

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
MANUEL ABRINA Y MONTANO, LORENZO MAGALLANES AND  
NORBERTO ANO, DEFENDANTS AND APPELLANTS.***G. R. No. L-7840. December 24, 1957*

Ponente: ENDENCIA, J.

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On July 4, 1953, at about 3:30 a.m., the lifeless body of Domingo T. Vengco was found, with ten stab wounds, on Dakota Street, near the Rizal Memorial Stadium, City of Manila, by policeman Bernabe of Precinct No. 4 of the Manila Police Department, who immediately report the matter to Lt. Dujua of the Homicide Squad, Detective Bureau, MPD. Immediately thereafter, Lt. Dujua together with Detective Corporal Saturnine Villasin and Sgta. Bulaklak, Walker and Turiñgan repaired to the place and found the body of the deceased sprawled on the street. There, Lt. Dujua ordered that photographs of the dead body be taken and, after the picture-taking, the party searched it but found nothing. The killing remained a mystery for almost a month, until August 1, 1953, when one Bonifacio Castro, a driver by profession, unable to withstand the impelling urge of his conscience, spontaneously went to the Manila Police Department to give information of what he knew about the matter. He then narrated that between 2:00 and 3:00 in the morning of July 4, 1953, a person whom he later identified as the deceased Domingo T. Vengco, boarded his jeepney at the corner of P. Paterno St. and Quezon Blvd., Quiapo, and sat at the rear right seat; that subsequently three other persons, known to him by their nicknames, whom he later on identified as the defendants, also boarded his jeepney; that defendant Lorenzo Magallanes sat beside him in the front seat, while defendants Manuel Abrina and Norberto Ano sat on the left side of the jeepney behind him, and with these" four passengers he proceeded on his way to Pasay; that on passing the corner of Taft Avenue and San Andres, he heard Norberto Ano and Manuel Abrina whispering to each other; that upon reaching Dakota St., near a midden shed before reaching the Rizal Memorial Stadium, he was ordered to stop by defendant Magallanes who gave him 30 cents for the fare of the three who alighted at that place; that defendant Ano pulled the hands of the deceased Vengco forcing him to come down; that after the deceased has alighted from the jeepney, he saw defendant Ano give a fist blow to Vengco which landed either on his face or breast while defendants Magallanes and Abrina were behind Ano; that when he saw the deceased fall to the ground after being socked by defendant Ano, he got scared and drove his jeepney away to Pasay where he went to a restaurant to take a snack and purchased a can of milk for his child, and then went home.

Upon receiving the foregoing information, the Police Department of Manila tried its best to arrest the defendants and, on August 2, 1953, Manuel Abrina was arrested and brought to the MPD for investigation. He denied his participation in the crime, but upon being lined up together with 14 other persons and confronted with Bonifacio Castro, the latter readily identified him as one of those who boarded his jeepney and alighted with his co-defendants near the Rizal Memorial Stadium early in the morning of July 4, 1953. Thereupon, on August 3, 1953, the Fiscal of Manila, after proper preliminary investigation, filed an information for robbery and homicide against Manuel Abrina and his other companions who were still at large and whose true names were not yet

known.

On August 4, 1953, defendant Norberto Ano was apprehended and brought to the MPD for investigation. As he also denied his participation in the commission of the crime, he was lined up with 18 other persons and when Bonifacio was called, the latter identified him as one of the three passengers that boarded his jeepney and the one who pulled down the deceased when they alighted near the Rizal Memorial Stadium.

Finally, on August 6, 1953, defendant Lorenzo Magallanes was also arrested and when lined up together with 19 other persons, he was also identified by Castro as the companion of Ano and Abrina. This defendant also denied his participation in the crime at bar, but later on he executed an affidavit (Exhibit E) wherein he stated:

"That in the morning of July 4, 1953, lie boarded a jeepney at Quiapo with his co-accused; that he did not stab the deceased Domingo T. Vengco; that it was Abrina, alias Neggi, who stabbed Veng-co, helped by Norberto Ano, alias Toto, who took away the things of the victim; that thereafter, they went to Pasay City, where, before separating", Abrina gave him 50¢ as faro money and told him that they would meet the following morning at the store of Mang Totoy at Leveriza; that they met in that place and drank tuba; that Abrina gave him P2, saying that little money had been realized from the sale of the things taken from the deceased, that he was present at the place of stabbing; that he did not complain when he received only P2 from Abrina; that in the jeepney he took the front seat beside the driver, but could not remember the places where his companions and Vengco sat at the rear of the jeepney; that he did not see what kind of instrument Abrma used in stabbing- the victim, but he saw Abrina pull out something from his pocket."

