

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JULIO CONTANTE, DEFENDANT AND APPELLANT.

G.R. No. L-14639. December 28, 1964

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PER CURIAM:

Appeal from a decision of the Court of First Instance of Camarines Sur finding the herein appellant guilty as charged of the crime of murder and sentencing him therefor to suffer the capital punishment.

In the evening of June 26, 1952, shortly after partaking of his supper with his wife, Anatolio Adayo was shot to death in his own house in Panagan, Mabaludbalud, Tigaon, Camarines Sur. Upon investigation by the local police authorities, a criminal complaint for murder was filed with the Justice of the Peace Court of Tigaon against Tomas Garchitorena and the herein appellant, Julio Contante. At the termination of the preliminary investigation, Tomas Garchitorena was discharged from the complaint for insufficiency of evidence and the case was forwarded to the Court of First Instance of Camarines Sur as to the other accused, Julio Contante.

On the remand, the Provincial Fiscal forthwith filed the corresponding information for murder, alleging as qualifying circumstances evident premeditation and treachery and the aggravating circumstance of nighttime.

At the trial, the case for the State was presented as follows:

Some four months prior to the killing, Anatolio Adayo chanced upon his wife, Luz Rodriguez, in the act of adultery with Tomas Garchitorena, a prominent lawyer and abaca plantation owner of Tigaon, Camarines Sur. Naturally, the aggrieved husband reacted violently to the scene although before he could lay his hands on Garchitorena, the latter had ran and escaped at Anatolio's indignation. However, Anatolio was able to get hold of his wife whom no then pummeled with fist blows.

In the days that followed, Anatolio and his wife under a most strained relationship. As Luz herself testified, she "was punished" and "not treated well." After about four days, however, and upon her entreaty, Anatolio forgave her, took her back and treated her once more as his wife.

A week after Luz was forgiven, Tomas Garchitorena returned to the house of the Adayos while Anatolio was away. He talked with her. He inquired if she would agree to have her husband killed. In her own words at the witness stand, she was asked thus: "Luz, do you like me to have your husband killed so that you can be mine?" As she was then sincerely contrite, she emphatically rejected the proposal. She explained that her husband had already forgiven her and, therefore, that it was unthinkable to as much as wish him ill. She told Garchitorena that if that was how he would repay her husband's kindness, then she would have no more of him, Garchitorena, for "I do not like you anymore." The lawyer remarked, however, that it did not matter any that she disagreed as, nevertheless, he would kill Anatolio or have someone kill him.

Later still, on February 19, 1952, Tomas Garchitorena again dropped in at the Adayo household looking for trouble. He brought with him an M-1 rifle, popularly known as "Carbine," and brandished it at Anatolio whom he dared to fight. By some fortunate turn of events, however, Anatolio was able to wrest the firearm from

Garchitorena, and, instead of accommodating the latter's invitation to fight, Anatolio took custody of the gun, turned the same over to the Philippine Constabulary and caused to be filed against the lawyer separate criminal complaints for illegal possession of firearm and grave threats. Until the trial of this case, these two criminal charges against Garchitorena were still pending.

On March 2, 1952, Garchitorena summoned to his house the overseer of his abaca plantation, Vivencio Ditan, and proposed to him the murder of Anatolio. Caught aback and unprepared by so strange a bidding, the overseer inquired from his employer what fur was he plotting on the life of Anatolio. Garchitorena replied that he wished the former to be silenced from testifying against him in the cases for illegal possession and grave threats. Ditan declined, affirming that he could not possibly undertake the crime as Anatolio was his Godfather, a sponsor to his wedding.

A few days after rejecting Garchitorena's offer, Ditan was relieved of his post as encargado of the plantation. In his place was appointed the appellant herein, Julio Contante. However, Ditan continued to work for Garchitorena and was even assigned a room in the latter's house in the poblacion where he would put up on nights that darkness overtook him.

