

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO FUNDADOR AND ACCELES FUNDADOR,
DEFENDANTS-APPELLANTS.**

G. R. No. L-6689. May 21, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Alfredo Fundador and his son Aceeleb Fundador are appealing from the decision of the Court of First Instance of Negros Oriental finding them guilty of murder, and sentencing each of them to reclusion perpetua, to indemnify jointly the heirs of the deceased Inocencio Campaner in the amount of P4,000.00, and to pay the costs.

While the evidence for the prosecution and the defense as to the responsibility for the death of Inocencio Campaner are conflicting, there is no conflict as to the following facts. About noon on December 21, 1951, or shortly thereafter, Inocencio Campaner was brought by Nicasio Marlbao, ranking rural policeman and Santos Sigoy, another rural policeman to the house of appellant Alfredo Fundador, then lieutenant of the barrio of Pacu-an, municipality of La Libertad, Negros Oriental. That evening Campaner died as a result of serious physical injuries which produced internal hemorrhage. He was buried the following day, not in the town cemetery but beneath a clump of bamboo trees about half kilometer from the house of Alfredo. His death was not reported by Alfredo to the authorities. The same day of the burial, Campaner's mother complained to the Chief of Police who later detailed Sgt. Mariano Rendal of the police force to conduct an investigation. Because it was already late, Rendal proceeded to the barrio of Pacu-an the following day, questioned Alfredo, had the corpse exhumed and taken to the Poblacion where it was autopsied by Dr. Juan S. Castillo, President of the Sanitary Division, who thereafter issued a medical certificate (post mortem report), Exhibit "A" which we reproduce below:

"December 24, 1951

SUBJECT: Medical Certificate of Inocencio Campaner (Post-Mortem)

TO : Whom it may concern

1. This is to certify that the undersigned has on the above date performed an autopsy on the dead body of one Inocencio Campaner, about 25 years old, single, and residing in Barrio Pacuan, La Libertad, Negros Oriental, and found the following:

a. General appearance of the body:- The cadaver is already swollen as the stage of decomposition has already set in. The face is cyanotic and swollen, the eyes are protruding, and the tip of the enlarged tongue is outside of the mouth. The body is enlarged and puffed up, especially the abdomen. The extremities are also enlarged and partly cyanotic. There are some blebs in both forearms. Both wrists show a groove of about 1/2 inch in width encircling them, indicating that the person was tied

b. Wound, contused, about 6 inches in diameter, situated on the right temporal region.

c. Wound, contused, about 6 inches in diameter, situated on the trunk, mostly occupying the right

hypochondriac region, the epigastric region, and the area covering the lower three ribs of the right side.

d. Upon opening the abdominal cavity, there is a sudden rushing out of the whole stomach, the large omentum, and about 3 and 1/2 feet of the small intestines, followed by the coming out of a frothy and hemorrhagic fluid. On closer examination, the stomach is reddish and shows signs of hemorrhage. Also the large omentum is red and cyanotic. The portions of the small intestines that are out are very red, and covered by tiny drops of hemorrhagic fluid. Indicating that hemorrhage occurred in this organ also,

2. The undersigned certifies further that the cause of death is due to internal hemorrhage and shock which are the effects of the injuries of the organs described above caused by a force as by a blow,

(Sgd.) JUAN S. CASTILLO
President, 2nd San. Division"

