

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PEDRO RACCA ALIAS DOMING, ET AL., DEFENDANTS AND APPELLANTS.

*G.R. No. L-15812. December 30, 1961*

Ponente: PAREDES, J.

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### PAREDES, J.:

We glean from the evidence adduced by the prosecution, the following facts:

At about 9:00 o'clock in the evening of May 10, 1954, Seismunda Lizardo was shot to death while sleeping inside her house in the barrio of Baliwdaya, Sta. Maria, Ilocos Sur. Notified of the incident, the Chief of Police Alfredo Foronda and some policemen, Justice of the Peace Sixto Domine and Municipal Health Officer Dr. Jesus D. Gala, went to the barrio at 11:00 o'clock same evening. They found Seismunda sprawled in her bed in the sala of the house, with a bullet wound piercing the right eye. Bullet holes were found at the bed, through the walls of the kitchen and the house, and a slug from a cal. .30 bullet was embedded on the floor of the kitchen (See also Exh. 7, sketch of the Chief of Police). Two sets of foot prints of male persons were found coming from the yard on the eastern side! of the house, and ascending the stairway on the southern side, leading to the sala and also from the house leading to the yard (Exh. 7).

The town officials attempted to interview the companions of the victim in the house, Eleuterio, Gregorio and Concordia Directo, children of Seismunda, but they were in a state of shock and were trembling. Dr. De Gala conducted a necropsy examination of the victim and found;

"1. A gunshot wound of about one centimeter diameter at the medial canthus of the right eye (entrance) coming out at the occiput about 2 centimeters posterior of the right ear (exit).

2. A gun shot of about one centimeter diameter at the right palm on the posterior surface at the middle of the metacarpal bone of the ring finger with fracture of said bone and coming out at the anterior surface of the palm on the same region.

Cause of death: shock due to brain tissue injury and hemorrhage" (Exhs. G, H & H-1).

On July 8, 1954, Gregorio Directo, Eleuterio Directo and Antonio Velasco were investigated and they executed affidavits subscribed before Judge Domine.

Gregorio Directo, 17, single and farmer, declared that he used to sleep in a camarin adjoining their house, that between 8:00 - 9:00 o'clock P.M. on May 10, 1954, he heard some gun explosion; he got up and would have gone upstairs but heard a voice, so he went under their house and, while there, he saw two persons, one of them was Inoy, going out of the house, one behind the other; that Inoy asked his companion- "Did you hit the mark?" to which the latter answered "she was hit in the eye"; that he could recognize Inoy, because his companion beamed his flashlight and he also knew the voice of Inoy whose real name is Nepomuceno Mendoza, of barrio San Ignacio, Sta. Maria; and that when he saw her mother, inside the house, she was already dead and they cried for

help.

Eleuterio Directo, 9, student, testified that he saw a person coming from their house that night and he was their neighbor Inoy, known to him personally and by his voice; and that when they were already downstairs, he heard Inoy call his companion.

Antonio Velasco, 18, student, asserted that he was one of those who hurried to the house of Seismunda, in answer to the call for help of Aurelio Directo; that on the following day, as he was on his way home, with Gregorio Directo, to barrio Silag to notify the in-fia of the victim, he overheard, from a distance of four meters, Nepomuceno Mendoza, Josefino Alejo and others conversing in an isolated place under the bamboos in barrio Cabaroan, Sta. Maria; and that Nepomuceno Mendoza alias Inoy, told his companions, Seismunda was hit in the eye.

Based on these affidavits, a criminal complaint was lodged before the Justice of the Peace Court of Sta. Maria against Nepomuceno Mendoza and John Doe. After his arrest, Mendoza on July 14, 1954, executed an affidavit subscribed before Justice of the Peace Domine. In his affidavit, Mendoza, 19, single of barrio San Ignacio, declared that about noon of May 10, 1954, he and Lucio Ragadi of barrio Sinabaan went to barrio Pacang, to visit Lucio's sister; that while they were waiting for the sister to arrive; one Rodolfo Rebellon invited them to lunch at his house, where they stayed until the morning of May 11, 1954, when they returned home; that on their way home, that morning, they met Josefino Alejo and his father Teodorico Alejo who told them Seismunda Lizardo was shot to death the previous night, at barrio Baliwdaya; that when the cadaver arrived at barrio San Ignacio, he waited for sometime before going to view it, because he had a little misunderstanding with the family of the deceased; and that he and Lucio Ragadi were together on May 9, 10 and 11, 1954.