One night in May, 1952, as Vivencio Ditan was about to retire to the room assigned to him in the house of Garchitorena, he heard the voices of two men conversing in the room adjacent to his. Peeping through a hole in the wall separating the two rooms, Ditan saw that the voices belonged to Garchitorena and the herein appellant, Julio Contante. As Ditan testified at the trial, he overheard Garchitorena speak to Julio, thus: "You must help me because you are my 'ahijado'. This case against me is hard." Julio was then offered P500.00 to kill Anatolio Adayo plus the assurance that should he be caught or imprisoned, he, Garchitorena, would, "take care" of his family. Towards the end of the conversation, Ditan heard Julio accept the offer. The latter even asked what weapon Garchitorena would want him to use. Tomas Garchitorena replied that a shotgun would be preferable as he, the appellant, would more likely not miss with it.

At about 7:00; o'clock in the evening of June 26, 1952, shortly after supper, Anatolio and his wife prepared to retire for the night. Just before repairing to their bedroom, however, Anatolio went to the main door, which was still open, presumably to close it. It seemed, however, that something stuck in the upper portion of the door for Anatolio took a chair, placed it beside the door, stood on it and raised his hands in an attempt to reach for and move the upper frame of the said door. At exactly the moment that he had his hands thus raised, the blast of a shotgun was heard and almost simultaneously, Anatolio fell dying on the floor. Though he died almost instantly, his wife clearly heard him moan "It happened"! just before passing away.

Luz screamed for help. Her shouts drew to the house their nearby neighbors. Among those who came was a brother of the victim, Marciano Adayo, who happened to be passing by on his way home from stripping abaca. By some coincidence, as he was rushing to his brother's place, he met the herein appellant, upon whose face he even trained his flashlight, carrying a double-barreled shotgun and scampering away from the victim's premises. They even had a brief exchange of words because Marciano asked Julio what the shot was about to which Julio replied he did not know. When, therefore, he arrived at his brother's house and saw that Anatolio had been shot, he related at once to the crowd that had by then gathered his having seen the appellant running away with a shotgun.

Another neighbor who rushed to the house was Vivencio Ditan. On being told that Anatolio had been shot, he carefully examined the wounds and observed that the victim could not have been killed by an ordinary rifle but only by a shotgun for the wounds about the victim's body were caused by scattered pellets. At the trial, Ditan recalled that among Garchitorena's trusted farm hands, only the appellant had been issued a shotgun by the latter. Ditan further testified that he knew of that fact as he himself was once Garchitorena's encargado and that even as

he was succeeded by the appellant as such foreman, he continued to work for Garchitorena.

In due time, the Camarines Sur Philippine Constabulary looked for and located the appellant in Maangas, a relatively distant barrio from Panagan. He was then taken into custody and brought to the Philippine Constabulary headquarters where he was interrogated the following day. At the PC investigation, his statements were taken in a question-and-answer method. He freely owned the crime and admitted that he carried it out at the inducement of Tomas Garchitorena and in consideration of monetary reward. The records do not suggest any irregularity in that proceeding. The inquest was conducted in the office of PC Lieutenant Piniones near the Southern Luzon Colleges, in the presence of a number of soldiers and, except for the usual agitation of one being grilled, the appellant appeared normal during the entire question and answer period. As a matter of fact, the appellant truthfully pointed to where he threw away the shotgun for the PC recovered it in the thick grass of Oscini, Tigaon as he indicated. Ballistic tests conclusively established it as the fatal weapon.

At the end of the investigation, the appellant was brought to the Deputy Clerk of Court of Naga City before whom he freely and voluntarily signed the statements he gave at the PC headquarters. Before affixing his signature, an employee in the said office translated for him in his vernacular the contents of the document. Too, the Deputy Clerk of Court administered the oath and subscription only after he had satisfied himself of the appellant's free disposition on the matter. Thereafter followed a re-enactment by the appellant of the shooting during which he demonstrated the little details that attended the commission of the crime. The re-enactment was witnessed by a PC captain, some soldiers, the Provincial Fiscal and the widow Luz Rodriguez. Photographs of the re-enactment were likewise taken.