After the arrest of Ano and Magallanes, the information was, by leave of court, amended to allege therein the true names of these defendants.

After due trial, the lower court found the defendants guilty of the crime of robbery with homicide, as charged in the information, with the aggravating circumstances of nocturnity and abuse of superior strength and the further aggravating circumstance of recidivism as against accused Manuel Abrina, and sentenced them to suffer the supreme penalty of death, and each and everyone of them to indemnify jointly and severally the heirs of the deceased Domingo Vengco in the sum of P6,000 and in the further sum of P275, the value of the stolen properties, and to pay 1/3% of the costs of the proceedings. And in view of the penalty imposed by the lower court and the appeal interposed by the defendants, the case was elevated to this Court for final decision.

Defendants Manuel Abrina and Lorenzo Magallanes appealed from the decision claiming that the trial court erred in finding them guilty of robbery with homicide beyond reasonable doubt and in imposing upon them the supreme penalty of death,

Defendant Norberto Ano also appealed from the decision contending that the lower court erred "in finding him guilty of the crime charged in the information because (a) the testimony of Bonifacio Castro is inherently improbable, highly suspicious and contrary to the ordinary course of human conduct; (b) the defense of alibi set up by him has been sufficiently substantiated by uncontradicted and credible evidence; and (c) even if the testimony of the witnesses for the prosecution were true, still proof is hopelessly wanting as to the author or authors of the crime of robbery with homicide."

In their briefs, the appellants do not dispute the perpetration of the crime alleged in the information, to wit, robbery with homicide, of which the deceased Domingo T. Vengco was the victim; neither do they assail the finding of the lower court, fully supported by the evidence on record, that early in the morning of July 4, 1953, the deceased Domingo T. Vengco was killed at the time and place mentioned above, and robbed and taken from him his ring valued at P60, a Parker fountain pen worth P20 and a wristwatch worth P150, it having been proven, through the testimony of David Martinez, that when the deceased boarded a jeepney on his way to Pasay, he had

with him a Parker 51 fountain pen, a diamond ring, rimless glasses and a watch, and thru the testimony of Irene Tayson, mother of the deceased, that the eyeglasses were worth P45, the ring P60, the fountain pen P50; and the watch P150; and, thru the testimony of witness Villasin, that when the lifeless body of Vengco was found by him, all these articles were missing-. Their principal contention is that the evidence on record does not warrant their conviction because there was no direct evidence clearly showing that they have killed the deceased Vengco and robbed him. They vigorously claim that the testimony of Bonifacio Castro, linking them with the crime at bar, deserves no credit for it is highly unreliable and that, even granting all his declarations to be true, still they do not prove that the herein appellants were the ones who took the life of the deceased and carted away the property he had with him when he was killed.

Five witnesses testified for the prosecution, namely, Bonifacio Castro, Abelardo Lucero, David Martinez, Irene Tayson and Saturnino Villasin.

Bonifacio Castro's testimony, as found by the trial court, is as follows:

"That he was the driver of a jeepney bearing plate TPU-919); that the deceased Vengco boarded that jeepney at the corner of Quezon Blvd. and P. Paterno St., Quiapo, Manila; that Vengco was the only passenger; that he did not immediately proceed on his way to Pasay City, but instead waited for other passenger; that five minutes thereafter, the herein three accused Manuel Abrina y Montano, Norberto Ano and Lorenzo Magallanes, boarded Castro's jeepney. Because of the light on the ceiling of the jeepney, Castro recognized the herein three accused. He recognized them as three characters he used to see hanging<sup>1</sup> around Leveriza St., Pasay City. In fact, he recalled Abrina as 'Neggie'. Lorenzo Magallanes took the front scat with Castro. Abrina and Ano took the rear seat.

