

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NARCISO PIZARRO, DEFENDANT-APPELLANT.***G.R. No. L-36445. August 28, 1984*

Ponente: RELOVA, J.

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Automatic review of the decision of the then Court of First Instance of Cagayan, in Criminal Case No. 124-S(71), sentencing herein appellant to double death, to pay the heirs of the victims the sum of P24,000.00 as indemnity, P50,000.00 as moral damages and to pay the costs.

In the evening of June 6, 1971, spouses Teodoro Taban and Maria Pescador were killed inside their home at Kinalian, Allacapan, Cagayan. They sustained gunshot and stab wounds. The gunshot wounds were caused by a gun with bullets containing many pellets; on the other hand, the stab wounds were caused by a sharp pointed instrument. This was the post-mortem finding of Dr. Alfredo Berbano, the Municipal Health Officer of Allacapan, who testified that the cause of death of spouses Teodoro Taban and Maria Pescador was:

"Shock, Irreversible, Secondary to hemorrhage, Acute, Internal and External, Secondary to Gunshot wound and stab wound, hypogastric and flank." (Exhibits "A" & "B", pp. 10 & 12, Record)

The finger of suspicion pointed to accused-appellant Narciso Pizarro, son-in-law of the victims, because among the relatives of the deceased, he was the only one who objected to the wish of the victims' family that they be buried face downward. This desire was due to the folks' belief that the ghost of the victims would not make the killer sleep if they were to be interred face downward.

Later, Leonila Taban, a sister-in-law of appellant, told PC Sgt. Francisco Vinagrera that the firearm of her deceased husband had been taken by the appellant. This firearm was a bulldog, gauge 16, which fires multiple pellet bullet, and this was exactly the type of gun used by the murderer. Likewise, Filomeno de los Santos testified that in the evening of June 6, 1971 he was in the house of one Librada Contapay, situated near the road at Kinalian, Allacapan, Cagayan, when he heard the barking of dogs. He peeped through the window and saw the accused with a companion going to the direction of the house of the Tabans. He even asked his nephew, Felipe Jose, who was also awakened by the barking of the dogs and was then urinating at their bataan, whether it was really the accused who was proceeding to the Taban's residence. Felipe Jose confirmed the identity of appellant and even informed him that accused Pizarro had a property dispute with Teodoro Taban and even threatened to kill the latter. The two, Filomeno de los Santos and Felipe Jose, went down and followed appellant and his companion. They observed their movements, hiding behind banana plants from a distance of about fifty (50) meters. Suddenly, they heard gunshot followed by another, coming from the house of the victims. They went nearer the Tabans' residence and saw two persons going out of the bataan, one carrying a gun and the other a knife. Pizarro was one of the two.

After Sgt. Vinagrera learned from Filomeno de los Santos what had happened, he confronted the accused who denied his presence at the place at that time, giving several excuses and alibis. Later, however, he broke down and confessed in detail the double murder he had committed. His statement was reduced in writing (Exhibits "C", "C-1" and "C-2") after which he was brought to Municipal Judge Alejandro Pagayatan of Allacapan,

Cagayan. The judge read to appellant the contents of said Exhibits "C", "C-1" and "C-2" and then asked if he understood everything stated therein. Answering in the affirmative, appellant then signed the statement and the oath was administered to him. Judge Pagayatan then signed the statement as the administering officer. A little later, Pizarro also admitted having taken the gun of the deceased husband of Leonila Taban and said it was the same gun he used in shooting the victims. He even pointed to the place where he buried it after the incident.

The gun (Exhibit "G") was recovered by the police at the place pointed to by appellant. Thereafter, appellant was brought again before Judge Pagayatan regarding another statement (Exhibits "E" and "E-1") relative to the recovery of the death gun. The contents of this statement (Exhibits "E" and "E-1") were again read to the accused who swore to its truthfulness. He then signed it.

Narciso Pizarro was charged with the crime of double murder.

In his defense, appellant Pizarro claims that he was in town in the morning of June 6, 1971. He returned home about seven o'clock in the evening. After supper, he went to bed between 8:00 and 9:00. He never left the house that evening. The following day, Santiago Bartolome informed him about the death of his parents-in-law, Teodoro Taban and Maria Pescador. Immediately thereafter, he and his wife, Josefina, repaired to Kinalian and made inquiries regarding the killers of the victims. Zosimo Taban, a 9-year old nephew, told him that he did not recognize the killer and could only describe him as a "bearded man, taller than himself (accused)."