The defense was alibi. At the trial, the appellant offered two witnesses, Pedro Relleda and Segismundo Alvarez, who testified having seen the appellant, on the night of the shooting, at a gathering in Maangas, Lagonoy. Maangas is a barrio separated from Panagan by a two-hour boat ride and a short bus trip. In the premises and consistently with the defense of alibi, the appellant offered evidence impeaching the testimony of Marciano Adayo. It should be recalled that Marciano Adayo was the prosecution witness who swore having seen the appellant running away from the scene of the crime carrying a shotgun. To discredit him, the appellant presented a number of witnesses who claimed to have seen Marciano far from Panagan at approximately the time that the murder was committed. Thus, defense witness Teodoro Alcoba claimed that he was one of the neighbors who ran to the Adayo house in response to the cries for help of Luz Rodriguez. He declared that Marciano was never among those who came. Another witness, Faustino Banguito, declared that Marciano could not have been in Panagan when the incident occurred because at more or less that time, he saw Marciano in Mabaludbalud. Finally, there was one Eligio Dacoco whose testimony was to the effect that at about 6:00 o'clock in the evening of a day in question, he and Marciano were together in a bus for Anawan.

Consistently too with the defense of alibi, the appellant repudiated the extrajudicial confession the previously executed, charging that his signature thereon was secured by force and duress.

After trial, the lower court found the appellant guilty beyond reasonable doubt "of the crime of murder qualified by teachery and with the attendance of the aggravating circumstances of place and dwelling."

In this appeal, counsel for the appellant prays for the review of the judgment on these two points, namely: First, the lower court's finding that alibi was not sufficiently established and, second, that the circumstantial evidence presented on the case warrant a conviction.

The determination of whether or not alibi as a defense has been sufficiently established is essentially an issue of fact. The reason is because by its very nature, alibi is established by the testimony of witnesses who vouch for the presence of the accused at some place so far removed from the scene of the crime as to cast reasonable doubt on

his actual participation in the offense charged. As a consequence, the credibility of an alibi depends so much on, and may very well be equated with the credibility of the witnesses who seek to establish it. On that account, therefore, and in that respect, the relative weight which the trial magistrate assigns to the testimony of said witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted. For his proximate contact with those who take to the witness box places him, compared to appellate Justices, in the more competent position to discriminate between the true and the false (*People vs. Cristobal*, 110 Phil. 741; *People vs. Tila-on*, G. R. No. L-12406, June 30, 1961). We must decline, therefore, the request for a review of the lower court's finding on appellant's plea of alibi.

Besides, We have repeatedly ruled in the past that alibi is the weakest of all defenses as it is the easiest to fabricate and concoct. The view We have adopted is that unless it is so convincingly demonstrated, the defense ought not be given credence (*People vs. de los Santos, et al.*, 93 Phil., 83; *People vs. Mesias*, G. R. No. L-19250, Aug. 30, 1963; *People vs. Ramos*, G. R. Nos. L-17402-03, Aug. 31, 1963.) It is all the more true when, as in this case, the prosecution evidence positively established the presence of the accused at the time and place of the commission of the offense (*People vs. Baniaga*, 110 Phil., 890).

The second issue refers to the sufficiency of the circumstantial evidence taken into account by the trial court. It is urged that they do not come up to the measure sufficient to justify a verdict of guilt beyond reasonable doubt.

To warrant a conviction in criminal cases upon circumstantial evidence, such evidence must be more than one, derived from facts duly proven, and the combination of all of them must be such as to produce conviction beyond reasonable doubt (Rule 123, Sec. 98, Old Rules of Court; now sec. 5, Rule 133; *U.S. vs. Levante*, 18 Phil., 439; *People vs. Diño*, 46 Phil., 395; *People vs. Chan Uh*, 51 Phil., 523). Of course, no general rule has been formulated as to the quantity of circumstantial evidence which will suffice for any case, but that matters not. For all that is required is that the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt (*People vs. Ludday*, 61 Phil. 216).