"After his four passenger had taken their respective seats, Bonifacio Castro proceeded on his way toward Pasay City. On the way to Dakota St., Bonifacio Castro heard Abrina and Ana whispering to each other. However, B, Castro could not make out the conversation between the two as he was then busy at the wheel. Just before the Rizal Memorial Stadium on Dakota St., the accused Magallanes told Castro to atop the vehicle. The vehicle having been brought to a stop, Magallanes paid the drive P0.30. Ano then dragged Vengco down at a spot in front of a public toilet before the Rizal Memorial Stadium going south on Dakota St. After the three accused had taken Vengco down, and before Bonifacio Castro resumed motion, the latter saw the accused Ano hit Vengco either on the face or on the chest, while Abrina and Magallanes were behind Ano."

Witness Abelardo Lucero testified about the autopsy he performed on the body of the deceased and the stab wounds he found thereon, to wit:

"Stab wound, base of the neck, right, piercing aorta, penetrating" anterior chest, (6 cm. X 2.5 cm. x 14 cm.)

Stab wound, .neck, left, post-auricular cutting the cervical vertebra and spinal cord (8 X 1-5 X 8.5 cm.)

Stab wounds, multiple (4), left side of the neck, one measuring 2 x 2 x 6 cm.; another measuring 2.6 X 1 X 3.5 cm.; another measuring 2.2 X 2.9 x 3 cm.; and the last measuring 2.5 X 0-6 X 3 cm.

Stab wounds, multiple (3) nape of the neck; one measuring 1.5 cm. X 0.5 cm. X 1-8 cm.; another measuring 2.5 X 1 cm. X 3 cm. and the last measuring 3X1X4 cm.

Stab wound, scalp, over the occipital protuberance measuring 2.5 X 0.4 cm. X 0.4 cm. deep.

Contused abrasions, multiple, scattered, right and left face, right shoulder, chin, both knees.

Shock and hemorrhage (850 cc. recovered blood) due to multiple (10) stab wounds in the neck."

He also testified that, on the whole, the wounds were mortal and, judging by the nature and location of the wounds, the assailants of Vengco must have been at the back or at the side of the victim.

David Martinez testified about the Parker fountain pen, diamond ring, rimless eyeglasses and watch which the deceased had with him when the latter and he (witness) separated at the corner of P. Paterno St. and Quezon Blvd., Quiapo, between 2:00 and 3:00 o'clock in the morning of July 4, 1953.

Irene Tayson mainly testified about these articles of Vengco which were missing from his dead body when it was found and searched by Lt. Dujua, Cpl. Villasin and other detectives on said date.

And Corporal Villasin mainly testified about the investigation he conducted, the arrest of the appellants, their identification by Bonifacio Castro and the taking and preparation of the affidavit of Lorenzo Magallanes (Exhibit E). If.

Appellants urge that the foregoing evidence for the prosecution is completely insufficient to establish their guilt for the crime charged against them; more especially, they claim that even granting the testimony of Bonifacio Castro to be true, said testimony would not show that they were the ones who killed and robbed Vengco in the early morning of July 4, 1953. At most, they insist, there being no clear and positive evidence that they attacked, killed and robbed the deceased Vengco, and there being no proof of conspiracy, if at all the only one who could be held responsible for physical injuries is Norberto Ano who, according to Castro, pulled down the deceased Vengco from the jeepney and dealt him fist blows on the face or chest. Lastly, they set up alibi as their defense and, specifically, appellant Magallanes claimed that his affidavit (Exhibit E) was obtained from him thru torture and maltreatment by the police authorities.

Upon careful consideration of the foregoing contentions, we find them untenable for, while it is true that there was no eyewitness to the actual killing and robbery of the deceased Vengco, it is a fact that Castro saw appellant Ano succeed in pulling Vengco down from the jeepney and hit him on the face or chest in the presence of Magallanes and Abrina; which fact taken together with the other unrefuted fact that Vengco was found dead scarcely one or one and a half hours after he was pulled down from the jeepney and attacked by Ano, do constitute certainly a well-founded ground to pin the responsibility on the defendants for the crime at bar, because they were the last persons seen manhandling the deceased and, as pointed by the Solicitor General, it would be absurd to assume that their manhandling of the deceased was only to caress or scare the latter considering that the victim was found brutally killed with ten stab wounds quite immediately after he was manhandled.