Because of said affidavit, an amended complaint was filed against Mendoza and Ragadi. When Ragadi was arrested, he and Mendoza executed a joint affidavit dated August 3, 1954, subscribed before Judge Domine, implicating Andres Ragil and Rodolfo Rebellon, thus:

"Q

-

And when you were near the place of the house of SEISMUNDA LIZARDO, what did you do?

A

-

Andres Ragil and Rodolfo Rebellon went up the house of Seismunda Lizardo, with Andres Ragil having the firearm (carbine), and soon thereafter there was a light and followed the gun report inside the house.

Q

-

And where were you when Andres Ragil and Rodolfo Rebellon went up the house?

A

-

I, Nepomuceno Mendoza, was under the balcony of the house, and I Lucio Ragadi was under the stairs".

The complaint was further amended to include Andres Ragil and Rodolfo Rebellon who were ordered arrested.

But on August 13, 1954, Ragadi and Mendoza executed separate statements, subscribed before Justice of the Peace Domine. Ragadi, 26, single, repairer of lockers, averred that at about 10:00 o'clock a.m. of May 9, 1954, he met Mendoza and Domingo Racca in the town proper of Sta. Maria; that he and Mendoza boarded a calesa together and upon reaching the barrio of San Ignacio, each went to their respective houses; that in the evening, who proposed to give him more than P100.00, if he would kill Seismunda Lizardo, and as he refused because he did not know her personally, Racca told him (Ragadi) to "contact Nepo as I (Racca) have given instructions to him as your companion to kill her"; that after the conversation, Racca went to his house and returned with a carbine wrapped in piece of paper which he handed to him (Ragadi:); that having agreed to kill her on the night of May 10, 1954 (Monday), he and Nepo on the morning of said day, went to barrio Pacang, bringing with him the barbine and Nepo, a flashlight, meeting there Andres Ragil, Doro Rebellon, Rodolfo Rebellon and others; and in the evening they proceeded to the house of Seismunda at Baliwdaya and killed her. Ragadi, described the killing, as follows:

"A — \* \* \* We entered their house thru the guide of the flashlight on the face of Seismunda and she tried to cover her face, I fired my carbine aiming at her.

\* \* \* \* \*

A —We ran downstairs and hurriedly went back to barrio Pacang";

and slept in the house of Rodolfo Rebellon who did not know about the killing; that Nepo was told by him that Seismunda as killed; that on the morning of May 11, 1954, they returned the carbine to Domingo Racca who told them to call for the money the next day; but on May 12, 1954, Racca could no longer be located; that it was their understanding with Nepo to implicate Andres Ragil and Rodolfo Rebellon, in the hope that they would be freed from any liability, but he (Ragadi) was retracting his former statement against them.

On August 13, 1954, Mendoza made further statements substantially corroborating the above declaration of Ragadi. He stated:-

"A—When we were inside the house already, I flashed my light and we notice that there were two children and Seismunda Lizardo was lying on the bed 'catre'. When we went near Seismunda, I flashed my light on her face and when she was awakened she put her hand on her face, Luelo Ragadi shot her face. After that we ran away downstairs and we went to barrio Pacang".

Because of these statements, the complaint was further amended by including therein Pedro C. Racca; while Andres Ragil and Rodolfo Rebellon were dropped and subsequently released from custody.

After the arrest of Racca on August 21, 1954, Mendoza executed, under oath, another statement before Judge Domine. He said—

That on the night of May 9, 1954, Pedro Racca and he, met Juan Felicitas and Filomena Pagaduan, near the market place of Sta. Maria; he and Racca made a deal with Juan and Filomena to kill Seismunda for P1,000.00 reward which Filomena promised to give them. He and Racca accepted the deal and Seismunda was killed by them. Lucio Ragadi was the triggerman, Racca was not with them during the killing, but the carbine used therein was given by Juan to Racca on the night of May 9, 1954. Racca, after the killing, was not able to collect from Juan, although he received P20. 00 from him Juan) on the night of May 9, 1954, when they went to take-the carbine from Juan; that Racca instructed him to guide Ragadi to the house of Seismunda before the killing and defrayed the expenses for cigarettes and liquors.

Pedro Racca-33 years old-carpenter, of San Ignacio, gave a sworn statement before Judge Domine on the same date, (August 21, 1954) as follows—

He was hired by Filomena Pagaduan and Juan Felicitas of Sta, Maria, to kill Seismunda, promising a reward of P1,000.00 because of property shares. As he did not have the nerve to do it, he [hired Lucio Ragadi promising to give him more than P100.00 therefor. Juan delivered to him a U.S. army carbine which he in turn gave to Ragadi. Ragadi killed Seismunda. After the killing, Filomena and Juan did not give him the amount, as promised, although, Juan had given him (Racca) P20.00 on the night of May 9, 1954, when he gave him the carbine, which amount was spent for drinks. On the night of May 11, 1954, he returned the carbine to Juan. When they agreed on the killing of Seismunda, Mendoza was his companion, as in fact Mendoza was also promised a reward by Juan and Filomena; and when Seismunda was killed, Mendoza was with Ragadi who actually shot and killed Seismunda.