After several days, he was picked up by the police, informing him that he was being suspected as the killer of his parents-in-law. He professed innocence and completely denied the accusation. However, due to the maltreatment received from the police, he finally gave way and decided to execute the statements, Exhibits "C", "C-1" and "C-2" and Exhibits "E" and "E-1."

Josefina Taban, daughter of the deceased Teodoro Taban and step-daughter of the late Maria Pescador, testified that she and her husband, Narciso Pizarro, on June 6, 1971 were residing at Maluyo, Allacapan, Cagayan; whereas, her parents were living at Sitio Kinalian which is about 15 kilometers away. Narciso left the house at about 10:00 in the morning of June 6, 1971 and returned at about 2:00 in the afternoon. From then on, Narciso stayed at home and went to bed at about eight o'clock. The following day, somebody informed them at their residence at Maluyo that her father and step-mother were killed. They rushed to the place and made inquiries as to who could be the assailant and a nephew, Zosimo Taban, described the killer as a "bearded man, taller than her husband."

The Court is inclined to give full faith and credit to the testimonies of Filomeno de los Santos and Felipe Jose. De los Santos, a relative of the appellant, clearly testified regarding the identity of appellant, as follows:

"Q While you were by the window of the house of Librada Contapay, and you saw Narciso Pizarro, what did you do next if any?

A I observed his movements, sir, I even followed him because I know that he should be in Maluyo. I supposed that he would be in Maluyo, because he was getting a carabao for which to pull something else, but I was surprised why he was there.

Q You said that we went to follow Narciso Pizarro was he alone when you followed him?

A He had a companion, sir.

Q To what direction did they proceed when you followed Narciso Pizarro and his companion?

A They proceeded to the direction of the house of Teodoro Taban, sir.

Q What did you do next after following Narciso Pizarro and his companion?

A I saw Felipe Jose and I asked him if that is Narsing (Narciso Pizarro) and he told me that it was Narciso Pizarro.

Q Where was Felipe Jose when you inquired from him if that was Narciso Pizarro?

A He was in their batalan urinating, sir.

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Q Why did you ask Felipe Jose as to the identity of the person who passed by you?

A I only said, "Is that Narsing?"

Q What was your purpose in asking that question from Felipe Jose?

A I had a suspicion because I know that Narciso Pizarro is not supposed to be around and he should be in Maluyo, so I asked Felipe Jose if that is Narsing, and he answered, 'Yes, Uncle.'

Q When Felipe Jose told you already that it was Narciso Pizarro who passed by also by their house, what did you and Felipe do next if any?

A Felipe Jose informed me because of the statement of Felipe Jose which he heard from Narciso Pizarro that because of the misunderstanding with his father-in-law, and if things go wrong he will be going to kill him, we tried to follow them for the purpose of observing what is going to happen.

Q You said a while ago that Narciso Pizarro and his companion proceeded to the house of Teodoro Taban, what did you and Felipe Jose do when you went to observe their movements?

A We hide at the banana plants.

Q How far is that place to the house of Teodoro Taban?

A About 50 meters, sir.

Q What happened next while you were hiding yourself and Felipe Jose among the banana grooves when you saw Narciso Pizarro and his companion proceeded to the house of Teodoro Taban?

A We heard a gun report, sir, and not long after, we heard again another gun report, so we went nearer the house of Teodoro Taban?

Q Where did the two gun reports emanated?

A Inside the house, sir.

Q In whose house?

A The house of Teodoro Taban, sir.

Q After hearing the two gun reports, what else happened if any?

A The light went out and we saw two persons going out of the batalan, one carrying a gun and the other one, immuko, sir.

Q Were you able to recognize those persons who went down from the batalan?

A I saw two persons but I only recognized Narciso Pizarro, sir, but when they went down, another person emerged from under the batalan making the group, three." (pp. 95, 96, 97 & 99, tsn., Nov. 15, 1972 hearing)

Likewise, Felipe Jose, pointed to appellant as one of those who passed by their house going to the direction of the

residence of the victims. Thus:

"Q In the night of June 6, 1971, in what particular place in Sitio Kinalian were you?