How fully has the lower court applied the foregoing formulations?

The decision of the court below under appeal recites the following circumstances as demonstrating beyond doubt appellants' guilt:

"1. In the early part of 1952 Tomas Garchitorena decided to kill Anatolio Adayo because he wanted the latter's wife with whom he maintained an illicit relation exclusively for himself and in order to prevent him from testifying for the prosecution in two criminal cases in which he was the accused;

"2. To carry out his resolution, Tomas Garchitorena asked Vivencio Ditan in March, 1952 to kill Anatolio Adayo for him and when Vivencio Ditan refused, he next asked Julio Contante in May of 1952 to do it;

"3. Julio Contante agreed to kill Anatolio Adayo with a double barrel shotgun previously given to him by Tomas Garchitorena in consideration of P500.00 to be paid by Tomas Garchitorena;

"4. At about 7:00 o'clock at night of June 26, 1952, Anatolio Adayo was shot on the back while he was standing on a chair in his house and as a result of the injuries he received he died almost instantaneously;

"5. About three minutes after the shooting, Julio Contante was seen on the road about one hundred meters from the house of Anatolio Adayo walking hurriedly and carrying a double barrel shotgun;

"6 At the investigation which followed Julio Contante executed the affidavit, Exh. E, in which he admitted having shot to death Anatolio Adayo. He also indicated therein the place where he threw the shotgun away;

"7. After various searches in the vicinity pointed by Julio Contante, the shotgun (Exh. B) was found by Barrio Lt. Florentino Dacoba; and

"8. Julio Contante re-enacted the shooting before Asst. Provincial Fiscal Gaudioso Tena. Exhibits C and D are pictures of the demonstration."

If the circumstances above enumerated have indeed been proved at the trial, then we do not see any room for dispute as to their sufficiency for conviction. They are more than one and clearly consistent with a hypothesis of guilt. Considered in their totality, they certainly exclude every reasonable hypothesis of innocence. It all remains, therefore, for this Court to determine whether the circumstances above recited were duly proved.

Said the lower court:

"Coming to the second question, it appears that of the eight circumstances relied upon by the prosecution for conviction, the first three which concerned with the motive behind the shooting and the inducement of Julia Contante by Tomas Garchitorena to commit it, rested solely on the testimonies of Luz Rodriguez and Vivencio Ditan who were also presented as defense witnesses. In their subsequent declaration about these circumstances, they completely repudiated what they had previously testified stating further that their former statements on the matter did not contain the truth. Their recantation has thus left these first three circumstances without any leg to stand on.

The evidence fully supports the fourth circumstance. It is established by the testimonies of Marciano Adayo, Dr. Diosdado Lahom and Teodoro Alcoba, the latter a defense witness, not to mention Luz Rodriguez whose recantation made no reference to this circumstance. Exhs. A, F and G corroborate effectively their testimonies. All together they prove that at about 7:00 o'clock in the evening of June 26, 1952, Anatolio Adayo was shot on the back while he was standing on a chair in his house resulting in his instantaneous death.

"The fifth circumstance is also supported by the evidence. Marciano Adayo convincingly testified that about three minutes after he heard the gunshot from the direction of the house of Anatolio Adayo he met Julio Contante on the road about one hundred meters from the said house walking hurriedly and tarrying a double barrel shotgun. There could be no doubt that he identified him correctly because he turned on him his flashlight and he even exchanged conversation with him. It is true Teodoro Alcoba testified that he did not see Marciano Adayo upon his arrival in the house of Anatolio Adayo at about five minutes past 7:00 o'clock, but this does not necessarily prove that Marciano Adayo was not in the vicinity of the house of Anatolio Adayo and had not gone up the house at and shortly after seven o'clock, because considering that it took Marciano about five minutes to reach the house after he heard the shot and that about the same period of time had elapsed before Teodoro Alcoba arrived at the house, it was probable that when the latter arrived the former had just left the house and gone out to notify his parents of the occurrence. Moreover, the estimate of Teodoro Alcoba of the time that had passed from the moment he heard this shot until he arrived at the house is not reliable. It was shown at the trial that he did not know what a minute is and how many minutes has an hour. When he was asked how long he had been testifying on the witness stand, his answer was five minutes but this was wrong because he started testifying at 9:15 and it was 9:30 when he was asked the question. It was more likely, therefore, that his estimate was inaccurate and that he actually arrived in the house several more minutes after 7:05.

