

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NEMESIO LASTIMOSO ET AL., DEFENDANTS. NEMSSIO LASTIMOSO,
APPELLANT.**

G.R. Nos. L-675-76. May 27, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by one of two accused, Nemesio Lastimoso, for reversal of a judgment of two convictions for murder, the other defendant, Jose Lastimoso, having been acquitted. The facts in so far as they are not controverted are these:

About 7 o'clock p. m. on May 5, 1945, Pedro Sanchez came down his house in barrio Vito, Barili, Cebu, followed by his son, Leoncio, twelve, with a lighted oil lamp, to pick calamungay leaves. Pedro and Leoncio were about one braza from each other in the yard, a few steps from the house, when the former was shot and killed instantly. Leoncio was also shot and wounded as he came to his father's aid but he recovered. Urbana Cayude, a maid-servant, was hit by a bullet inside the house and died, too, the same night from the effects of her injuries.

Leoncio Sanchez pointed to Nemesio Lastimoso and Jose Lastimoso as the assailants. He said that Nemesio Lastimoso and Jose Lastimoso were about three brazas apart when they shot his father; that about twelve shots were fired; that he could not identify Jose Lastimoso because Jose was behind Nemesio.

Vivencio Sanchez, 22 years old, another son of the deceased, testified that he was on the steps of their house when his father was killed; that he saw Nemesio Lastimoso firing when he (witness) was helping his father after the latter fell; that he could not identify Jose Lastimoso at that moment; that he had known Jose Lastimoso for a long time but had seen Nemesio only that night; that after his father was wounded Lastimoso continued firing at the fallen man, on account of which he (witness) started to escape and was hit in the right side; that Nemesio was near the spot where his father dropped and died.

Emigdio Barazon testified that on May 5, 1945, he was in the outpost of volunteer guards, of which he was a leader, in barrio Cawasan, near the road; that Pedro Sanchez's house was in barrio Vito, about one kilometer from that place; that at sunset Nemesio Lastimoso and Jose Lastimoso stopped at the outpost and lighted cigarettes; that the two Lastimosos walked away before he had a chance to talk with them but he heard Jose ask Nemesio if Pedro Sanchez's house was still far and heard Nemesio answer, "Keep quiet, it is already very near;" that the two men took the direction of Pedro Sanchez's house; that Nemesio was carrying a rifle on his shoulder and Jose Lastimoso ammunition in his belt. Barazon further said that at about 7 o'clock, he heard reports of a gun which scared his subordinates; that shortly afterward he saw the two accused running past the outpost and asked them what was the matter, asked them if it was Japanese who were shooting, but neither of them answered; that he had known Nemesio since he was a boy because he attended school in witness's barrio, although he had seldom met Jose Lastimoso; that darkness had set in when the two defendants came running after the shooting but there was a bonfire.

Prisca Roco, Sanchez's widow, said that she was in the house with Urbana Cayude when she heard gunshots; that Urbana was also hit and upon seeing her servant wounded she fled to her parent's house believing that Japanese stragglers were making a raid.

As to the motive, Vivencio Sanchez declared that Nemesio Lastimoso suspected the deceased of being a witch and of having effected Nemesio's parents' death by sorcery; that, besides, Adriana Sanchez (Nemesio's mother) and Pedro Sanchez had had a quarrel over a piece of land. On cross-examination this witness admitted that he had learned of Nemesio's suspicion that the deceased was a witch and of the land trouble by hearsay.

In addition to the foregoing testimony, the prosecution introduced in evidence a written and sworn confession of Nemesio Lastimoso, translation of which from Visaya into English is of the following tenor:

"I, Nemesio Lastimoso, single, 19 years of age, resident of barrio Talibas, San Carlos, Negros Occidental, after having been duly sworn according to law, depose and say:

"If I have not forgotten, in the morning of the 5th day of May, 1945, I arrived at Pinamungajan, Cebu, from Negros. Then I proceeded to barrio Tutay, Pinamungajan, with the purpose of gathering our corn because we have a piece of land there. Upon arriving at the house of Modesto Lastimoso, it happened that Jose Lastimoso, son of Modesto, came from the battle of Babag, Cebu, because he was a soldier. At his house Modesto Lastimoso inquired as to the cause of the death of my parents and two brothers. To that I replied that they were subjected to the devil powers (barang) of Pedro Sanchez. Upon hearing this, Jose Lastimoso invited me to accompany him because he would kill them (Pedro Sanchez and family) with his rifle. We agreed and he had with him 14 rounds of ammunition. At 2:00 in the afternoon of that day, Saturday, May 5, 1945, we started from Barrio Tutay for Vito, Barili. We arrived at the house of Pedro Sanchez at about 8:00 p.m. and at that time Pedro Sanchez happened to come down at a distance of about 2 meters from the stairs of his house. When Jose Lastimoso saw him, he at once aimed and fired two shots, and subsequently fired at the direction of the house ten shots. After the twelve shots we went home and believing that Pedro Sanchez was hit and died because we saw him by the light of the lamp. At the house of Jose Lastimoso, he forbid me to keep that secret. The following Monday, I went back to Negros."

