

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FAUSTINO LOPEZ, ET AL., DEFENDANTS. PERFECTO LOPEZ, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-12704. September 29, 1961*

Ponente: PADILLA, J.

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On 29 October 1955, the chief of police of Bantay, Ilocos Sur, subscribed and swore to a complaint charging Perfecto Lopez, Teodorico Lopez, Faustino Lopez, Dominador Lopez and Valentin Lopez with the crime of murder for the death of Eleuterio Paza. On the same day, the Justice of the Peace conducted a preliminary inquiry or examination of the witnesses, namely, Saturnino Lopez, Teodoro Publico, Victoriano Tabuso and Venancio Palapala, to determine whether there was a reasonable ground to believe that the offense charged had been committed and the defendants were probably guilty thereof, and, if so, to issue a warrant for their arrest and to hold them for trial (Exhibits 1 & C). Thereafter, also on the same day, the Justice of the Peace issued a warrant for the arrest of the defendants. On 30 October 1955 Perfecto Lopez and Valentin Lopez were arrested by the chief of police of Bantay at their respective houses and confined in the municipal building. On 31 October 1955 Teodorico Lopez and Faustino Lopez surrendered to the PC authorities at their headquarters in Tamag, Vigan, Ilocos Sur. On 2 (or 11) November 1955 Dominador Lopez surrendered to the same PC authorities. On 7 and 9 February 1956 the Justice of the Peace conducted or held the preliminary investigation, during which counsel for the defendants examined Saturnino Lopez and presented evidence in behalf of the defendants. On 29 February 1956 the Justice of the Peace forwarded the record of the case to the Court of First Instance of Ilocos Sur. On 22 May 1956 the Provincial Fiscal filed the corresponding information in the Court of First Instance charging the defendants with the crime of murder for the death of Eleuterio Paza, committed as follows:

That on or about the 29th day of October, 1955, in barrio Malingebe, municipality of Bantay, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Faustino Lopez, Perfecto Lopez, Dominador Lopez, Teodorico Lopez and Valentin Lopez, with evident premeditation and treachery, conspiring together and helping one another and with Intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot with automatic firearms one Eleuterio Paza, who, as a result thereof, sustained mortal gunshot wounds on the vital parts of his body which wounds produced the death of said Eleuterio Paza almost instantaneously.

Neither did the Provincial Fiscal recommend nor did the Court grant, bail for the provisional release of the defendants, hence they were confined in the provincial jail in Vigan. Upon arraignment the defendants entered a plea of not guilty. After trial, on 10 July 1957 the Court rendered judgment finding the defendants guilty of the crime charged and sentenced as follows:

* * * the accused PERFECTO LOPEZ and VALENTIN LOPEZ, to suffer each the penalty of Reclusion Perpetua, and the accessories of the law, and the accused FAUSTINO LOPEZ, TEODORICO LOPEZ and DOMINADOR LOPEZ, to suffer each, an indeterminate penalty from twelve (12) years and one day of

Reclusion Temporal, in its minimum period, as the minimum of the penalty to seventeen (17) years, four (4) months and one (1) day, of Reclusion Temporal, in its maximum period as the maximum of the penalty, the accessories of the law, and all of said accused to jointly and severally indemnify the heirs of the deceased Eleuterio Paza, in the amount of P6,000.00. without subsidiary imprisonment in case of insolvency, and to pay the costs. One-half of the period of their preventive imprisonment shall be credited to said accused in the service of the sentence.

The Court appreciated in favor of the defendants Faustino Lopez, Teodorico Lopez and Dominador Lopez the mitigating circumstance of Voluntary surrender. The defendants, except Faustino Lopez, have appealed.