"The testimony of Faustino Banquito that he saw Marciano Adayo met Luz Rodriguez in Mabaludbalud at past 7:30 p.m. of June 26, 1952, cannot also impeach the testimony of Marciano Adayo. It will be recalled that Marciano Adayo testified that shortly after he had gone up the house of Anatolio Adayo he left immediately for Mabaludbalud to notify his parents of the untimely death of his brother. This explains his presence in Mabaludbalud at about 7:30 because he went in fact to the said barrio after having left the house of Anatolio Adayo.

"Likewise, the testimony of Eligio Dacoco that Marciano Adayo boarded a bus in Tigaon at 6:30 p.m. of June

26, 1952 and was his co-passenger until 6:35 cannot disprove the presence of Marciano Adayo in the vicinity of the house of Anatolio Adayo at about 7:00 o'clock in the evening. Eligio Dacoco admitted on cross-examination that the same bus was to pass by the house of Anatolio Adayo which was only about one kilometer from whom he got off and that Marciano Adayo who continued to ride on the bus could have reached the neighborhood of the house of Anatolio Adayo even before 6:40 of the same evening.

"Lastly, the defense tried to impeach Marciano Adayo by showing that he did not reveal to any police officer that fact that he met Julio Contante. This has no merit because Marciano Adayo communicated what he knew to Sgt. Pesimo and made a remark about it to a local policeman, but they not take him seriously because they said that his testimony would not be believed as he is a brother of Anatolio Adayo.

"The sixth circumstance is also sufficiently supported by the evidence. The testimony of Sgt. Pesimo, Deputy Clerk Malaya and clerk Mauro Fajardo all proved clearly that Julio Contante executed Exhibit E knowingly, freely and voluntarily. The said sworn statement was prepared at the investigation of Julio Contante by Sgt. Pesimo. When it was finished, Julio Contante was taken to the office of the Clerk of Court for his oath and signature. Upon reaching the said office, Deputy Clerk Malaya asked clerk Fajardo to translate into Bicol the contents of the affidavit to Julio Contante. In compliance Fajardo translated to him each and every question and answer appearing in the affidavit. When the translation was finished, Fajardo asked Julio Contante if he understood the contents, and after Julio Contante had replied affirmatively, Fajardo took him back to Deputy Clerk Malaya, who in turn asked Julio Contante if he understood the contents. Julio Contante again answered in the affirmative, after which he swore to the truth of the statements and signed the affidavit before Malaya. All these facts clearly show that Julio Contante had full knowledge of the contents and that he subscribed and swore to their truth freely and voluntarily. There could be no doubt about its spontaneity, because the office of the Clerk of Court is always full of people and is only a few meters from the session hall of this Court. Obviously, the use of threat, force or coercion in the said office is even unthinkable.

"The finding of a bluish discoloration on the abdominal region of Julio Contante by the charity physician of Gao does not necessarily prove that Julio Contante was maltreated by the PC soldiers. The physician testified that Julio Contante was brought to her by the PC soldiers themselves for physical examination. If they had maltreated him, it would be the height of folly on their part to bring him for physical examination. Moreover, the physician could not be certain when she made the examination. At one time she said she examined Julio Contante about a month before she took vacation leave in June of 1953. Considering that the alleged maltreatment happened in July, 1952, the hematoma found at the examination could not have been caused by the maltreatment.

