

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO REYES (ALIAS BASIBAS) ET AL., DEFENDANTS, VICENTE
GATCHALIAN (ALIAS MAGALLANES) AND SEVERINO AUSTRIA
(ALIAS BIG ...**

G.R. Nos. L-1846-48. January 18, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

This is an appeal from a judgment of the Court of First Instance of Pampanga sentencing herein appellants to reclusion perpetua and indemnity for the murders of Benjamin Nery and Alfredo Laguitan and to a term of imprisonment and indemnity for the injuries they had inflicted upon Francisco Orsino.

These two appellants, together with Pedro Reyes, Eusebio Perez, Gervasio Due and Marcelo Due, were charged in two separate cases with the violent death of Benjamin Nery and Alfredo Laguitan. In another, they were accused of having caused physical injuries to Francisco Orsino. A joint trial was ordered. At the beginning thereof the fiscal filed a motion for the dismissal of the case against Eusebio Perez for insufficiency of evidence. This was granted. He also asked that the accused Pedro Reyes be discharged so that the latter may be used as prosecution witness. This was also granted.

Evidence for both sides was later submitted in open court; and after a careful consideration of the same the Honorable Antonio G. Lucero, Judge, found the accused Maximino Austria alias Severino Austria alias Big Boy and Vicente Gatchalian alias Magallanes guilty of the offenses set forth in the different informations. His Honor therefore sentenced them as follows:

"* * * the court hereby finds the accused Maximino Austria alias Severino Austria alias Big Boy and Vicente Gatchalian alias Magallanes guilty, beyond reasonable doubt, of the crimes charged in the information and sentences them as follows: (a) in criminal case No. 867, to reclusion perpetua, with the accessories of the law, to indemnify jointly and severally the heirs of Pvt. Benjamin Nery in the sum of P2,000, without subsidiary imprisonment in case of insolvency, and to pay the costs; (b) in criminal case No. 367-A, to reclusion perpetua, with the accessories of the law, to indemnify jointly and severally the heirs of Pvt. Alfredo Laguitan in the sum of P2,000 without subsidiary imprisonment in case of insolvency, and to pay the costs; and (c) in criminal case No. 367-B, to an indeterminate penalty of six (6) years of prision correccional, as the minimum, to twelve (12) years and one (1) day of reclusion temporal, as the maximum, to indemnify jointly and severally Pvt. Francisco Orsino in the sum of P1,000, without subsidiary imprisonment in case of insolvency and to pay the costs. In these three cases the accused are entitled to be credited with one-half of their preventive imprisonment."

Gervasio Due alias Oliveros and Marcelo Due alias Pipit have not been arrested nor tried.

The transcript of the testimony taken before the Pampanga judge and the documentary evidence in connection therewith are all before us, and the Court, after examining the same, has voted to affirm the verdict of guilt of appellants Austria and Gatchalian, because from the evidence it appears beyond reasonable doubt that: In the

night of Good Friday of 1946 (April 19) while religious celebrations were in full swing in the barrio of Cacutud, Arayat, Pampanga and the "pabasa" was being performed (reading and singing of the story of the Crucifixion) the herein appellants assisted by Marcelo Due alias Pipit, Gervasio Due alias Oliveros and one Peping, all armed with pistols, approached three members of the military police, Philippine Army, i. e. privates Benjamin Nery, Alfredo Laguitan and Francisco Orsino—hereafter to be designated MP's for short—who were peaceably seated, entirely unarmed, in a store watching the affair. At the point of their guns they drove the latter to the road leading to Magalan and at a short distance (about ten meters from the "pabasa" or "cenaculo") shot them from the back and left them lying on the ground.

The attackers were Huks, and the motive of the killing was obviously the enmity existing between that outlaw organization and the forces of peace and order.

Nery and Laguitan died as a result of the shooting. Private Orsino suffered serious injuries. His leg, shot and fractured, needs about six months to heal.

