

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MANUEL VALENCIA, DEFENDANT AND APPELLANT.***G.R. No. L-1369. January 21, 1949*

Ponente: PERFECTO, J.

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On October 19, 1945, at one o'clock at noon, two persons went to the house of Lucia Kempis, 152 Castaños, Manila, looking for her husband, Vitaliano Kempis, because they wanted to rent a car, Hudson 1941, owned by the Kempises. Vitaliano was out and the two men waited for him until he arrived at 4 o'clock on the same afternoon. Upon agreeing on the sum of P150 as rent for a trip to Bocaue, Vitaliano put gasoline in the gas tank and air in the tires of the car. At 4:30 the two persons and Vitaliano left, but it was the last time that the latter was seen alive by his wife, notwithstanding his promise that he would be back that same night.

The next day Lucia Kempis made inquiries about her husband and reported his disappearance to the police authorities.

Upon clues given by a former servant of the Kempises, the detectives were able, on December 10, 1945, to arrest Avelino Fajardo, whom they had been looking for for sometime.

He was one of the two persons who on October 19, 1945, went to rent the car of the Kempises and he was the one who indicated where the Hudson car and the cadaver of Vitaliano Kempis could be found. The widow and the detectives, accompanied by him, found the car in the repair shop of Irineo Santos, in barrio San Jose, Baliwag, and the remains of Vitaliano Kempis buried just outside the fence of the Baliwag cemetery at Buson Street.

Avelino Fajardo testified that he was able to learn about the location of the burial place of the deceased Vitaliano Kempis through information given to him by Peping, or Jose de Leon, a cousin of his.

The only evidence linking appellant Manuel Valencia with the death of Vitaliano Kempis consists in the lone testimony of Avelino Fajardo to the effect that on the night of October 19, 1945, after completing an illegal deal he made on GI goods in Baliwag, he went with Vitaliano Kempis and Teofilo Lopez, his companion when he rented the Hudson car, to a restaurant to take his supper. After finishing supper and having been paid for it and when the three of them were about to board the car to return to Manila, the two accused, Manuel Valencia and Augusto Chico, each with pointed .45-caliber revolver, held them up, telling them not to move if they did not want to die, and that they wanted the car. The two accused boarded the car, not without Valencia taking first 380.00 from Avelino Fajardo, and ordered Vitaliano Kempis to continue driving it, and he (Avelino Fajardo) and Teofilo Lopez, just went away in the direction of Plaridel while the car was being driven towards the church. The accused told them not to report the matter to the authorities otherwise they would implicate them and as soon as they are confined in Bilibid they would kill them.

Not a single witness has corroborated Avelino Fajardo on the Baliwag hold-up. His companion, Teofilo Lopez, who could have corroborated him, was not called to testify.

Irineo Santos, a witness for the prosecution, testified that at about 2 o'clock in the morning of October 20, 1945, a tall and dark individual requested him to make repairs on the Bids on car, advising him that the next morning Manuel Valencia would come for it. The following morning a person by the name of Manuel Valencia came for the car and, when asked by the prosecution to point in the courtroom the person of Manuel Valencia, if he was present, he pointed to Avelino Fajardo, while he did not recognize accused Manuel Valencia.

Manuel Valencia testified that he had not been in Baliwag on the night of October 19, 1945, and denies that he and Augusto Chico held up Valeriano Kempis, Teofilo Lopez and Avelino Fajardo on said night in Baliwag, and the reason why Avelino Fajardo implicated him in the case is that he has not given to him the proceeds of a half case of morphine tablets that the accused sold for Avelino Fajardo, the accused wanting to sell first the whole merchandise one and a half cases of which still remained. Later the accused told Avelino Fajardo that the remaining morphine tablets and the money were confiscated by the police authorities, but Avelino Fajardo did not believe it and required the accused to pay him the total value of the merchandise amounting to P5,000. He took the watch of the accused and asked him to pay the value of all the merchandise, but the accused did not make any payment.