Castro's testimony is, however, assailed as unreliable because of his failure to immediately report the incidents to the police authorities, but he explained that he failed to do so because he was shocked and terribly scared by what he saw on that occasion, and certainly this is a strong reason for him to shut his lips, he being an ordinary person, a jeepney driver who depended on his daily wages for his and his family's subsistence and who would not be willing to lose much time to testify at the trial of a case which does not concern him personally. Further, in failing to report the incident promptly, he might have been prompted' by fear of reprisal by the defendants, which, ordinarily, is a strong factor for common people to fail to immediately denounce the perpetrators of a crime. Hence the lower court committed no error in giving full credence to Castro's testimony for, as correctly stated in the decision,

"There was no showing of any improper motive or purpose on the part of Bonifacio Castro in imputing to these three accused so serious a crime as that alleged in the information. In the absence, therefore, of any improper purpose "which may have activated Bonifacio Castro in testifying against them, his testimony should be entitled to full credence. (People vs. De los Reyes, 82 Phil., 180 46 Off. Gaz., [No. 41] p. 1520; People vs. Dizon, 78 Phil., 265, 42 Off. Gaz., [No. 11], p. 2766, People vs. Gonzales, 42 Off. Gaz., [No. 12], p. 3195; 78 Phil., 473).

The fact that, for about 3 weeks after the crime, Bonifacio Castro did not reveal the crime to the authorities does not detract from his credibility, his silence having been explained by him that he was too scared to report. (People vs. Malibiran, G. E. No. L-4192, December 27, 1951). Then, too, we must consider that coupled with that is the well known inclination of the common run of people to keep aloof of matters that do not concern them personally, specially matters that might take them away from their usual occupation. (People vs.

Gutierrez, 88 Phil., 592.)"

Appellants also urge that, there being no evidence of conspiracy among them, they cannot be held liable, as the trial court did, for the offense charged against them. It has, however, been established beyond reasonable doubt that (1) they boarded the jeepney at the same time; (2) Abrina and Ano were seen and heard whispering to each other while the jeepney was in motion; (3) Magallanes ordered the driver to stop, and as the latter stopped the vehicle, he paid 30¢ as fare, that is 10\$ for each of the three appellants; and (4) Ano dragged the deceased out of the jeepney while Abrina and Magallanes waited and in fact stood behind the deceased when the latter was socked by Ano; all of which clearly show the appellants' sharing of criminal purpose and strongly indicate conspiracy, for which reason they should be held liable for the crime at bar despite the absence of clear and distinct evidence who among them inflict the stab wounds upon the deceased and who among them took away his personal belongings, for conspiracy, once established, makes each and everyone of the appellants liable for the crime committed by anyone of them.

Anent the respective defenses offered by the appellants at the trial of the case, which are now insisted upon in this instance, we find correct and well founded the trial court's ruling thereon and see no justification for disturbing its findings which we quote:

"The accused Abrina brushed aside the charge against him with a shrug of the shoulders and as I do not know anything about that' (Wala akong alam dian). On cross-examination by the fiscal, he admitted that he had been convicted of robbery on February 16, 1948 in criminal case No. 1414 of the Court of First Instance of Manila, and for which he had served an indeterminate sentence of from two years, to six years and one day. He was released on November 11, 1947 (See also Exhibit F). It is of course obvious that this defendant's bare denial cannot prevail over Bonifacio Castro's positive testimony. (People vs. Ferrer, 44 Off. Gaz. [No. 1], p. 1123; Aribas [CA], 46 Off. Gaz. [No. 5], 2049).

"The accused Lorenzo Magallanes set up some sort of an alibi. He testified that he could not remember exactly where he was in the night of July 3, 1953, except that he was at Pasay City. He also denied having been with his co-accused Ano and Abrina in the night of July 3, 1953. He further stated that he could not remember where he had been after July 3, 1953. He admitted, however, having been arrested either on August 5, 1953, or August 6, 1953.