On 26 October 1955, the municipal mayor of Bantay, Ilocos Sur, issued a permit allowing the people of barrio Guimod, Bantay, Ilocos Sur, to use the water coming from the hills of Turod and flowing through an irrigation ditch to barrio Guimod to irrigate their ricefields within a period of seven days. At about 6:00 o'clock in the afternoon of that day, the permit was given to Loreto Palapala, a policeman of the municipality residing at barrio Guimod. On 27 or 28 October, 1955, Loreto Palapala went to the barrios of Malingueb and Capangdanan to show the permit to their respective barrio lieutenants to assure the farmers of barrio Guimod an unobstructed flow and exclusive use of the water for the duration of the period granted. In the morning of 29 October 1955, a group of farmers from barrio Guimod, namely, Saturnino Lopez, Teodoro Pablico, Alejandro Lopez, Eleuterio Paza, Venancio Palapala, Modesto Palapala, Agustin Palapala, Virgilio Lopez, Benito Pacpacacao, Primitivo Rapin, Bonifacio Rapin, Victoriano Tabuso and Emiliano Pugal, numbering thirteen, equipped with scythes and "sapils" (the latter are bamboos one meter long used for removing obstructions in the ditch), met near a bagbag tree in barrio Capangdanan or Guimod to clear the irrigation ditch of obstructions so that the water coming from the hills of Turod to barrio Guimod could flow freely to their ricefields. At 8:00 o'clock in the morning of that day, the group began their work starting from the west end of the concrete structure of the ditch near the bagbag tree in Capangdanan or Guimod to the east end thereof in Malingueb, using scythes and "sapils" to cut the grasses and remove the fallen twigs and leaves in the ditch (Exhibit B). After about two hours of work, they reached the east end and finished their work. Afterwards, they started to go back home, taking the short cut route. After negotiating about a hundred meters from the east end, they saw people coming from the northeast going toward the concrete structure at Malingueb. Some of them in the group thought that those people were also their companions coming to help in clearing the ditch of obstructions and be able to have a share in the flowing water. Eleuterio Paza suggested to his companions to return to the place where they had come from, and to talk to the newcomers to know from them how long they would need the water. Eleuterio led the way followed by Saturnino Lopez and their other companions in single file. Hardly had they walked five paces when they heard gun reports in three successions and the group instantaneously laid down. Saturnino Lopez looked up to the southeast from where the gun reports came and at a distance of about ten meters saw Faustino Lopez, Perfecto Lopez and Dominador Lopez, each holding a firearm about one-half meter long, pointing their firearms at Saturnino and his companions, and heard Valentin Lopez exhort his companions "Go on, kill them," and Teodorico Lopez shout "Go on, nobody has been hit yet. You kill them all." Teodoro Pablico also saw Faustino Lopez, Perfecto Lopez and Dominador Lopez each aiming at them a gun about a yard in length and heard Valentin Lopez say "Go on shoot at them," and Teodorico Lopez shout "Go on, nobody has been hit yet. Shoot at them." Alejandro Lopez saw and heard too what Saturnino Lopez and Teodoro Pablico saw and heard. Not long after the first burst of fire, there was another volley, this time hitting Eleuterio Paza. Eleuterio cried that he was hit and begged his companions not to abandon him. Saturnino Lopez ran to the northwest then to the west direction and after running a distance of about 100 meters, looked back and saw Faustino Lopez, Perfecto Lopez, Teodorico Lopez, Dominador Lopez and Valentin Lopez, the last named person looking at the prostrate body of Eleuterio Paza. Teodoro Pablico also ran to the west and at about a hundred meters away from the scene saw Faustino Lopez and his companions going to where Eleuterio Paza was lying. The assailants again fired at the fleeing group. After

reaching the concrete structure of the ditch at Capangdanan, the farmers went home except Teodoro Pablico, who went to the house of Faustino Paza, brother of Eleuterio, and told him what happened. Upon learning of the incident, Faustino Paza lost no time in dressing up and rode in a pick-up truck bound for the municipal building of Bantay.