The evidence on record does not prove beyond all reasonable doubt that Manuel Valencia is in any way responsible for the death of Vitaliano Kempis. The testimony of Avelino Fajardo in this respect is wholly unreliable. The witnesses who could have corroborated hint, Teofilo Lopez and his cousin Peping or Jose de Leon, were not called to testify. There is no explanation why Teofilo Lopez was not summoned to testify. The allegation that his whereabouts is unknown is hardly convincing. Avelino Fajardo's report to the detectives made many days after the finding of the remains of Vitaliano Kempis that he heard that his cousin Peping was liquidated, appears to strengthen the suspicion that the existence of his cousin Peping is a figment of his imagination.

There are indications to the effect that Avelino Fajardo appears to be more responsible for the death of Vitaliano Kempis than appellant Manuel Valencia and it is regrettable that his exclusion as one of those accused of the murder of Vitaliano Kempis should preclude the prosecution from accusing him again. His conduct and the conduct of his companion Teofilo Lopez belie his story as to the alleged hold-up on the night of October 19, 1945, in Baliwag. Neither he nor Teofilo Lopez had reported the incident to the authorities. There was absolutely no reason for them to be afraid of being implicated for any offense that, at the time, involved only the forcible taking of the car. They did not report the incident to the wife of Vitaliano Kempis. Instead, Avelino Fajardo went to hide in Nueva Ecija and in other places, and it took the authorities weeks before locating and arresting him.

Avelino Fajardo has not given any explanation as to how he was able to help the detectives locate the Hudson car in the repair shop of Irineo Santos. The testimony of the latter gives the lacking explanation and points to Avelino Fajardo as one of those responsible for the bringing of the car to the repair shop, and that explanation is incompatible with the story of the hold-up.

There is absolutely no explanation why Avelino Fajardo would want to know the burial place of the deceased Vitaliano Kempis, and neither would he explain why his cousin Peping should have such definite knowledge and desire to impart that knowledge to Avelino Fajardo. The latter's knowledge of the place is rather a circumstantial evidence that shows that Avelino Fajardo had been a personal witness, if not a protagonist, in the burial.

His posing before Irineo Santos in the morning of October 20, 1945, as Manuel Valencia, instead of presenting himself with his true name, could be attributed only to a guilty conscience.

If there was no illegality to be hidden, there was no reason for him to assume a false name, with which he could have evaded responsibility, and throw it into another, and he could not think of a better scapegoat than Manuel

Valencia whose name, because of the fact that the latter defrauded him of P5,000, the value of the morphine tablets, would have been constantly looming in his memory and imagination for purposes of retaliation.

At the hearing of this case on October 9, 1947, the prosecution brought up the question as to whether or not the appeal should be dismissed because of appellant's escape on August 24, 1947, from the provincial jail in Malolos, without, however, making any move on the matter, leaving it entirely to the discretion of this Court, under Section 8 of Rule 120, considering appellant's subsequent recapture.

Appellant's attorney de officio argued vigorously against the dismissal of the appeal upon the plea that appellant is Innocent, explaining that his escape was motivated by the desire of eluding the punishment meted out to him by a judgment the injustice of which appeared to him revolting. According to the official report of the provincial warden, appellant took advantage of a mass Jail break which had taken place in Malolos on August 24, 1947, but he was recaptured, together with three other detainees, two hours after the jail break. The circumstances of this case do not justify dismissal of the appeal which, upon the conclusion we have arrived at on the merits of the case, would entail a clear miscarriage of justice.

The appealed decision is reversed and appellant Manuel Valencia is acquitted.

Moran, C.J., Paras, Feria, Pablo, Bengzon, and Briones, JJ., concur.

DISSENTING

TUASON, J.:

I dissent. I am satisfied beyond reasonable doubt that the appellant was an active participant in the crime even though Avelino Fajardo was "more guilty". The exclusion of the latter from the prosecution is indeed a very shocking miscarriage of justice, but this does not justify the discharge of one less guilty.

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