

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MARIO TANDUG, DEFENDANT AND APPELLANT.***G.R. No. L-1765. May 09, 1949*

Ponente: PARAS, J.

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This is an appeal from a judgment of the Court of First Instance of Romblon, finding the appellant, Mario Tandug, guilty of murder and sentencing him to life imprisonment and to indemnify the heirs of the deceased Cipriano Songcang in the sum of P2,000, with subsidiary imprisonment not exceeding one-third of the principal penalty in case of insolvency, plus the costs.

Cipriano Songcang was struck by an arrow on the left side in the evening of October 21, 1946, while he and his wife Teofista Mondoy were walking along the road not far from their house in Santa Fe, Carabao Island, Romblon. Cipriano died at four o'clock the next morning. Nobody saw who let loose the fatal arrow, but the appellant was apprehended and investigated on the strength of the ante mortem statement of Cipriano to the effect that, although he did not know the author of the aggression, he suspected three men, namely, the appellant, Avelino Tandug and Florencio Elisan. Appellant's conviction by the trial court is mainly predicated on the alleged admissions made by the appellant to Sgt. Opiniano Santillan and Cpl. Benigno Hinampas of the military police, to the effect that the appellant shot Cipriano Songcang with an arrow because the latter had previously threatened the appellant and maltreated his grandmother by reason of a certain land dispute, which admissions are incorporated in the written confessions, Exhibits A and B.

Appellant's defense consists in his testimony that the confessions were not voluntary and had been the result of maltreatment inflicted by the investigating MP officers, Santillan and Hinampas. This defense is corroborated by witnesses Avelino Tandug and Maria Sacapano. After weighing the facts of this case, we are led to the conclusion that the appellant should be acquitted.

The appellant was brought to and investigated by two armed MP officers in the house of Braulio Songcang, brother of Cipriano, a place of course pervaded by an atmosphere of hostility and hate against the appellant; and no satisfactory explanation had been given for the choice of that place. The appellant, so circumstanced, could not feel absolutely free to insist in denying knowledge or authorship of the offense. Even considering the testimony of Avelino Tandug as biased, we cannot lightly disregard the corroborative statement of witness Maria Sacapano who was not shown to have had such interest in the case as to falsely testify in favor of the appellant.

The prosecution sought to strengthen its case by presenting in evidence a sling (Exhibit D) which, according to Sergeant Santillan, was surrendered by the appellant. It is inherently improbable that, however stupid the appellant is, he would have preserved that incriminating evidence and, much less, voluntarily surrendered the same to the authorities. The appellant had sufficient time to conceal or destroy said sling, because he was not arrested until the next morning. The prosecution also put on the witness stand Felix Fellarca who testified that he met the appellant in the vicinity of the place where Cipriano was shot and that, when asked as to where he came

from, the appellant admonished Felix not to proceed in his walk. This witness is of course not worthy of credit because he admitted that he was taught what to say in court. Moreover, he has lent weakness to the theory of the prosecution by his failure to notice or state that the appellant then carried a sling.

The appealed judgment is hereby reversed and the appellant acquitted, with costs de oficio. So ordered.

Moran, C. J., Feria, Pablo, Perfecto, Bengzon, and Briones, JJ., concur.

DISSENTING

TUASON, J.:

I disagree with the decision of this Court absolving the appellant.

The defendant's confessions, Exhibits A-1 and B, are couched in language which only he could have uttered. They are brief and may with profit be copied here in full:

"EXHIBIT A-1

"ENGLISH TRANSLATION OF THE AFFIDAVIT OF THE ACCUSED MARIO TANDUG MARKED EXHIBIT A

"I, Mario Tandug, of age, married and resident of barrio Agcogon Sta. Fe, Tablas, Romblon, Philippine Islands, on my own free will, without being threatened or promised of any reward, declare the following:

"That on October 21, 1946 at about 4:00 o'clock p. m., I was out on target practice with my sling and arrow. After the practice I went home to take my supper. After taking my supper, I immediately left in the direction of the uninhabited house of Cipriano Sungcang.

"At about 7:00 p. m., I saw Cipriano Sungcang and his wife walking with a torch. I shot him with my sling and arrow and he was hit on the left side of his body. Sensing that Cipriano Sungcang was hit, I immediately escaped.