Pedro Reyes turned state evidence, but he did not confirm every statement he had previously made at the fiscal's investigation. He testified, however, that at about seven o'clock that night he saw, among the people gathered at the "pabasa," "Pipit" (Marcelo Due) Piping, Gervasio Due alias Oliveros, Vicente Gatchalian and Maximino Austria alias Big Boy; that Pipit and Piping (Felipe Sese) called him and told him that Oliveros wanted to talk with him; that talking with Oliveros he was invited by the latter to speak to the MP's (the members of the military police, Nery, Laguitan and Orsino); that he refused; that thereafter he heard several detonations; that he ran to the rice field and there he met Oliveros (Gervasio Due) and Gatchalian talking, the former declaring he was sure the MP he had shot will die and Gatchalian making the same assurance as to the MP he (Gatchalian) had shot in turn. Reyes had previously told the authorities in his affidavit Exhibit A, in addition to what he related in court, that Oliveros, Magallanes and Big Boy had approached the three MP's and lined them up on the road, after which shots were heard. Enough, however, may be gathered from his testimony in open court to identify Gatchalian as one of the assailants, the conversation he overheard in the rice field being admissible as an admission and as part of the *res gestae*. (U. S. vs. Remigio, 37 Phil., 599; People vs. Nakpil, 52 Phil., 985; People vs. Durante, 53 Phil., 363.)

Francisco Orsino, one of the victims, narrated the incident substantially as above described, but could not identify the aggressors except the defendant Severino Austria whom he pointed out as his treacherous assailant.

Lieutenants Fidel Martinez and Secundino Quintans declared under oath that Vicente Gatchalian admitted before the latter, while under investigation, that he had shot one of the MPs who died later. Gatchalian even showed how he had fired at the MP from the back, posing for a picture (Exhibit H).

Lieutenant Quintans likewise asserted that Severino Austria had voluntarily signed the confession Exhibit E wherein said Austria made the following statements:

"Q. What did you do on that same night?—A. While we were at the back of the 'Cenaculo', OLIVEROS ordered PEPIT and FELIPE SESE to see if there are any MP soldiers in the vicinity of the 'Cenaculo'. PEPIT and FELIPE SESE did as ordered and came with the information that there are three MP soldiers in one of the stores near the 'Cenaculo'.

"Q. What did you do when you were informed thus?—A. BASIBAS, MAGALLANES, BATUIN, OLIVEROS, and I went to the place where the MP soldiers were and I myself talked with one of the said soldiers, and I asked him to stand and come with me where we could talk together, but he refused, so I drew my pistol and forced him to come with me. Oliveros held one of the soldiers, Magallanes held the other and forced them to come with us.

"Q. Why and where were you taking the MP soldiers?—A. To talk with them in front of the house of SEGUNDO GUEVARRA.

"Q. What happened when you took the soldiers?—A. While we were walking about 10 meters from the 'Cenaculo', the soldier who was with me tried to grab the pistol that I was holding with my right hand. Suddenly I heard about 4 shots from behind, so I also fired at the soldier who was with me."

The picture of Austria reenacting the crime is Exhibit G.

We are thus satisfied from the foregoing of the guilty participation of the appellants in this gruesome business. Their defense of alibi is weak and untenable. The Solicitor General's brief substantially proves conspiracy between them and their other co-accused who are still at large. There are three offenses: two murders and one serious physical injuries, for which all the accused must do penance irrespective of the actual deeds of each.

Wherefore, the penalty imposed on the appellants being in accordance with law, it is hereby affirmed, with costs.

Moran, C.J., Paras, Feria, Pablo, Briones, Tuason, and Montemayor, JJ., concur.

DISSENTING

PERFECTO, J.:

On the night of April 19, 1946, while attending a pabasa (reading of life story of Christ) in barrio Cacutud, Arayat, Pampanga, three MPs,—Benjamin Neri, Alfredo Laguitan and Francisco Orsino,—were taken by four armed individuals, brought to the road leading to Cabiao and there shot by them. As a result Neri and Laguitan died. Orsino recovered from his wounds.