"The seventh circumstance is likewise supported by the evidence. Julio Contante admitted in his affidavit that he threw the double barrel shotgun, Exhibit B, among the thick grasses near the road in Ocini while he was going to Maangas in the night of June 26, 1952. Sometime in the middle of July, Julio Contante, accompanied by Sgt. Pesimo and Private Buenaflor, went to the place he indicated and made a search for the shotgun, but they did not find it. However, Florentino Dacoba, barrio lieutenant of Panagan who accompanied them, continued the search on subsequent occasions at the request of Sgt. Pesimo, and on October 10, 1952, he finally found the murder weapon near the trunk of a big tree about one hundred meters from the spot originally pointed by Julio Contante.

"The identity of the shotgun was well established. Marciano Adayo declared that it was the same gun carried by Julio Contante when he met him. This testimony cannot be doubted, because he is familiar with the firearm having seen it many times before. The gun was also identified by Vivencio Dian as the one given to Julio Contante by Tomas Garchitorena for use by the former for shooting deers and wild pigs for the latter. This part of his previous testimony was not subsequently repudiated by him. On the other hand, the testimony of Aurelio Tirzo that the land where the shotgun was found was bulldozed in July, 1952 and he did not see then any fire-arm in the whole area, cannot overthrow the evidence of the prosecution. His testimony amounts to a negative evidence and as such it cannot prevail over the positive declaration of Florentino Dacoba. Moreover,

his credibility is in doubt because he lives in a house belonging to the mother of Tomas Garchitorena.

"The eight circumstances likewise finds full support in the evidence. The testimony of Fiscal Tena and photographer Peñas disclosed beyond any doubt that Julio Contante willingly and freely re-enacted the crime. These two witnesses are disinterested parties and have no motive of any kind to testify falsely against Julio Contante. The re-enactment strongly implies that Julio Contante really shot Anatolio Adayo to death because he could not have repeated the same acts with all the accompanying details had he not performed them before."

While the eight circumstances only were admittedly established, still the remaining five fulfill the requisites of Rule 123, Sec. 98 of the old Rules of Court. They still make out "an unbroken chain which leads to but one fair and reasonable conclusion which points the defendants to the exclusion of all others as the guilty person (U.S. vs. Decusin, 2 Phil., 536; U.S. vs. Villas, 6 Phil. 510)". They still lead the mind irresistibly to one conclusion, namely, the guilt of the person charged. (U.S. vs. Reyes et al. 3 Phil. 3; U.S. vs. McCormick, 15 Phil. 185)

We find no error in the appealed decision. The crime committed was murder qualified by treachery and aggravated by the circumstances of price and dwelling.

Before, passing sentence, however, this Court would like to make of record its concurrence with the serious observation of the Solicitor General's Office that there seems to have been allowed in this case a "travesty of justice." A simple, uneducated farmer has been made to shoulder the full burden of somebody else's evil. Without, of course, condemning him before he has been heard, it is this Court's profound view that Atty. Tomas Garchitorena should not have been excluded at all from the prosecution of this case. This is not to say Tomas Garchitorena is guilty; this is only to point out that justice and the rule of law would have been served far more by his inclusion rather than by his exclusion from the indictment prepared against Julio Contante alone.

This Court would, therefore, hope that the Department of Justice would inquire into this aspect of the case. If the prosecution of Tomas Garchitorena is still feasible within the framework of existing laws, he should be tried. Not only that truth may come out, but more so that Tomas Garchitorena may have his day in court.

IN VIEW OF ALL THE FOREGOING, and considering the apparent lack of education of the appellant Julio Contante, this Court is unable to reach the requisite votes for the imposition of the death penalty. Consequently, the sentence of the lower court is hereby lowered to the penalty next lower in degree, reclusion perpetua. And, conformably with previous decisions of this Court, the indemnity for the heirs of the victim should be increased to P6,000. With costs.

Bengzon, C.J., Bautista Angelo, Reyes, J. B. L., Barrera, Parades, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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