"This thing occurred because of my resentment against him in connection with the land he grabbed from us. Besides he threatened me in my house telling me that he will kill me. Also he gathered the fruits of my coconut. He also called for my grandmother in the house of the barrio lieutenant Roberto Tumbagahon in the same barrio of Agcogon, where he maltreated her by striking her against the floor, holding her by the hair. And that was the cause of her suffering. She is feeling waist pain and as a result of such she became deaf. I acted in this way, because I have not the ability and force to meet him face to face.

"In witness hereof, I have hereunto signed my name in the presence of Sgt. Santillan and Cpl. Hinampas and two other witnesses.

(Sgd.) "Mario Tandug"

"EXHIBIT B

"AFFIDAVIT

"I, Mario Tandug, of legal age, married, and a resident of barrio Agcogon, Carabao Island, District of Santa Fe, special municipality of Tablas, Province of Romblon, Philippines, after having duly sworn on oath according to law depose and say the following freely and voluntarily:

"That on or about 4:00 p. m. of the 21st day of October 194, managed myself to a target practice may using slingshot and arrow (Pana) tirador and odiong, in the shore of Tan-agan, Agcogon, Carabao Island. That my

object in executing the target practice is to prepare myself of my skill in targeting one Cipriano Sungcang the following evening. After finishing my practice at about 5:00 p.m. that same afternoon I immediately proceeded to a certain road near his house. I stayed watching said Cipriano Sungcang for almost two hours. When said Cipriano Sungcang came ahead of his wife Teopista Mondoy with a torch lighted, I immediately executed the target of my slingshot and arrow and pretty well knew that Cipriano Sungcang was hit in the left side of his ribs. After that I managed myself crawling away from the scene and went home.

"I have done this criminal act because of my previous sentiments against Cipriano Sungcang regarding the boundaries of my property and his property, and because he, one time came to my house threatening me of death with a certain bolo (Talibong).

"In testimony whereof I hereunto sign, this affidavit this 25th day of October 1946, at Looc, Tablas, Romblon, in the presence of two witnesses.

(Sgd.) "Mario Tandug"

It will be noted that these statements contain assertions calculated to justify the killing or at least mitigate the declarant's criminal liability. In reality, the defendant did not say that the statements were false, except as this may be inferred from his denial of complicity in the murder. What he and his witnesses said was that he was boxed, maltreated, and with his brother and grandmother kept in the sun.

But Sgt. Opiniano Santillan and Cpl. Benigno Hinampas, members of the military police, who questioned the accused and secured Exhibits A-1 and B, positively denied that either of them employed improper means to extort the confessions. The trial judge who saw the witnesses testify, analyzed their testimony and their relation to each other, rejected the theory of force and violence and concluded that both officers "in their direct and rebuttal testimonies, convinced the court that they did not employ any act imputed to them by both Avelino and Mario Tandug." The question is reduced to the relative credibility of the witnesses, and the finding of the trial judge, according to well-established rules founded on natural reason, is entitled to the utmost respect.

When the accused was brought to the justice of the peace court where he had full freedom to speak the truth, he voluntarily and readily ratified Exhibits A-1 and B, stamping his signature thereon, without any protest or reservation. He did not show or offer to show at anytime to anyone any mark of injury on his body. Not only that; he pleaded guilty to the complaint on arraignment and did not produce any evidence, either his testimony or that of his witnesses whom he presented at the trial in the Court of First Instance. Could he with success claim now that he pleaded guilty and was prevented from making his defense by force and intimidation?

While it is a common practice of law officers to resort to violence to extract confession, the method is not employed in all cases, and charges of maltreatment should be given credence only when supported by clear proofs. The settled rule is that a confession is presumed to be voluntary, and the burden of proof is on the accused who repudiates it, to show that it was made or obtained by undue pressure. (United States vs. Zara, 42 Phil., 308; People vs. Cabrera, 43 Phil., 64, 76.) It should not be enough to nullify a confession that the accused, who is fighting for his life or liberty, and his relatives should make the accusation. As the court a quo well observed, "If criminals to save themselves would resort to accusing the agents of the laws of this dastardly practice of employing third degree punishment after they had voluntarily confessed of their guilt to them no accused could be punished and we would see criminals free to roam around and mingle with the community against whom they erred."