Based on the last statement of Mendoza and the confession of Racca, the complaint was once more amended to include Juan Felicitas and Filomena Pagaduan.

An information was filed by the Provincial Fiscal against Pedro Racca, Lucio Ragadi, Neporauceno Mendoza, Juan Felicitas and Filomena Pagaduan of the crime of murder, in connection with the killing of Seismunda Lizardo. A petition to discharge Racca, in order to become a State witness was presented by the Fiscal, but the court deferred action thereon, until after the hearing of a substantial portion of the People's evidence. After the presentation of the prosecution witnesses, Racca refused to testify for the government. The prosecution withdrew its petition for his discharge. After the prosecution had rested, the trial court dismissed the charge, with respect to Pagaduan and Felicitas.

The remaining three accused presented their evidence. They denied the imputation and interposed the defense of alibi and alleged that their extrajudicial declarations were obtained by force, threat and intimidation.

Appellant Mendoza testified: On the morning of May 10, 1954, while he was in the barrio of San Ignacio, he met Lucio Ragadi. He and Ragadi went to barrio Pacang, 4 kilometers from San Ignacio, to visit a sister of Ragadi, arriving there at 11:00 o'clock in the morning; but as Ragadi's sister was out, they were about to leave when Rodolfo Rebellon invited them to stay. They took their lunch at Rebellon's house and assisted a neighbor in the construction of a house in the afternoon and spent the night in Rebellon's house. At 7:00 in the morning of the following day, they proceeded same; on the way, they passed barrio Cabaroan, where they met Teodorico Alejo who informed them that a certain "Mundarig" was shot thru the eye and died. He remarked to Alejo: What, her eyes?" It was at this juncture that Antonio Velasco and Gregorio Directo passed by. They arrived at about 9:00 o'clock the same morning in San Ignacio.

On July 8, 1954, he was arrested. "When his statement was given, he was boxed on the abdomen and other parts of his body by constabulary soldiers; ordered to dig a pit for his grave; he was not allowed to sleep and was ordered to stand on his feet the whole night and made to look upwards and count the mosquitoes for hours. Although his lawyer Atty. Vergara instructed him not to give a statement, he had to, because the soldiers maltreated him with the butts of their rifles. The soldiers prepared typewritten statements implicating Pedro Racca.

Appellant Ragadi gave practically the same story as that related by Nepomuceno. He said he was arrested in Pidigan, Abra, and when he denied participation in the crime, he was also tortured before giving a statement. The soldiers placed bullets between his fingers and then pressed them (showing small scars on two fingers); they fired pistols near his ear; tied both of his hands to his legs and hang him inside the toilet for three hours; kicked him and one of his ribs was dislocated; singed his pubic hair, and the tip of his male organ. He never had his wounds treated nor told his sister of the maltreatment because he was warned by the PC not to mention it. His alibi was corroborated by Caridad Ordoñez, second cousin-in-law of Mendoza.

Appellant Racca testified that on May 8, 1954, between 7:00 and 8:00 in the morning, he, his wife and children

left the town of Sta. Maria for Bago-Bantay, Quezon City, in connection with the baptism of his child during the fiesta in said City. They arrived between 4:00 and 5:00 in the afternoon of the same day at Bago-Bantay in the house of his mother. On May 16, 1954, during the fiesta at Bago-Bantay, his son Dominador was baptized. He remained there from May 8, 1954 until August 16, 1954, when he was arrested by the Constabulary. The soldiers showed him the statements of Nepomuceno and Ragadi and as he refused to admit his participation, he was maltreated. One day, at dawn, preferring to die instantaneously, rather than suffer slow torture and tell a lie, he slashed his left cutting five big veins with a dull razor blade; but the blade broke, he drank "white wash (carburo)". He lost consciousness, and upon regaining the same he was already being treated by Dr. Lara. Still dizzy, weak and suffering from severe headache, he was brought by the soldiers to swear a prepared statement before the judge. He reported the maltreatment to Attys. Reyes and Rapanut, who advised him to tell everything to the Court and who promised to write a letter about it to the PCAC, but they did not. Racca declared further that he could not have possibly conspired with Juan Felicitas because they were political enemies and that he had no motive to kill the deceased, as she was his second cousin and had no misunderstanding with her. In support of Racca's alibi, the defense presented Pio dela Cruz, a brother-in-law, Mariano Venida, a close friend, and Pedro Dasalla, another brother-in-law of his; and baptismal certificate, Exhibit 4, executed on May 17, 1954.