According to the evidence for the prosecution which was accepted by the trial court, in the morning of December 21, 1951, Nicasio Maribao was informed that there was a man hiding in a cave in the sitio of Mambulao. Maribao asked his informer to return and watch further developments around the cave while he went to inform barrio lieutenant Alfredo who told him to go to the cave and verify the information. Accompanied by Santos Sigoy, another rural policeman, Maribao on approaching the cave saw Campaner already outside of it and when questioned as to what he was doing in the cave, he answered that being tired he went there to rest. Maribao dispatched Sigoy to inform Alfredo that the man in the cave was Campaner and Sigoy came back with the order of Alfredo to arrest and tie up Campaner and bring him to Alfredo's house, which was done, Campaner arrived at Alfredo's house healthy and without any physical injuries. Upon order of Alfredo, Campaner's hands were untied and he sat on a bench in the waiting room. Then the other defendant Aceles, son of Alfredo entered the waiting room and approaching Campaner addressed him thus: "By gosh, if these were still the guerrilla days, I could make you dig your own grave and then bury you in it." Campaner did not answer. After eating his lunch in the kitchen Alfredo entered the sala, had the clothes of Campaner removed to see if he had any concealed weapons and finding none then proceeded to accuse Campaner, charging him with the theft of the horse of one Mario Lacson and later selling it to one Jose Gallosa, using Alfredo's name so as to induce Gallosa to buy the horse. Campaner denied the charge saying that he; merely used the horse to go to Isabela and that upon arriving there Gallosa took the horse, claiming it as his own. Then rural policeman Maribao and Sigoy prepared to leave, at the same time suggesting to Alfredo to take Campaner to the poblacion for further investigation, but Alfredo said "not yet, maybe tomorrow because I have yet many questions to ask him." Before they left the two were ordered to again tie the hands of Campaner lest he escape. Shortly after leaving the house and not far from it the two policemen observed that the door and the windows of the house of Alfredo were being closed and almost immediately thereafter they heard sounds of gasping or moaning which they recognized as coming from Campaner, and also dull noises as of blows. At about ten o'clock that night Aceles Fundador went to the house of Maribao asking him to come to the house of his father because Campaner was in pain and was being given first aid. Maribao went as requested but found Campaner already dead, with his forehead, neck and abdomen swollen. Because it was too late to render any aid Maribao went home but the following morning he was again called to help bury the cadaver. He again complied with the request, calling on Sigoy and others to help. At the house of Alfredo they prepared the body for burial, at the same time suggesting that the body be taken to the town cemetery for interment but Alfredo said that there was no necessity of burying the body in the town cemetery, and that it was his order that it be buried near the bamboo clump. Then someone suggested that the case be reported to the town authorities to which Alfredo answered that there was no need to report the matter because there was no aggrieved party and that should there be one in the future he was there to answer. Then he said or made the warning that if any one should complain or squeal and make gossip he would have him arrested. Emigdio Embajada, assistant barrio lieutenant suggested that the matter be reported to the town authorities

otherwise danger but Alfredo cut him short, saying Alfredo would be in danger but Alfredo cut him short, saying "do not talk too much about it, because you do not know anything about the law." Roberto de la Cruz and Dominador Bihik aged 15 and 13, respectively, friends of Wilson Fundador aged 12 and son of defendant Alfredo Fundador said that they were informed by Wilson that there was a robber in the house of his father and he invited them to come and see. Accepting the invitation to satisfy their boyish curiosity, Roberto and Dominador went to Wilson's house about two o'clock in the afternoon of December 21st. They saw Aceles Fundador pull Campaner who had his hands tied, to the middle of the sala and there upon order of his father Alfredo, repeatedly box him. Alfredo encouraged Aceles to continue with the maltreatment saying: "Go ahead, box him. Anyway, if he dies, we would know how to assume the soul of the man." After receiving blows on both hips and the upper part of the abdomen Campaner fell heavily on the floor, flat on his face. The two boys were scared by what they saw and left the house.

The theory of the defense supported by the testimony of several witnesses, including Aceles and Wilson, sons of Alfredo, was that Campaner was maltreated by Maribao, Sigoy and their companions before he was taken to the house of Alfredo, because Campaner was suspected of having stolen chickens belonging to one of the group. This was rejected by the trial court.

As to who was really responsible for the ill-treatment of Campaner which resulted in his death, depends on which set of witnesses, prosecution or defense is to be believed. After studying the evidence we find nothing in the record that would warrant interfering with the findings of the trial court, based on the credibility of witnesses, we quote with favor certain portions of the decision appealed from on this point:

"The Court, during the trial of this case, had closely observed the manner and demeanor of the witnesses, both for the prosecution and the defense, when they testified. It has scrutinized closely the utterances of the said witnesses and found that the witnesses for the defense, in most instances, have been unnatural and their statements were beset with improbabilities. The supposed principal witness, Pedro Villeres, due perhaps to his great desire to save the 2 accused from the criminal charge and after evading some questions of the Fiscal on cross-examination, stated without being asked that he was telling only what he knew about the case without adding or subtracting anything therefrom. This witness would like this Court to believe that he actually slept in the house of Alfredo Fundador in that evening of December 21, 1951, but which the Court is not ready to accept, considering that his house was just in an adjoining barrio and he could have returned or proceeded to his house that very afternoon or that evening to join his family from whom he was away for days. In many instances, this witness, as well as the other witnesses for the defense, have made serious contradictions in their testimonies. He further asserted that when Campaner and the 4 persons, who allegedly maltreated him, arrived at the house of Alfredo Campaner (should be Fundador). he was already there sitting. This is contrary to the testimonies of the other witnesses of the defense as well as the prosecution that Inocencio Campaner was brought to the house of Alfredo Fundador at 2:00 o'clock or thereabout, while this witness arrived in said house very much later,