The question in this appeal is whether or not appellants Vicente Gatchalian and Maximino Austria alias Severino Austria participated in the crime.

Six witnesses testified for the prosecution.

Eusebio Perez, 23, testified that he attended the pabasa, where, at about 7 o'clock at night, of April 19, 1946, in barrio Cacutud, Arayat, Pampanga, he saw, among others, Maximino Austria. (2-3). At 10 o'clock, "While we were eating there was an explosion" (3). The witness heard three rapid explosions, followed by a fourth which was stronger. (8). "I took my wife by the arm and we ran, the people scattered." He went to Lacmit, about three kilometers away. The next day he saw three persons, including Maximino Austria who told him that they were going to hide because something happened in Cacutud, as they were engaged in shooting. (4-5).

In his testimony, the witness did not mention the presence of Vicente Gatchalian.

Pedro Reyes, 33, the information against whom was dismissed because he was utilized as witness for the prosecution, testified that among those present in the pabasa were Vicente Gatchalian and Maximino Austria. (13). While there, Pipit (Marcelo Due) and Piping (Felipe Sese) called him to a place in front of the altar because Oliveros wanted to talk to him. (14). Oliveros told him to come along with him and approach the MPs and speak to them, but Reyes refused. (15). While Reyes was talking to Oliveros, Vicente Gatchalian "was not there and I don't know where he was." (16). Then Reyes returned to his place, and, while returning, there was a commotion and a moment later he heard shots. "I only heard two strong Explosions. I did not see MPs." (15). "After the explosions we ran into the field." In the field he came to Oliveros and Gatchalian talking. (16). He heard Oliveros saying he was sure that the person he shot would die because he shot him four times, and then ask Gatchalian if the person he shot was also going to die, and Gatchalian answered he would. The other persons there present were

Pipit and Piping. (17). In the field he saw also Maximino Austria with Oliveros, Pipit, Piping and Gatchalian. (21). Austria said that his pistol jammed, but hit an MP. (22). The conversation was overheard by Reyes when he was about 7 or 8 meters away from those talking. (24-25). Besides Vicente Gatchalian, Oliveros, Pipit and Piping, "no one else" was "present there in the field." (17). The night was dark, there was no light in the field. (26). Reyes was not sure of the identity of the persons talking because they were far away. (27). After hearing what he heard, "I went home." (17).

Fidel Martinez, 29, testified that he was present during an investigation of the incident conducted by Lt. Quintans. (29). In that investigation, Gatchalian stated that "they approached the MPs whom they found unarmed. Each and everyone of them grabbed one MP." (30). "And fired four shots at the MP and he was sure that the MP will die." The statement was not put in writing because Lt. Quintans was then too occupied. (31).

Federico G. Cayco, 32, is the physician who treated the victims in the station hospital in Camp Olivas. (35-44).

Segundino S. Quintans, 28, testified that he investigated Gatchalian and Austria. (46). Exhibit E is the written statement of Austria. (46). He was not able to put in writing the declaration of Gatchalian because he did not have time to do so. Gatchalian told him that "he was one of those who shot my soldiers on April 19, 1946." (48). Exhibits F, G and H are photographs taken of the reenactment of the incident made by Gatchalian and Austria. (49-50).

Francisco Orsino, 20, declared that he was shot on April 19, 1946, in Arayat at the crossing of the road going to Magalan. He was with Alfredo Laguitan and Benjamin Neri (53). "On that night we were sitting on a bench near a lady's store, four armed persons approached us and told us not to move." One of them "took me towards the road to Magalan." Laguitan and Neri were also dragged behind him. (54). "As we reached a place where there were many people I tried to grab the pistol of the person holding me, but in the attempt I was not successful because he was stronger than I and that happened to shot me." He was shot on the knee. "I heard two shots before I was shot. When I was shot I fell unconscious and I did not know what happened next." (55). The person who shot him was Severino Austria. He could not identify the persons who held Laguitan and Neri nor the fourth person. (56). The witness was shot "just in front of the place where the pabasa was being held." (60). When the witness was taken he was sitting with his companions in front of a store about 20 meters from the place where the pabasa was being held. The store was lighted. (61). Austria was wearing a buri hat. (62). There were many people in the store. (63). There were more than 10. He tried to grab the pistol of Austria after walking with him about 20 meters. (64).

