

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, ADRIANO MALIBIRAN ALIAS ADRIANO MALABIRAN, DEFENDANT-APPELLANT.*G.R. No. L-4192. December 27, 1951*

Ponente: BENGZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ab63a91e6146/>**BENGZON, J.:**

In the morning of November 10, 1947, Dolores Dalisay, 19, and her father Dionisio Dalisay, 40, were returning home from their field labors, in Barrio Balantoc, municipality of Talisay, province of Batangas. As was their habit, the two rode on the same horse. When they approached a bend of the trail that skirted the farm of Adriano Malibiran, a shot rang out sending both riders tumbling to the ground. Rising quickly and glancing at the place where the gun had been fired, she spotted the accused hiding behind cut branches, kneeling in a hole nearby and pointing a long-barrelled rifle at them. Frightened, she scampered for home, two additional shots speeding her away. Arrived at their house, she immediately reported the occurrence to her mother Maria Agno, naming the accused Adriano Malibiran. Mother and daughter (followed by a younger brother) hurriedly repaired to the scene of the shooting only to find Dionisio seriously wounded and beyond human help. For fear of their lives the two women agreed to feign ignorance of the killer's identity. So, when on the same day the barrio lieutenant inquired about it, they replied they had no idea as to who the assailant was.

On subsequent days they maintained their silence, until the ninth or tenth day when word was sent to the Chief of Police requesting for investigation. And when Sgt. Pedronio of the municipal police force and Sgt. Cadamo of the Philippine Constabulary (MP), in company with another peace officer questioned them regarding the matter, they both pointed to herein accused as the criminal who had waylaid and shot their deceased husband and father.

The revelation started these judicial proceedings coming from the court of first instance of Batangas, where this accused was, after trial, convicted of homicide, and sentenced to a term of years, to indemnify the heirs of the deceased in the sum of P2000 and to pay costs. The judgment was in due time appealed to the Court of Appeals. However, despite the extensive and carefully prepared brief of the attorney-de-officio the appellate tribunal, after reviewing the evidence declared that the crime was murder, that the proper penalty should be life imprisonment, and that consequently the matter should be disposed of by this Supreme Court.

Under the facts above related, the ambushade was obviously an assassination. The deceased was seen in the act by Dolores Dalisay whose testimony thoroughly convinced the trial judge. In many judicial decisions conviction for murder has been rested upon the identification of the culprit by one lone witness. In this case the daughter's declarations were corroborated by Maria Agno, whose testimony concerning the immediate report of her daughter, although strictly hearsay evidence, is legally admissible as an exception, under the doctrine of *res gestae*.

There is ample reason to believe the story of the eyewitness. A dispute existed between this appellant and the deceased concerning the piece of land possessed and cultivated by the latter against the claims of ownership by the former aided by Rufino Pangilinan. Obviously, the appellant thought murder was the only solution, since his

previous attempt to chase Dionisio out of the premises with the assistance of Miguel and Julian Cedera had failed.

Speaking for himself the defendant denied the accusation, essaying an alibi. He swore that that morning, while cutting and harvesting mongo with his wife in his adjoining field, he heard the fatal shots. let everybody understands how ineffective such defense could be in the face of the positive identification made by the prosecuting witnesses, who having no special reasons to falsify, are confirmed by surrounding circumstances. More, having admitted that he was near the scene of the shooting accomplished by a man hiding in his land, did he do anything to ascertain the identity of the killer who had liquidated his own neighbor while hidden among the bushes of his farm?

The fact that, for several days after Dionisio's demise mother and daughter pretended total ignorance of the murderers identity does not detract from their credibility, such silence having been sufficiently accounted for when they explained they were afraid to make the disclosure because the culprit would take revenge upon them. Under similar situations we refused to discredit the witness or witnesses.

There is some dispute between the parties as to the bullet that killed the deceased. One says it was the first shot; the other maintains it was one of the subsequent volleys fired when Dalisay was already on the ground. Whether the first or the latter, the attack was sudden and carried in such manner as to insure the safety of the assailant. Wherefore we have no hesitation to qualify the offense as murder.

The Batangas court, reckoned two mitigating circumstances, because the accused was allegedly seventy years old besides being illiterate. For the reasons set forth in the People's brief we believe, with the Court of Appeals, that this appellant is not entitled to the above-mentioned attenuations. Consequently, pursuant to section 248 of the Revised Penal Code his term of imprisonment should be for life.

Thus modified, the appealed decision of the court of first instance of Batangas is hereby affirmed, with costs against appellant. So ordered.

Paras, C.J., Pablo, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.
Feria, and Bautista Angelo, JJ., took no part.

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