"Wilson Fundador, one of the sons of Alfredo Fundador, while testifying seemed to have committed to memory the facts he had testified to during the trial. He admitted that he was asked by his father, one of the accused herein, to relate to him the same facts several times, the last time was on October 21, 1952, the day before the date of trial, when he testified in Court, and while they were already in the City of Dumaguete. He also declared that his sister, Adoracion, was in their house during the whole day of December 21, 1951, when as a matter of fact, as testified to by Adolencia de la Cruz, she and Adoracion arrived in the house of Alfredo Fundador late in the afternoon or already twilight on December 21, 1951.

"A further examination of the evidence adduced by the defense, as testified to by the witnesses, will show many other contradictions, besides those already mentioned. The defense of Aceles Fundador is, more or less, an alibi. He wanted to impress the Court that from the morning of December 21 up to 5:00 o'clock in the

afternoon of the same day, he was not in his house, because he was sent by his father to look for tobacco seedlings. His assertion, however, is belied by all the witnesses for the prosecution who were there in their house from noon up to afternoon of that day of December 21, 1951, until Inocencio Campaner has been boxed and maltreated by him several times. The defense of alibi may not prevail over the testimony of at least 2 witnesses who saw the accused inflict the injuries that caused the death of the victim; x x x.

"It Is surprising that while the accused Acceles Fundador was made to take the witness stand, the defense did not see it fit to present the other accused Alfredo Fundador to deny or counteract the testimonies of the prosecution witnesses against him. The prosecution, with its evidence, points to Alfredo Fundador as the principal accused by inducement for the death of Inocencio Campaner. It has not been established or shown that the witnesses for the prosecution had some grudges or ill-feeling against Alfredo Fundador, a barrio lieutenant - a prominent citizen of the barrio of Pacu-an - that might have induced said witnesses to: testify falsely against him and his son, as the defense wanted the Court to believe. It has been insinuated by Acceles Fundador that Roberto de la Cruz and Dominador Bihic must have testified in the way they did, because of certain misunderstandings about the borrowing of corn or some money by the fathers of those 2 boys from the accused Alfredo Fundador. The Court, however, could not give credit to this assertion because it is even improbable that these 2 boys must have known anything about the dealings of their (respective fathers with the! accused Alfredo Fundador."

Moreover, as well observed by the Solicitor General, if Maribao and his Companions as contended by the defense really manhandled Campaner to the extent of practically killing him, they would not have exposed the crime by taking the victim to the house of the barrio lieutenant Alfredo, and Carapaner would have been unable to walk as he did from the cave to the house of Alfredo; and that if this maltreatment by the two rural policemen had really taken place, their chief barrio lieutenant Alfredo would have reprehended them for it and would have reported the matter to the town authorities. But as it was Alfredo never reported Campaner's death to the poblacion; and he even ordered the the body buried near a bamboo grove in the barrio instead of inside the town cemetery; and when Sgt. Rendal came to investigate the death, Alfredo failed to give any satisfactory explanation, thereby compelling Rendal to order the exhumation of the body which was done; and after due investigation by Rendal, the Chief of Police and the Fiscal, these officials were convinced that it was not Maribao and Sigoy and their companions but rather Alfredo and his son Acceles who were responsible for the cruel maltreatment of Campaner, and no these last two were charged with murder. The fact that Alfredo Fundador failed to take the witness stand to deny the damaging testimony against him and his son Acceles or to impute the maltreatment to Maribao, Sigoy and his companions, is also significant. Although under the law, he was under no obligation to testify, under the circumstances it was rather strange why he did not take the witness stand to counteract or explain the damaging evidence against him and his son.

In conclusion, we are convinced that as found by the trial court, the witnesses for the prosecution were more worthy of credence; that the maltreatment and death of Inocencio Campaner occurred as testified to by them, and that appellants Alfredo and Acceles are guilty of the crime of murder with which they were charged. The decision appealed from is hereby affirmed, with the modification suggested by the Solicitor General that the indemnity be paid by appellants jointly and severally. With costs.

Pablo, Bengzon, Padilla, Reyes, Bautista Angelo, Labrador, Concepcion, and J.B.L. Reyes, JJ., concur.

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