Juan Felicitas and Filomena Pagaduan after their discharge from the case, denied participation in the commission of the crime. Felicitas declared he was not on speaking term with Racca and Mendoza; he did not know Ragadi or Pagaduan. Pagaduan declared she did not know Felicitas, Ragadi or Mendoza personally; that she is married to Victoriano Velasco, the only son of her parents-in-law, but she is now living apart from her husband; and that the deceased was a ward of her parents-in-law, since Childhood.

The trial Court rendered the following sentence:

"WHEREFORE, in view of the foregoing, the Court finds the accused LUCIO RAGADI alias LUCIO, NEPOMUCENO MENDOZA, alias INOY, alias NEPO and PEDRO RACCA, alias DOMING, guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Art.248 of the Revised Penal Code, and in view of the presence of three aggravating circumstances without any attenuating circumstance to offset them, this Court is constrained to impose upon each of them the supreme penalty of death to be executed in the manner provided by law, to indemnify jointly and severally the heirs of the deceased in the amount of P6,000.00 without subsidiary imprisonment in case of insolvency, in view of the nature of the penalty and to pay the costs".

Accused interposed the present appeal and raised the questions of: (1) identification of the appellants; (2) credibility of witnesses; and (3) sufficiency of proofs to warrant their conviction.

We are convinced that the extra-judicial declarations of appellants, as heretofore exposed, had been voluntarily executed by them. Except their self-serving statements, no other proofs were adduced that said declarations were extracted by force or intimidation, as pretended. Justice of the Peace Domine, categorically stated that before administering the oath, he asked each of the appellants in their own dialect (Ilocano) whether they had been coerced or maltreated, and they all answered in the negative. It was a precaution consistently adopted by the judge in matters of this nature. If it were true that appellants were forced or coerced into executing the said affidavits, it would have been extremely easy for them to merit to Judge Domine whose attitude evinced the desire and zeal to safeguard their constitutional rights. It should also be noted that the statements of Mendoza and Ragadi ([Exhibits 3 and 3-A) were only made after the constabulary authorities had filed an amended complaint on August 3, 1954, for murder against Ragadi and Rebellon which resulted in their arrest. They cannot claim that they were maltreated and forced into executing Exh. 3, for in this statement, they practically exculpated themselves from blame. It would be absurd to believe that the same police authorities would maltreat the two appellants and compel them to execute exculpatory statements in connection with the amended complaint. Even granting, as

counsel claims, that they were afraid to mention the alleged maltreatment due to the presence of some constabulary soldiers, still no satisfactory explanation had been offered by them, why they never denounced it to the proper authorities after said date. As early as July 14, 1954, Mendoza was already represented by a competent counsel. Ragadi was represented by counsel on September 11, 1954, and even waived his right to present evidence during the preliminary investigation. From August, 1954, until the trial begun in the middle of 1956, the two had all the opportunity to make the proper denunciation. They did not do so—an inaction which heavily argues against the veracity of their claim (*People vs. Ijad, et al.*, supra, p. 348). It should also be noted that the declaration of the appellants were full with details, which could only be supplied by them and which could not have been given by minds subjected to torture and violence. They reflect spontaneity and coherence; free from extraneous restraints. And the record fails to show any ulterior motive on the part of the constabulary officers to force a confession from the appellants. They were neither friends or foes of the appellants.

Again it appears that appellant Racca executed before Special Counsel Valdez, Office of the Provincial Fiscal, on July 13, 1955, a sworn statement (Exh. X), confirming Exhibit C (a previous statement) which contained even corrections in ink initialed by Racca himself; and on September 21, 1956, Racca executed Exh. X-I before the same Special Counsel Valdez, re-affirming Exh. X, and agreeing to testify for the prosecution.

It should likewise be observed that the three confessions (Exhs. A to C) contain, details on material and identical points and there being no proof adduced, showing, collusion with reference thereto, before making such declarations, each declaration is confirmatory of the confession of the appellants.