At about 12:00 o'clock noon of that same day, after Desiderio Peredo, then chief of police of Bantay, Ilocos Sur, had finished his lunch, patrolman Loreto Palapala came to his house and reported that Eleuterio Paza had been shot. Peredo immediately dressed up and went to his office at the municipal building where upon arrival he saw Faustino Paza who confirmed the report made by patrolman Palapala. After entering the report in the police blotter (Exhibit 3), Peredo went to Dr. Mauricio Paz, municipal health officer, and told him of the incident. Accompanied by Dr. Paz, he returned to the municipal building and, together with the doctor, Sgt. Ona, Pfc. Merza and Pfc. Quimmen of the 27th BCT and Faustino Paza. Peredo repaired to barrio Malingueb. Upon arrival at barrio Malingueb, Peredo and his party searched for the body of Eleuterio Paza. Pfc. Quimmen found it in the ricefield about a hundred meters away from the "padila," lying on the ground, face turned a little to the south. After Peredo had finished making a sketch of the vicinity where the body was found, Dr. Paz turned the cadaver face upward and made a post-mortem examination of it. After the cadaver was brought to the house of the victim at barrio Guimod, Dr. Paz performed another post-mortem examination and issued the following certificate:

Octubre 29, 1955

A QUIEN CORRESPONDA:

Por la presente certifico que este día 29 de Octubre, 1955, a la hora de 3:00 p.m., reconoci y examine el cadaver de Eleuterio Paza, 33 años de edad, casado y residente en el B. Guimod, Bantay, Ilocos Sur.

El cadaver estaba tendido boca abajo y bañado de su propia sangre en una sementera palayera a la jurisdiccion del Bo. Malingueb, Bantay, Ilocos Sur.

Examinado el cadaver presenta las lesiones siguientes:

- (1) Una herida circular, bordes regulares de 2 centímetros de diametro, penetrante, situada en el vacio (bazo) izquierdo;
- (2) Otra herida circular, bordes irregulares, de 3 centímetros de diametro, situada en el pecho en la region precordial, al nivel de la tercera costilla izquierda. Esta herida se communica con la otra herida.

Estas heridas fueron producidas por una sola bala que entro en la primera herida y salio en la herida descrita en el numero 2, destrozando el bazo, diafragma, pulmon izquierdo y el corazon. (Exhibit A.)

The doctor testified that the wounds were caused by a .45 caliber pistol or revolver; that the first wound was the point of entry and the second the point of exit; that death was due to profuse internal hemorrhage and could have been instantaneous; and that the wounds were inflicted while the victim was in a stooping position, body a little toward the front.

The appellants deny complicity in the killing of Eleuterio Paza. Testifying in his own behalf, Teodorico Lopez claims that at about noon of 29 October 1955, while he and his cousin Faustino Lopez were on the way home to Malingueb, after coming from barrio Sagaba, where he and Faustino went in the morning to visit the latter's and his father's ricefield, they met Eleuterio Paza, who was in one of two groups of men numbering about fourteen in all; that after exchanging greetings with Eleuterio, who asked Faustino where he came from, to which question the latter answered that he came from Sagaba to inspect his ricefield, Teodorico and Faustino continued on their way; that after walking a distance of about two brazas, Eleuterio called them back; that when Teodorico and Faustino looked back, they saw Eleuterio nod his head at his companions; that Saturnino Lopez asked Faustino why he

ambushed his (Saturnino's) father while milking his carabaos at Capangdanan; that immediately thereafter Teodorico heard several gun reports coming from the direction of Saturnino Lopez; that Teodorico ran to the east then to the south while Faustino jumped to a nearby ditch; that as he was running he again heard two gun reports coming from northwest of the place where he ran to; that as he was running Faustino called to wait for him; that when he asked Faustino if he was hit, Faustino answered that he was not and told him (Teodorico) that he (Faustino), with the gun he was holding, fired at somebody waving his hand at his companions; that Faustino further told Teodorico that he (Faustino) saw Eleuterio Paza's companions running and heard Eleuterio asking his companions not to leave him behind as he was hit; that he and Faustino hid in the trees west of their grandfather's house in Maligueb where they rested for more than two hours; that while there, they heard the sound of the motor of a jeep going to the house of Faustino and the barking of a dog; that they saw among the persons in the jeep one wearing a khaki uniform; that they moved to Suripan south of Mailngued; that at Suripan, Faustino told Teodorico to go home for he (Faustino) alone would go to Bantay and surrender to the police authorities; that Teodorico reminded Faustino that there was a policeman from Guimod by the name of Loreto Palapala and feared that he might be killed; that they stayed in Suripan for two days and two nights; that on Monday following the incident, between 9:30 and 10:00 o'clock in the morning, Teodorico and Faustino went to see attorney Benedicto Paz at his office in Vigan; that as attorney Paz was not in they went to attorney Felix Nolasco at his house, where they took their lunch; that after they had finished their lunch and after attorney Paz had arrived at attorney Nolasco's house, the two attorneys accompanied them to the PC headquarters at Tamag, Vigan, Ilocos Sur, to surrender.