A I was in our house, sir.

Q Do you remember anything unusual that happened during that night?

A Yes, sir I remember.

Q What was that incident about, will you please tell to this Honorable Court?

A That night, I heard the barking of dogs. As I went out to urinate, I saw Narciso Pizarro and a companion.

Q You said one of the persons you saw was Narciso Pizarro, is that one Narciso Pizarro the person you have just pointed a while ago, the accused in this case?

A Yes, sir.

Q How far were you from them, when you saw Narciso Pizarro and his companion passing by?

A About five meters, sir.

Q What was the condition of the night when this Narciso Pizarro and his companion passed by your house?

A That time it was showering but there was the moon.

Q It was bright?

A Yes, sir.

Q After the accused and his companion passed by your house, what happened next?

A Filomeno de los Santos came to me and inquired if these persons who passed by Narciso Pizarro is one of them, and I answered him, yes.

Q After telling Filomeno de los Santos that the person who passed by your house and one of them is the accused in this case, what else happened?

A I know that this Narciso Pizarro should be in barrio Maluyo and I am surprised why he is here now, so I told him (Filomeno) that we follow them.

Q After that, what did you do next?

A He said, let us go and follow him because according to this Narciso Pizarro, it was only a week before, they told me that his in-laws are liars and that he was going to kill them.

Q Where did you talk with Narciso Pizarro a week before when he told you that his father-in-law is a liar and he is going to kill him?

A In our house, sir.

Q When you and this Filomeno de los Santos followed Narciso Pizarro and his companion to what direction did the accused and his companion go?

A They proceeded towards the east, sir.

Q Do you know in what place did they go when they proceeded east?

A I know, sir.

Q Where?

A They went to the house of Teodoro Taban because we followed them, sir.

Q Up to what place did you follow the accused and his companion when they proceeded to the house of Teodoro Taban?

A When we were nearing the house of Teodoro Taban, about 50 meters away, we heard two gun reports.

Q Where were these Narciso Pizarro and his companion when you heard the two gun reports?

A They were already inside the house of Teodoro Taban, sir." (pp. 119-121, tsn., Nov. 19, 1972)

The defense of alibi cannot prevail over the positive identification of appellant. No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused has been sufficiently and positively established by eye-witnesses to the crime. Alibi is easy to concoct, and difficult to disprove. For alibi to prosper, it is not enough to prove that defendant was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time. (People vs. Estrada, 22 SCRA 111). Otherwise stated, alibi is a defense with a bad reputation.

Regarding the statements, Exhibits "C", "C-1", and "C-2" and Exhibits "E" and "E-1", wherein appellant confessed to have committed the crime charged against him, the rule is clear that when such declaration expressly admits guilt the same may be given in evidence against him (Section 29, Rule 130, Revised Rules of Court). Early decisions of the Court state that if such statements are made freely and voluntarily, the confession constitutes an evidence of a high order, since it is supported by the strong presumption that no person of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime unless prompted by truth and conscience. (U.S.A. vs. de los Santos, 24 Phil. 329) Hereunder are the pertinent facts narrated by appellant in his statements, Exhibits "C", and "C-1" -

"7. Q - Will you please narrate to me in brief how the incident happened?

A - In the morning of June 6, 1971, Orencio Ramos and I met in the public market at Centro, Allacapan, Cagayan wherein said Orencio told me that he wants to kill Teodoro Taban. I also agreed and made the plan to kill Teodoro Taban on the night of June 6, 1971. After that, we went to sitio Kinalian, Burot, Allacapan, Cagayan and again both of us made the final plan to liquidate the old man. In the afternoon of that day, I left for Maluyo in order to deceive the people and on the evening I left barrio Maluyo to execute our plan. Orencio met me in a certain place and proceeded to the house of Teodoro Taban passing the house of BRIGIDA CONTAPAY and DONATO DE LOS SANTOS at sitio Kinalian, Burot, Allacapan, Cagayan. Upon nearing the house of Teodoro Taban, Alfredo Ramos appeared and joined us. Upon reaching the house of Teodoro Taban, we peeped inside the house and found the occupants sleeping. I then shouted "TATA TATA" and after that Teodoro raised up his body and at that juncture, Orencio fired his gun at the old man. After that the old man laid down and then Orencio and I went up inside the house. When we were up, the old man was still hovering between life and death, so I stabbed him once below the left armpit. At that time, the wife of Teodoro Taban identified Orencio and remarked, "WHY DO YOU KILL US BROTHER-IN-LAW" and at that instant Orencio fired his gun at the old woman. After that, Orencio said, "Let's go" and because the old woman was still alive and having recognized me, I again stabbed her twice below the left armpit and at the body. After that, Orencio told me to get the titles of the land owned by the old man so we forcibly opened the locker with their bolo. Because we could not locate the documents, we closed the locker and we went down from the house. After that Orencio, Alfredo and I left proceeding westward and upon crossing a creek, we separated and I went home to Maluyo.