And Delfin Ginobana, justice of the peace of Barili, testified that the above confession was subscribed and sworn to voluntarily and that at the preliminary investigation Nemesio Lastimoso pleaded guilty while Jose Lastimoso pleaded not guilty and waived his right to such investigation.

Nemesio Lastimoso took the witness stand and denied that he killed Pedro Sanchez, or that he passed by the volunteer guards' outpost, or that any of his relatives died through witchcraft. He also denied that he knew Emigdio Barazon. He swore that he came to Barili from San Carlos for the first time after he was arrested in Maglahos, San Carlos. He explained that he could not have come to Cebu in May because "Japanese operations" in Negros were strong at that time and he and his family were evacuating. He said he left Cebu to settle in San Carlos in 1932 and never returned to Cebu since. He repudiated his confession alleging that he had been brutally maltreated by members of the military police, first in Dumaguete, on their way to Cebu, and again upon arrival in Barili.

Pedro Bajaran, 26 years old, testified that on May 5, 1945, he was in Maglahos, San Carlos, Negros Occidental, to escape from the Japanese and met Nemesio Lastimoso there. He declared that in May, Nemesio never went to Cebu; that Nemesio's house was about 100 yards from his and he used to talk with the defendant; that he did not see Nemesio everyday but "always saw him in a week."

We are not satisfied that the two eye-witnesses to the crimes recognized the accused. We incline to the belief that they named the two defendants more through auto suggestion than through visual perception of their facial features.

However, there is no room for reasonable doubt about the correctness of Emigdio Barazon's testimony regarding the defendants' identity. Having known them for a long time, Barazon saw the accused at close range and heard them talk on May 5 when it was still light; and he was in a position to recognize them after the shooting by their Physical appearance and apparels and because there was a fire in the open air at the outpost. As to Barazon's veracity for truth it is unimpeachable.

Appellant's confession has the earmarks of truth and ties up in many essential particulars with the prosecution witnesses' testimony. The appellant's statement that he was coerced into making this confession by tortures does not deserve, in our opinion, serious attention. He could not tell the names nor the ranks of the members of the military police who, he said, beat him. He admitted that when he signed the statement before the justice of the peace only the chief of police was present, yet he told neither of those officers of the alleged beating. He did not show or try to show any mark of violence in his body.

In fact, the appellant not only did not protest when the justice of the peace asked him if he ratified Exhibit A, took his oath and told him to sign the statement; he, three days later, pleaded guilty to the complaint upon being arraigned and did not introduce any evidence in his defense. Disavowing at the trial in the Court of First Instance the voluntariness of his confession, he kept silent about his plea of guilty before the justice of the peace. Independent of his confession, this unchallenged plea of guilty is more than enough to warrant a verdict of conviction. A confession in open court, freely made by accused who was fully informed of what he was doing, is in law and in fact evidence of guilt of the most trustworthy kind.

The defendant's plea of alibi lacks satisfactory substantiation. It would have been easy for him to present one or more members of his family in Negros or one or more of his relatives in Barili to testify that he had not come to Cebu, if that had been the case. The lone witness he introduced was a man who lived about 100 yards away from his home in Negros Occidental and who admitted that he did not see this accused everyday, only once a week. As San Carlos, Negros Occidental, is separated from Barili, Cebu, only by a narrow strait of water, it was quite possible for the appellant to make the trip from San Carlos to Barili and return by sailboat in less than a week without Barajon noticing his absence. We must also keep in mind that in May, 1945, the battle for the liberation of Negros Occidental must have been at its height, considering that that province was freed on the 30th of that month. In the words of the defendant, the Japanese operations in Negros were then strong, so much so that he had to evacuate his family. In those turbulent months, Barajon could not very well have known what the appellant did or where he went. Moreover, Barajon gave his evidence almost one year after the crime was committed, when it was hardly possible for him to recall the dates he saw and the dates he did not see the appellant one year ago.