The above extra-judicial declarations of the appellants are not standing alone. One of the appellants was positively identified. Gregorio Directo and Eleuterio Directo, in their affidavits of July 8, 1954, identified appellant Mendoza (Exhs. 1 & 2). The delay in the execution of these sworn statements was satisfactorily explained. Gregorio and Eleuterio declared that they were neighbors of Mendoza; are familiar with his physical features and his voice; and that they were able to recognize him by the beams of the flashlight handled by him, and by a clear moon. The defense assails the credibility of these two witnesses, for inconsistencies, improbabilities and contradictions. The trial court found them worthy of credence, and as far as the record is concerned, there is no justification for discrediting his Honor's conclusions regarding their veracity. The alleged inconsistencies and improbabilities in their testimony and their contradictory statements can be satisfactorily explained and they refer to inconsequential or insignificant matters; they can not impair their credibility, considering their ages, the lapse of time and the rigid questioning of counsel. Discrepancies do not constitute sufficient ground to impeach their credibility if the principal points of their declaration do not reveal anything against their truthfulness (*People vs. Jureidini*, 76 Phil., 219; 42 Off. Gaz. 2432; *Abutan vs. Hernandez*, 44 Off. Gaz., 1849).

It should also be observed that the physical findings on the body of the deceased, as to the parts of the body hit, the extent and nature of the injuries, corroborate the narration given by the appellants in their extra-judicial admissions, as to the manner the killing was effected.

The defense of alibi was properly discarded by the trial court. Appellants Mendoza and Ragadi repeatedly admitted in their extra-judicial confessions that they were together since the morning of May 10, 1954, until the morning of May 11, 1954 and even spent the night together in the house of Rebellon on May 10, 1954, in barrio Pacang. From here, it was not physically impossible for them to go to barrio Baliwdaya and commit the crime. Appellant's Racca's alibi can not measure up to which would deserve credence. His testimony that standard of proof that he went to Manila on May 8, 1954, two days prior to the killing is unbelievable. The persons presented to support his defense are close friends, relatives and neighbors, who would naturally testify in his favor. These circumstances and facts should also be considered with respect to the alibi of the other two appellants. In the face of the positive identification of one of the appellants by Gregorio and Eleuterio, their defense of alibi vanishes

into thin air. The defense of alibi should be clear, positive and convincing-which are wanting in this particular case.

There are also other facts and factors which convince us of the untenability of appellants' defenses:

- (a) Appellant Mendoza-himself admitted that Antonio Velasco and Gregorio Directo were passing by when, on the morning following the commission of the crime, he (Mendoza) was bragging to Teodoro Alejo and others how Seismunda was killed; (b) It was shown that Felicitas and Pagaduan wanted to eliminate the deceased, thru the appellants, because of "property shares"; and (c) the attempt of appellant Racca to commit suicide could have only been impelled by a guilty feeling of remorse at the heinous crime he had committed.

Summarizing, therefore, in the night of May 9, 1954, in the town of Sta. Maria, Ilocos Sur, Racca and Felicitas and Pagaduan, to eliminate Seismunda for the promised reward by the latter of P1,000.00 because the same evening, Racca induced Ragadi to Mendoza agreed with of property shares. In act as the trigger man, upon assurance of a share in the reward, Racca supplied Ragadi with a carbine which he obtained from Felicitas, for the purpose. On the morning of May 10, 1954, Ragadi and Mendoza left for barrio Pacang, same town, where they spent the day waiting for night fall. At about 10:00 o'clock P.M., same day, Ragadi and Mendoza went to the house of Seismunda at barrio Baliwdaya of the same locality. Mendoza who knew Seismunda and was familiar with the house, served as guide. They entered the house and found the occupants fast asleep. Mendoza indicated Seismunda who was then sleeping on a bed in the sala, with his flashlight. As Seismunda was suddenly aroused and tried to cover her eyes with her hands from the flare of Mendoza's flashlight, Ragadi fired his gun and hit Seismunda on the right eye and right hand, inflicting wounds which caused her death. Ragat and Mendoza returned to barrio Pacang where they spend the night. The following morning, Ragadi reported to Racca the accomplishment of their plan and returned the carbine to him.

In view hereof, we are of the opinion that the trial court did not err in finding appellants guilty of the crime of murder charged in the information, qualified by treachery, committed in consideration of a price, reward or promise, with evident premeditation and in the dwelling of the offended party. In view, however, of the absence of the statutory requirement for the imposition of the supreme penalty, meted by the trial court, the appellants are hereby sentenced to suffer life imprisonment, and to indemnify jointly and severally the heirs of the deceased in the amount of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. Appellants should be credited with one-half of the preventive Imprisonment already undergone (Art. 29, Revised Penal Code).

Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, and De Leon, JJ., concur.

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