Aside from denying complicity in the killing of Eleuterio Paza, the appellants Perfecto Lopez, Dominador Lopez and Valentin Lopez set up the defense of alibi. Perfecto Lopez swore that since 5:00 o'clock in the morning until past 5:00 o'clock in the afternoon of 29 October 1955, he was at home in the poblacion of Bantay taking care of his nine-month old son named Cesar; that at about 6:00 o'clock in the morning of that day his father Fermin arrived from Vigan where he went to sell carabao milk; that after changing his shirt, his father set loose his carabaos in the field; that at about 8:00 o'clock Maria Pablico, his sister-in-law, came with her one-year old child to play in his house; that at about 9:00 o'clock, his uncle Valentin Lopez (his father's brother) and his cousin Dominador Lopez (Valentin's son) came to fetch his father to go to Vigan to confer with attorney Benedicto Paz concerning their case where they were accused of attempted murder; that at about 9:30 o'clock his father, Valentin and Dominador left the house for Vigan; that he was not able to go with them because he had to take care of his child as his wife Encarnacion Pilar had gone to harvest rice; that at 12:00 o'clock noon, Maria Pablico and her child left and he took his lunch and put his child to sleep; that at about 12:30 o'clock in the afternoon his father, Valentin and Dominador arrived riding in a calesa; that after his father had taken his lunch he asked him about the result of their conference with their counsel and his father answered that their lawyer was angry at them because he, Teodorico and Faustino did not come with them for interview; that his father further told him that attorney Paz had indorsed their case to attorneys Alcantara and Arcano; that thereafter he looked after his child who was crying and afterwards went to sleep for a while; that at about 2:00 o'clock in the afternoon his sister-in-law Maria Pablico came back to his house; that at about 5:00 o'clock a jeep coming from the north stopped in front of his house and someone riding in it asked him to come down and inquired for the whereabouts of his brother Faustino; that he answered the inquirer that Faustino was not there and asked the chief of police who was also in the jeep why they were looking for him; that the chief of police remarked to his companion "How could we blame this he has no fault," and told him "You may go up now;" that later on another jeep coming from the south arrived and a PC soldier told him to dress up and go with them to the municipal building where upon arrival a PC soldier ordered him to sit near the stairs; that in the municipal building he saw Faustino Paza, Alejandro Lopez, Saturnino Lopez, Teodoro Pablico, Venancio Palapala and others and heard somebody giving his statement to the chief of police; that after about three hours the same PC soldiers who ordered him to sit near the stairs of the municipal building told him "Go home, you may go home, you have no fault."

Valentin Lopez and Dominador Lopez testified that after taking their breakfast in the morning of 29 October 1955, at about 8:30 o'clock they went to the house of Fermin Lopez in the poblacion of Bantay to fetch him and go to Vigan to confer with attorneys Paz, Alcantara and Arcano, their counsel in the case for attempted murder where they were the defendants; that at about 9:00 or 9:30 o'clock they, Valentin, Dominador and Fermin left the latter's house, leaving behind Perfecto Lopez who was talking with Maria Publico, and took a calesa bound for Vigan, where they arrived at the office of their counsel at about 10:00 o'clock; that attorney Paz chided them for arriving late and for the failure of Faustino, Perfecto and Teodorico to come with them; that after interviewing Fermin Lopez and Dominador Lopez about the case, talking about the amount to be paid by the clients as attorney's fee, and indorsing the case to his colleagues, attorneys Alcantara and Arcano, attorney Paz left the office to prepare to go to Cagayan because his mother-in-law was sick; that when the churchbell struck 12:00 o'clock noon, they left the office of their counsel after helping them close the windows of their office and went to the market place where they took a calesa for the return trip; that at about 12:30 o'clock in the afternoon, they reached the house of Fermin Lopez in Bantay and the latter alighted from the calesa while they resumed their trip to go home to Balaleng; that at about 1:00 o'clock they reached their house and took their lunch; that after lunch they took a short nap; and that from 2:00 o'clock to 5:30 or 6:00 o'clock in the afternoon, they tended their carabaos.