Quite apart from the fact that only the accused and Pedro Barajon gave evidence to establish the purported alibi, we note that the testimony of both is laconic and perfunctory, showing a frame of mind quite incompatible with that of an innocent man charged with a heinous crime that might take him to the gallows.

As we have said, the testimony of Pedro Sanchez's children regarding the identity of the men who fired the shots is unreliable. Nemesio Lastimoso's confession as well as Jose Lastimoso's states that Jose did. This is the more probable because Jose Lastimoso had been a guerilla, had been inducted into the army, and was the owner of the gun and ammunition. Even so, Nemesio is equally liable for the resulting crime. It is evident beyond doubt from the actions and conduct of the two defendants before, during and after the perpetration of the crimes, that they acted together in concert. As a matter of fact, Jose Lastimoso had nothing against the deceased, as far as the records would show; it was to satisfy the spite of Nemesio that Jose accompanied him to slay Pedro Sanchez.

The fact that Jose Lastimoso may have been more guilty of the two but was acquitted is no justification for absolving the appellant. Two errors do not make a right.

The appellant was sentenced to reclusion perpetua for each of the two murders charged, to indemnify each set of heirs, that of Pedro Sanchez and that of Urbana Cayude, in the sum of P2,000, and to pay one-half of the costs. These sentences are in accordance with law and the evidence and are hereby affirmed with costs of this instance.

Moran, C. J., Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur,

TUASON, J.:

I certify that Mr. Justice Briones has voted to affirm the lower court's decision.

DISSENTING

PARAS, J.:

I dissent. The prosecution presented in evidence an affidavit of the appellant Nemesio Lastimoso (Exhibits A and A-1) and an affidavit of Jose Lastimoso (Exhibits B and B-1). The appellant in his affidavit stated that Jose Lastimoso was the one who fired the shots that killed Pedro Sanchez and Urbana Cayude, while Jose Lastimoso in his affidavit admitted that he was the one who shot Pedro Sanchez and fired at the house of the latter.

After a thorough study of the record, I have found that the evidence for the prosecution is replete with obvious exaggerations, improbabilities and flaws that have compelled me to grant the appellant the benefit of a reasonable doubt. Indeed, the majority of the Court admit that the testimony of the witnesses for the prosecution Vivencio and Leoncio Sanchez regarding the identity of the men who fired the shot is unreliable. "We are not satisfied that the two eye-witnesses to the crimes recognized the accused. We incline to the belief that they named the two defendants more through auto suggestion than through visual perception of their facial features." (Page 5, par. 3, maj. op.) That leaves the testimony of witness Emigdio Barazon without corroboration. This witness stated that he saw the two accused pass by and smoke in front of his post at about five o'clock in the afternoon of May 5, 1945; yet in his affidavit (Exhibit 2-A) he did not refer to such an important detail. Again, such testimony is rather in conflict with what he stated in his affidavit to the effect that he could not recognize appellant's companion, notwithstanding his claim that he knew Jose Lastimoso "very well" even before the incident in question. (Page 20, t. s. n.) The unfavorable inference that can be drawn from these omissions is inescapable. Witness Barazon also testified that as the two accused passed by his post, Jose Lastimoso asked the appellant, "Is Pedro Sanchez's house still far from here" to which the appellant answered, "Keep silent, it is already very near." Apart from the circumstance that this important detail was not mentioned by Barazon in his affidavit (Exhibit 2-A), it seems improbable that the two accused, who are alleged to be known to said witness, would have conversed before him in such a manner as to connect them readily to an intended criminal act. It is also out of the ordinary that Barazon could have recognized the two accused as they were returning from the place of the crimes, since, according to his admission, it was dark and the accused were running.

The trial court gave credence to the defense of alibi set up by the accused Jose Lastimoso, with the consequent rejection of his admission of guilt in the affidavit (Exhibits B and B-1). I am, to be consistent, inclined to give the appellant a similar benefit, since in the latter's affidavit (Exhibits A and A-1) he merely stated that, although he was with Jose Lastimoso, the latter was the trigger man, and, as hereinbefore noted, Jose Lastimoso's affidavit wholly confirms appellant's story. Indeed, if one of the accused was guilty, he must have been Jose Lastimoso who has been acquitted.

Conviction must not necessarily follow from the mere circumstance that the witnesses for the prosecution are alleged to be without any motive to falsely incriminate the appellant, for the latter fact does not preclude the

commission of an honest mistake in the matter of identification.

PERFECTO, J.:

We vote to acquit appellant for the reasons stated in the above dissenting opinion of Mr. Justice Paras, with which we concur.

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