The witnesses for the defense testified in substance as follows:

Segundo Guevara, 61, whose house was located at about 100 meters from the pabasa, said that he saw there Vicente Gatchalian at about 7:30 p.m. (73). He invited Gatchalian, besides Evaristo Paras, Emilia Mallari, and a baby, to eat in his house. (74). "When they were about to finish eating" after eight there were heard four explosions. "I ran to the window to see what happened and I saw people running down the street." Gatchalian "snatched his child from his wife and lay down beside the palay in sacks." (75). Gatchalian did not go down but remained in the house the whole night "because I invited them to sleep in my house." (76).

Evaristo Paras, 67, declared that in the afternoon of April 19, 1946, he was in Lacmit, from where he went to the pabasa with Vicente Gatchalian, the latter's wife and their small child. They reached the pabasa at about 5 o'clock and remained there up to 7.30, more or less. (80). Segundo Guevara invited them to his house where he served them food. When they were about to finish eating, "we heard several shots and the confusion among the people and we had to stop eating." Gatchalian did not go down. (81). The witness left the house of Segundo Guevarra the next morning. (82).

Perpetua Austria, 14, was living with his parents, Severino Austria and Leona Ramos, in their home in barrio Lacmit. On April 19, 1946, his father attended the pabasa. That evening her mother, who was on the family way and had been exposed to heat, had stomach-ache. (85). So "I fetched my father from the chapel," and they arrived home at about 7 o'clock p.m. "My father boiled water and applied enema. He also rubbed her stomach and legs." Perpetua went down only to get guava leaves, and retired at about 11 o'clock. Her father did not go down. (86).

Leona Ramos, 32, declared that she had stomach-ache in the evening of April 19, 1946, and asked her daughter Perpetua Austria to fetch her father from the chapel. (93). Father and daughter arrived home at about 7.30 p.m. Austria had guava leaves boiled and administered her enema. She was on the family way. "I did not sleep the whole night. I could not sleep very well because my stomach-ache was intermittent." Her husband was at her side sometimes rubbing her stomach. (94). Her husband did not go down. (94-95).

Vicente Gatchalian, 24, testified that he went to Cacutud between 5 and 6 o'clock with his wife, a child and Evaristo Paras. He parked his calesa at the house of Segundo Guevara. (98). They went to the place of the pabasa, where they remained for about more than one hour. At 7.30, he left the pabasa together with Segundo Guevara, Evaristo Paras, his wife and his child and went to the house of Segundo Guevara. "When we were about to finish eating we heard shots." (99). It took place at about 8 o'clock. "I took cover behind the palay in sacks that was near the bamboo wall." He did not leave anymore the house of Segundo Guevara that night. (100). It is not true that he made any confession to Lt. Quintans. Lt. Quintans asked him and insisted that he was one of the authors of the killing on April 19, 1946 "but I answered that I was not one of them." (101). He appears in the picture Exhibit H, notwithstanding "his unwillingness, and although he did not take part in the killing, because "Sgt. Macasaquet told me which I preferred to reenact the crime or to lose my life. Being a family man because of the threat upon my life, I enacted what I never did." (402). The witness has been tortured by Sergeant Macasaquet and other MPs. They gave him fist blows and clubbed him until he lost consciousness. As evidence of the torture, the witness exhibited a black mark one centimeter long and one-half centimeter wide in one of his arms. (104). He exhibited also "a whitish scar on his right side about two inches long and one millimeter in width, and another scar in the middle of the stomach about one inch long and one millimeter in width, and he says that his ribs were dislocated." "While they were torturing me they persisted in asking me if I was one of those who killed the MPs." "When we left the camp on a truck to the place where that picture (Exhibit H) was taken, Sgt. Macasaquet brought three shovels saying that if we were not going to do what they wanted us to do they will make us dig our graves." (105). The witness had to pose for the picture "because I was afraid they would kill me, as they said they would." (106). The witness was undressed and maltreated in the presence of Lt. Quintans. (112).