Fermin Lopez corroborated the testimony of Perfecto Lopez that during the whole day of 29 October 1955, Perfecto was at home taking care of his child, and the testimony of Valentin Lopez and Dominador Lopez that they went to Vigan to confer with their counsel, attorneys Paz, Alcantara and Arcano, regarding their case for attempted murder where they were the defendants. Maria Publico also corroborated the testimony of Perfecto Lopez, Florencio Arcano corroborated the testimony of Valentin Lopez and Dominador Lopez that they went to confer with him and his colleagues at their office in Vigan between 10:00 o'clock and 12:00 o'clock noon on 29 October 1955.

The appellants' respective claims and defenses of alibi are unbelievable in the face of the clear, direct and positive testimony of the witnesses for the prosecution that on the day Eleuterio Paza was killed they were in the company of Faustino Lopez; that the latter and the appellants Perfecto and Dominador were armed with guns; and that after the first volley of fire, the appellants Teodorico and Valentin exhorted their companions to kill the victim and his companions. In his testimony given during the direct and cross-examination at the trial of the case, Saturnino did not deviate from the sworn statement he had given during the investigation conducted by the chief of police of Bantay on the day of the incident, that Faustino Lopez and the appellants Perfecto Lopez and Dominador Lopez were the ones who fired at him and his companions while the appellant Valentin Lopez gave the order to fire (Exhibits I and C). Granting that, as claimed by the appellants, Saturnino Lopez has a grudge against them for the alleged attempt on the life of his father by the appellants, which could have been the reason why he testified in the manner that he did to get even with them, yet they have not imputed any reason why Teodoro Publico and Alejandro Lopez testified in the manner that they did. The appellant Perfecto Lopez himself admitted on cross-examination that he is related to Alejandro Lopez; that Alejandro harbors no grudge or bears no ill-feeling towards him; that he also knows Teodoro Publico; and that Teodoro does not bear him any grudge. Valentin Lopez testified, also on cross-examination, that he does not have any misunderstanding with Saturnino Lopez, Teodoro Publico and Alejandro Lopez before the incident of 29 October 1955, except that Saturnino had filed an attempted murder case against his two nephews, two sons and a brother; that he (Valentin) had not done anything wrong against any of them to incur their hatred. On the other hand, it is the appellants and their witnesses who have reason to pervert the truth and give false testimonies to favor each other. Perfecto Lopez and Teodorico are brothers. Their father Fermin Lopez is the younger brother of Valentin Lopez. Faustino Lopez and Dominador Lopez are brothers, and their father is Valentin. Maria Publico is the sister-in-law of Perfecto. Blood is thicker

than water, as the common saying goes. Attorney Florencio Arcano is not the disinterested witness that he claims to be. The records show that he has signed pleadings filed in behalf of the appellants in the Justice of the Peace Court of Bantay during the preliminary stage of the case. Moreover, his close professional and personal association with attorney Paz, counsel for the appellants, detracts from the probative value of his testimony,

The fact that after the incident which resulted in the death of Eleuterio Paza, Teodorico Lopez, in the company of Faustino Lopez, retreated to the orchard west of their grandfather's house in Malingueb, where they stayed sitting for more than two hours; that in spite of the fact that they were hungry already they did not go to the house of their grandfather to eat; that when they heard the sound of the motor of a jeep going to the house of Faustino, followed by the barking of a dog, and they saw someone in khaki uniform, they fled to barrio Suripan south of Malingueb where they stayed for two days and two nights; and that Teodorico was afraid to go home lest the brothers of Eleuterio Paza see him, are indicative of Teodorico's guilt.

