after giving birth to a child. Cecilio Esguerra says that from 9:30 o'clock in the morning of 10 November 1953 to 12:30 o'clock in the morning of the next day, he acted as poll inspector at Precinct No. 14 in Medicion, Imus, Cavite, as a substitute for Jose Gonzales, the inspector for the Nacionalista Party who was absent; and that he never left the place during that time. Marcelino Esguerra testifies that at 9:00 o'clock in the morning of 10 November 1953 hi boarded a LTB bus to go to Batangas, Batangas, to see his three children at

barrio Libhok, arriving in Batangas at 1:00 o'clock in the afternoon of the same day, and returned to Imus in the morning of 12 November 1953.

The defense of alibi in criminal cases is inherently weak. Eulogio San Jose positively and categorically identified the appellants as among the armed men that fired at the house of Zoilo Morales at about 11:30 o'clock in the morning of 10 November 1953, resulting in the death of Jacinto Morales. No motive has been shown why Eulogio San Jose should falsely testify and point to them if he had not seen them during the incident. Manuel Pakingan himself said that he had no quarrel with him, that he knew him only by face. On the other hand, the appellants have a motive in firing at the house of Zoilo Morales. They were the henchmen and loyal followers of Governor Camerino, the leader of the Liberal Party in Cavite. In the morning of 10 November 1953, before the death of Jacinto Morales, Eduardo Ocampo, vice-mayor of Bacoar, a member of the Nacionalista Party who had defected to the Liberal Party, was killed in an encounter with members and sympathizers of the Nacionalista Party. To avenge his death, the Governor's armed henchmen, numbering about thirty, including the three appellants, proceeded to barrio Niog, Bacoar, and fired at the house of Zoilo Morales, leader of the Nacionalista Party in that barrio.

The reasons and considerations given by the trial court to arrive at the conclusion that there was no sufficient evidence to show conspiracy refer to the defendant Dominador N. Camerino and not to the herein appellants.

The fact that the band of armed men, including the appellants, riding in jeeps stopped in the vicinity of the house of Zoilo Morales at barrio Niog, Bacoar, Cavite, and fired simultaneously at his house, show that they had conspired together in carrying out the premeditated plan of killing Zoilo Morales and the members of his family or inflicting harm upon them.

The crime committed is murder qualified by treachery and aggravated by the aid of armed men, penalized with reclusion temporal in its maximum period to death. There being no mitigating circumstance to offset the aggravating circumstance, the maximum penalty of death should be imposed.

Nevertheless, for lack of sufficient number of votes to impose the death penalty, the judgment appealed from is affirmed, with the proportionate costs against the appellants.

Paras C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Convicted and sentenced to death for the murder of Cesario Gavarán, G. R. No. L-8705, 28 May 1958.

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