"This accused attempted to repudiate his confession. Exhibit E, by alleging torture and maltreatment in the hands of the police authorities. He claimed that he came to know his co-accused Norberto Ano and Manuel Abrina only in the City Jail during their detention, altho he said he knew Abrina by face because he had seen him gambling on Leveriza. It is apparent, however, that his attempted repudiation of his statement is Exhibit 'E' must be over-ruled. In the first place, the statement is replete with details that could have been known only to him but which were difficult or even impossible for the police to insert or include therein (People vs. Pulido, et al., 47 Off. Gaz. [No. 9], p. 4581). In the second place, his allegation of torture and maltreatment in the hands of the police is belied by the fact that the latter did not obtain any written confession from his co-accused Abrina and Ano.

"The defense of the accused Norberto Ano, a former dock laborer who has been out of work for at least one year prior to July, 1953, is planted on an alibi consisting in his own testimony and that of his sister, Remedios Ano, and his townmate, Laureana Regalado, a medical student of the University of Santo Tomas. The gist of his alibi is that he was at home at 58 Valenzuela St. the whole night of July 8, 1953, because he was suffering from fever due to pulmonary tuberculosis.

"According to this defendant's testimonial evidence, he went to the Philippine Anti Tuberculosis Society at 1893 Rizal Ave., Manila, for consultation on June 30, 1953 and was issued a patient's identification card as Case No. 20900 (Exhibit 3) ; that he was given prescriptions for dehydro-streptomycin, tenitone and by draeid

tablets, with the corresponding instruction for their use (Exhibits 4, 5, 6 ;and 7); that he and his sister, Remedios Ano, purchased the medicines from tho Globe Drag Store in Quiapo at around 9 o'clock in the morning' of July 3, 1953; that around 7 or 8 o'clock in the evening of July 3, 1953, Miss Regalado started treating him by giving him the first injection of streptomycin; that he did not leave the house the whole night of July 3, 1953 as he was suffering from fever and pains on the chest; that Miss Regalado checked him up every two hours between 10 o'clock p. m, of July S, 1953 to 4 o'clock a.m. of July 4, 1958.

"On cross examination (Miss Regalado admitted that she is a townmate of the accused and his sister; that she has been boarding with Remedios at 58 Valenzuela St., Manila, and, at the time of her testimony, was still boarding with her at 72-B Lima Street, Project No. 4, Quezon City.

"After an evaluation of the evidence in support of the alibi set up by the accused Norberto Ano, the Court believes that the same must be overruled. In the first place, it would appear from his testimony and that of his sister, Remedios, that although he may have been suffering of pulmonary tuberculosis in July 1953, he was :at most an ambulatory patient as shown by the fact that he was able to go to the Philippine Anti Tuberculosis Clinic on Rizal Avenue on June 30, 1953 for consultation, and that lie even went with his sister in purchasing' the medicine's allegedly prescribed for Mm from the Globe Drug Store on the morning of July 3, 1953. This is, of course, in the assumption that his sister Remedios had already purchased the medicine prescribed in Exhibit 4, 5, 6 and ", for if she had really done go, the prescriptions Exhibits 4, 5 and 7 would nave been retained by the pharmacist in accordance with standard pharmaceutical practice. In the second place, the testimonial evidence in support of his alibi comes from his own sister and his townmate. Because of the easiness with which testimonial evidence in support of the alibi can be manufactured among members of a family and among friends and even among those who are not (People vs. Nolasco, 88 Phil., 676), the court believes that the testimonial evidence in this case in support of Ano's alibi cannot prevail over his positive identification by the government witness, Bonifacio Castro, and the latter's clear and convincing testimony."

The facts of the case, as sufficiently and clearly established by the evidence on record, constitute the crime of robbery with homicide with the aggravating circumstances of nocturnity and abuse of superior strength and the further aggravating circumstances of recidivism as to Manuel Abrina y Montano and therefore, the trial court justifiably imposed upon the appellants the supreme penalty of death. However, as the votes of the members of this Court fell short of the required number for the imposition of said penalty, the same should be as it is hereby reduced, according to law, to reclusion perpetua.

Wherefore, the decision appealed from is hereby modified as above indicated and affirmed in all other respects, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Cvneepcion, Reyes, J. B. L., and Felix, JJ., concur.

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