With reference to Exhibit D, a sling by which the fatal arrow was propelled, the accused's testimony was, on its face, absurd. If the defendant could make this utterly ridiculous falsehood, what was there to stop him from saying the simplest thing in an attempt to extricate himself from his previous confession, that he was manhandled?

Santillan and Hinampas testified that Exhibit D was handed to them by the defendant at the time he admitted that he was the author of the killing, stating that it was the sling by means of which the fatal arrow, Exhibit C, was driven.

The accused in his testimony said, referring to Exhibit D, that when those officers were upstairs, they told him to go down; "that the MPs ordered for someone who knew how to make this sling" and afterwards showed him Exhibit D, telling him somebody had made it and that it "was part of Exhibit C", and urged him "to accept this to be mine"; that he "did not object at all for fear of being punished." We think this testimony is too ridiculous to require any comment. It is enough to say that the fact that Exhibit D was not mentioned in Exhibits A-1 and B is the best refutation of the testimony that it was a police invention. Being a very damaging evidence, the defendant's statement regarding Exhibit D would have been reduced to writing if the police officers had supplied this article.

The fact that the defendant's brother and grandmother, equally suspected with the accused, were not forced to make a written statement and were released when they disclaimed any participation in the murder is, to my mind, another proof that Exhibits A-1 and B were voluntarily made.

I do not consider anomalous the fact that the questioning of the accused was carried on in the house of the deceased's brother. Looc, where the crime took place and where the deceased and his brother lived, is a remote barrio on an island separated from the main Island of Romblon. There did not seem to be any public building in that barrio, or any house more appropriate for holding the inquest. Furthermore, the accused was a neighbor of the deceased's brother, who was apparently a peaceful citizen, and it has not been shown that the place awed him more than a police or military quarters would. In fact in or around the house were defendant's friends and relatives whose being near could not but have bolstered his morale and courage.

Santillan and Hinampas denied that the defendant was made to remain standing in the sun. They said that what they did was to keep him and his kins at a distance, under a tree, while other witnesses were being questioned, in order that they might not overhear what was being said at the investigation. This sounds truthful. Indeed, I do not believe that to put in the sun, at ten o'clock, an accused accustomed to this form of discomfort, (if it was a discomfort to be in the sun), could have been conceived as part of a means to coerce him to confess.

Felix Fellarca, 31 years, laborer, gave evidence that is revealing of defendant's guilt. This witness declared that at about seven o'clock in the evening, as he was walking home, he heard a cry for help ahead; that after walking about 200 brazas, he met the accused; that he asked the accused where he came from and the latter told him not to proceed; that he then turned back. On cross-examination, the following questions and answers appear:

"P. Do you know; Braulio Suncan?—R. Yes, sir.

"P. And this Braulio Suncan was the one who brought you from Hambil to this town?—R. Yes, sir.

"P. And he had taught you what you would say in this court?—R. Yes sir."

The majority seize upon the last question and answer as an admission that Fellarca's testimony was a concoction. I think, the conclusion is unwarranted.

This witness, in whose testimony in chief the judge who observed his demeanor expressed implicit faith, could very well have misunderstood the defense counsel's question, or he might have meant to convey by his answer a thought different from the literal import of the question propounded to him. In answering, "Yes, sir," to the question whether his testimony had been taught him, he might have understood it, the question, to be whether he had been told to say what he knew or had seen. The Court has overlooked the fallability of the transcription of evidence, of the frequency of mistake arising from numerous factors—inability of the witnesses to understand the

questions properly or to express their idea correctly, deficiencies of translation, etc. An affirmative answer to a question of opposing counsel, a question charged with a double meaning to an illiterate witness, should not be allowed to override the witness' detailed narration the meaning of which leaves no room for doubt.

The nature of Fellarca's testimony precludes the possibility that it was a fabrication put into his mouth. The testimony that the witness saw the accused in the vicinity of the crime was at best inconclusive. To manufacture a direct evidence against the accused, it would have been easier and the effect would have been more damaging to say that the witness actually saw the accused in the act of shooting. And to manufacture such evidence it would not have been necessary to use a stranger; the deceased's widow whose presence in the place of the crime and whose loyalty were undoubted, would have been a better medium.

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