Perfecto Lopez's testimony that he stayed the whole day in his house in Bantay on the day of the incident in question, taking care of his nine-month old child because his wife Encarnacion Pilar went to harvest rice, is unreliable. Perfecto appears to be in good health and not suffering from any ailment that would prevent him from harvesting rice. Why would he stay at home to look after his child to enable his wife, who had delivered a baby not too long ago, to harvest rice? The task of taking care of the baby is the mother's while that of providing food for the family is the father's. Granting that it is true that his wife really did go to harvest rice, still the fact that Perfecto had to stay home to take care of the baby for nobody could, could not be true because his sister Pacita, fifteen years of age and who live with him at his father's house, or his wife's sister Maria Pablico, who lived nearby, could have taken care of the baby.

Moreover, the fact that the testimony of the appellants and their witnesses dovetails as to the minute details such as the sequence, exact time and place of events on the day in question, indicates a version that was rehearsed by the witnesses before they took the stand in court.

On the other hand, the appellants are not without motive to fire at Eleuterio Paza and his companions. The appellants are farmers with ricefields in Malingueb while the victim and his companions are farmers too with ricefields in Guimod. All are dependent upon the fall of rain and the water coming from the hills of Turod, conveyed by an irrigation ditch to the ricefields of Malingueb, Capangdanan and Guimod. At that time there was no sufficient rain. The appellants must have resented the fact that the farmers of Guimod would have exclusive use of the much needed water for a period of seven days.

The crime committed is murder qualified by treachery in that the unsuspecting victim and his companions were fired upon suddenly and without warning to afford them an opportunity to defend themselves. The fact that the defendant Faustino Lopez and the appellants Perfecto Lopez and Dominador Lopez, armed with guns which they used in firing at the victim and his companions and after the first volley of fire, at the exhortation of the appellants Teodorico Lopez and Valentin Lopez, the armed defendant and appellants fired at the victim and his companions, show a community of purpose and concerted design which constitute conspiracy. The guilt of one is the guilt of all.

The mitigating circumstance of voluntary surrender may be appreciated in favor of the appellants Teodorico Lopez and Dominador Lopez but neither aggravating nor mitigating circumstance may be considered against or appreciated in favor of the appellants Perfecto Lopez and Valentin Lopez.

The penalty imposed by article 248 of the Revised Penal Code for the crime of murder is reclusion temporal in its maximum period to death. Divided into periods, 17 years, 4 months and 1 day to 20 years is the minimum; reclusion perpetua is the medium; and the death is the maximum.

With respect to the appellants Perfecto Lopez and Valentin Lopez, neither aggravating nor mitigating circumstance may be considered against them or appreciated in their favor. Hence, the medium period of the penalty, i.e., reclusion perpetua, should be imposed. This the trial court correctly did.

With respect to the appellants Teodorico Lopez and Dominador Lopez, there being one mitigating circumstance that may be appreciated in their favor—voluntary surrender—the minimum period of the penalty should be imposed, i.e., 17 years, 4 months and 1 day to 20 years. Applying the Indeterminate Sentence Law, section 1 of which provides—

* * * in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to minimum which shall be within the range of the penalty next lower to that prescribed by the code for the offense,

in connection with section 3, article 61, of the Revised Penal Code, which provides:

When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale,

the penalty next lower in degree is prision mayor maximum to reclusion temporal medium, i.e., 10 years and 1 day to 17 years and 4 months. Therefore, the correct penalty to be imposed upon the two appellants is from 10 years and 1 day of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum.

Modified as to the penalty to be imposed upon the appellants Teodorico Lopez and Dominador Lopez, the judgment appealed from is affirmed, with costs against the appellants.

Bengzon, C. J., Labrador, Concepcion, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.
Barrera and Dizon, JJ., took no part.

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