

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FILOMENO VACAL, AND FIDENCIO VACAL, DEFENDANTS,
FILOMENO VACAL, DEFENDANT-APPELLANT.**

G.R. No. L-20913. February 27, 1969

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

Appeal by defendant, Filomeno Vacal, from the sentence of reclusion perpetua imposed upon him by the Court of First Instance of Southern Leyte.

Filomeno Vacal and Fidencio Vacal were accused-as principals of the murder of Ignacio Ruiz. Filomeno Vacal Was convicted, but Fidencio Vacal was acquitted on the ground of insufficient evidence to identify him as the carbine-armed companion of the former.

At about 10:00 o'clock on the starry night of March 20, 1960, four men, Hilario Baclayon, Ignacio Ruiz, Nemesia Musico and Serapio Humangit, were walking single file in that order on the trail from Katublian to Katong, Hinunangan, Southern Leyte. As they neared a cable post, Filomeno Vacal, with a pistol in his right hand, suddenly appeared near the right side of Ignacio Ruiz and shot him dead. Filomeno Vacal was recognized by Baclayon, Musico and Humangit, who knew him very well, as the assailant. In their testimonies at the trial, these three positively identified Filomeno Vacal as the person who shot Ignacio Ruiz dead.

There is credible evidence that Filomeno Vacal was an enemy of Ignacio Ruiz who claimed ownership by inheritance of a parcel of coconut land which, according to Filomeno Vacal, had been sold to him by Ruiz, father. Filomeno Vacal filed a criminal complaint against Ignacio Ruiz for qualified theft of coconuts, but the court, on motion of the Fiscal, dismissed the complaint on the ground that the case between them was civil in nature and not criminal.

The autopsy report reads:

"EXTERNAL EXAMINATION

"1. Clothing - On examination the deceased was wearing a long denim pants, a bloody white T-shirt. The blood stains were located at the corresponding location of the wounds at both sides of the body.

"2. Body - The body was that of an adult male Filipino, fairly developed, fairly nourished, about 5 ft. and 2 in. tall, and about 105 lbs. weight. There is already complete postmortem rigidity all over the body. The skin is pale, eyes open with both pupils dilated and mouth open.

"External signs of violence found in the surface of the body were:

"1. A circumscribed smooth aperture about 1/2 cm. in diameter located in the rt. lateral aspect of the body 3-1/2 in. from the lower border of the lower floating rib. A thin halo of black line was found just around the wound denoting powder burns.

"2. A circumscribed slightly serrated aperture about 3/4 of an inch in diameter located in the left lateral aspect of the body 6 in. above the lower border of the lower rib.

"The imaginary line connecting the two wounds, would pass over the xyphoid process.

"Wound direct upwards at an elevation of 2-1/2 in. from the baseline.

"3. Multiple pin size perforations in the inner aspect of the arm about 3 in. above the corticoid process of the rt. arm.

"On further examination a probe was in-serted to the first wound which could pass only after several attempts. Blood oozed from both apertures.

"CONCLUSION

"From the foregoing post-mortem findings the following conclusions were made:

"1. That the wound above described on account of its appearance, character and extent are to be classed as a single perforating wound, the entrance of which is at the rt. lateral aspect, and outlet at the left lateral aspect of the body.

"2. That Ignacio Ruiz died of internal hemorrhage which resulted directly following the infliction of the above described wound of the thoracic cage.

"3. That judging from the appearance and location of the wound the assailant must have been at the right side of the victim.

"4. That the above described wound on account of its nature, appearance and character is caused by a gunshot.

"5. That the multiple pinpoint perforations on the inner aspect of the arm was caused by gunpowder burns.

"6. That the assailant is not far from the victim during the shooting due to the presence of gunpowder burns.

"7. That the assailant was slightly lower than the victim from the baseline judging from the nature and extent of the wound.

(SGD.) B.E. JOSTOL, M.D.

Municipal Health Officer"

The lower court found the accused, Filomeno Vacal, guilty of murder with treachery as the qualifying circumstance, with the aggravating circumstance of nocturnity offset by the mitigating circumstance of passion, and obfuscation, and sentenced him to the penalty of reclusion perpetua. Defendant was also ordered to pay P3,000 as indemnity to the heirs of Ignacio Ruiz.

Appellant contends that the lower court erred in finding that his identity was sufficiently proved. The contention is untenable. The argument that the night was dark, and that witnesses Baclayon, Musico and Hu-mangit could not have recognized the appellant, is untenable. Against this argument we have the testimonies of the said three witnesses positively identifying Filomeno Vacal as the person who shot Ignacio Ruiz dead. They testified that the stars were shining in the sky, that visibility was fair and not poor and that they recognized Filomeno Vacal who was very well known to all of them. Visibility must have been fair because the murderer himself was able to recognize and single out his victim from among the four pedestrians. Appellant also argues that as these three witnesses did not report the murder to the authorities and that they identified him as the murderer only when they were questioned by the police, such conduct shows that they did not recognize him as the murderer. This argument is not logical and cannot overcome the positive identification of appellant by said three witnesses as

the killer.

Appellant's defense of alibi is too elaborate and too good to be true. The alibi was testified to by said appellant, his brother Fidencio, and Pio Mangaron. In substance, they declared that in the afternoon of March 20, 1960, Pio Mangaron and a friend, Salvador Bastes, were, in the cockpit at the poblacion of Hinunangan; that after witnessing one cockfight, they went to look for Filomeno Vacal, who was authorized by the Mayor to propose appointments to municipal positions, to follow up their appointments for janitor and policeman, respectively; that when they saw Filomeno Vacal, they invited him for drinks and supper at Salvador Bastes' house at barrio Kanipaan, which is about three kilometers from the poblacion; that the three hiked to Kanipaan where, after arriving at his house, Salvador Bastes ordered his wife to prepare supper for Filomeno Vacal; that the latter refused to eat because he remembered that his brother, Fidencio, was holding a party at the poblacion in celebration of his child's baptism the day before; that Filomeno Vacal instead invited his companions to Fidencio's place; that they hiked back from Kanipaan to the poblacion, arriving at about 8:30 o'clock; that they stayed in Fidencio's house until 12:00 o'clock midnight; and that among the guests present were the Mayor, the Municipal Secretary, a councilor and other prominent persons.

However, none of these prominent persons mentioned by the defense witnesses testified in support of the alibi. The Mayor, who was supported in the previous elections by Filomeno Vacal and for whom he was working as secretary for appointments and promotions, did not testify despite notices to him to appear and testify. None also of the other prominent persons allegedly present at the party of Fidencio Vacal testified for appellant. Of the many other persons allegedly present at the party, only Pio Mangaron, who needed Filomeno Vacal's recommendation for appointment as janitor, testified for him.

The lower court did not err in finding that the killing was attended with the qualifying circumstance of treachery. There was absolutely no defense against the sudden pistol shot which caused the instantaneous death of the victim.

The lower court erred in finding that the aggravating circumstance of nocturnity was present. There is no evidence that the accused purposely sought the nighttime for the commission of the crime. The lower court also erred in finding that the mitigating circumstance of passion and obfuscation was present. There is no evidence to establish passion and obfuscation.

PREMISES CONSIDERED, that part of the appealed judgment sentencing the appellant to reclusion perpetua, is affirmed. That part of the judgment ordering the appellant to pay an indemnity of P23,000 to the heirs of Ignacio Ruiz, is modified by increasing the amount to P12,000.

Costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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