8. Q - What participation did Alfredo do in the commission of the crime?

A - He was assigned to guard around the house when Orencio and I went up inside the house, sir.

9. Q - Was Alfredo present when the plan to liquidate Teodoro Taban was made?

A - None, but they might have made the arrangement with his brother Orencio, sir.

10. Q - What were your individual arms or weapons?

A - Orencio was armed with a home-made gun (Bulldog), Alfredo was armed with a bolo and I was also armed with a pointed knife (Imuco).

11. Q - You stated in your narration that when you shouted "Tata, Tata", the old man raised his body and that was the time when Orencio fired at him. Where was Orencio then at the time he fired gun at the old man?

A - Orencio was still on the ground as the house is very low and some portion of the walling of the house is open.

12. Q - What prompted you to kill the old man when in fact, Teodoro is your father-in-law?

A - Because of the hardship of life I and my family are sacrificing and my father in-law seems to ignore the will of his daughter by giving what is due to them in connection with the land since all his daughters are already married. Because of that attitude, that prompted me to commit the crime." (pp. 4-5, Record)

The above statements contained informations that could not have been known to the police. His claim therefore that he was maltreated into executing the same cannot be believed. Further, the finding by the police officers of the gun used in the commission of the crime in the place pointed to by said appellant is a strong proof of his participation in the commission of the crime. Hereunder is his statement, Exhibit "E" and "E-1", pertinent to the death gun:

"6. Q - Presenting to you these homemade gun (Bulldog), gauge .16, serviceable. What relation has this to that of the firearm which you buried and recovered at barrio Maluyo if there is any?

A - That is the very gun which I buried and recovered by us at Maluyo, sir.

7. Q - Is this the firearm used in killing the late Teodoro Taban and his wife, Maria Pescador at sitio Kinalian, Burot, Allacapan on the night of June 6, 1971?

A - Yes, sir." (p. 21, Record)

Thus, assuming that his extra-judicial confessions were involuntary, they are admissible.

"x x x even assuming the involuntary character of said confessions, the finding of the bones and hair above referred to confirms the admissions of guilt and renders the confessions admissible in evidence. In the case of Bery vs. U.S., 2 Col. 186, it was held that 'if the involuntary confessions are confirmed on material points by facts subsequently discovered in its consequence, the whole confession should be received and admitted as evidence. * * * The finding of the goods at the place indicated not only tends to corroborate the declaration of the prisoner that they will be found there but also his declaration that he stole them and concealed them at that place, if he made this statement.'" (People vs. Garcia, et al., 99 Phil. 381, 386).

The above statements, Exhibits "C", "C-1", "C-2", "E" and "E-1", were given in July 1971, or before the 1973 Constitution took effect. While it is true that they were given without the aid of counsel, this Court has ruled in Magtoto vs. Manguera, 63 SCRA 4, 12 and in People vs. Julianio, 95 SCRA 511 that "[t]his specific portion of this constitutional mandate has and should be given a prospective and not a retrospective effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been

informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date."

WHEREFORE, the appealed decision is **AFFIRMED**. However, for lack of the necessary votes, the penalty is reduced to double reclusion perpetua and the indemnification to the heirs of Teodoro Taban and Maria Pescador is increased to P30,000.00 for each.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Fernando, C.J., and Makasiar, J., on leave.

Teehankee, Acting C.J., no part.

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