Maximino Austria, 39 denied having taken part in the killing. (114). He attended the pabasa at about 6 o'clock in the afternoon. After one hour he was fetched by their daughter "because my wife was having stomach-ache." Since he arrived at his home at Lacmit after 7 o'clock p.m. he did not go down the whole night. (116). He ordered his daughter to take guava leaves and boil, after which he administered enema to his wife. He slept at about 12 because his wife was on the family way and he was afraid that she was to give birth. (116). The witness signed Exhibit E. He was investigated by Lt. Quintans. (117). The answer attributed to him that he was with those who took part in the killing was not given by him. (119). "They insisted that I admit that these people, whose names were in a list, were with me on that night but because I did not want to admit the fact, Sgt. Macasaquet hit me on the head and I fell as a result thereof." It is not true as appears in Exhibit E that he admitted he had been provided with firearms. (120). The statement attributed to him in the exhibit as to his participation in the killing was not given by him. Regarding the signing of Exhibit E, "I asked that the document be read to me in order that I would be informed of its contents, but Sgt. Macasaquet picked a hammer and hit me on the head and I fell unconscious, perhaps for about two minutes. When I regained consciousness they manacled me and I just signed it without knowing what I did." The witness does not know how to speak and write English. He never studied English.

(126). It was Sgt. Macasaquet who ordered the witness to pose for the picture Exhibit F. "They brought us from their camp on a truck at about 10 o'clock to that spot with three shovels." (127). "They told us they would kill us in case we will not do it and the purpose of the three shovels was to make us dig our own graves." (128). In connection with this case "I was not arrested, but I surrendered." (131). "The MPs came to my house in San Isidro on a Sunday looking for me but I was out fishing and when I came back my wife informed me, so I sent for my wife's nephew in Mexico and asked him to accompany me to the MP of Mexico." (132). "I was brought to Arayat on a Tuesday, we reached there about 2 o'clock where they immediately stripped me of my clothes and they began maltreating me." "Sgt. Macasaquet insisted that I admit participation of that act." (133). When the witness was brought to the fiscal's office, Orsino "did not point to me. They asked him then if he knew me and he said that he did not". "Before the investigation I was maltreated for two days and one night and I was also maltreated during the investigation, because I refused to admit what was written on that paper. They gave me fist blows, trampled upon my fist." (134). It is not true that he saw Eusebio Perez on April 20, 1946, and that he stated to him that he wanted to hide. (135).

Considering the whole of the evidence on record, we cannot but entertain serious doubt as to appellants' guilt.

The testimony of Eusebio Perez to the effect that on April 20, 1946, appellants told him that they wanted to hide because of their participation in the shooting the previous night, is absolutely incredible. His testimony attributes to appellants such glaringly stupid attitudes that could not have been expected except from insane individuals or imbeciles. If appellants had wanted to hide, it is incomprehensible that they should start by admitting to Eusebio Perez that they took part in the shooting affray and then confiding to him their intention to hide. The testimony of Pedro Reyes cannot be taken seriously, not only because it comes from a polluted source, but because it is inherently unbelievable that the authors of the shooting could have been so reckless enough to make comments on the results of the shooting in the field, near the scene, and at the hearing distance of Pedro Reyes. According to the latter, everybody, including the assailants, ran away afield; but it is unbelievable that the assailants should stop in their flight just to make comments and seemingly to afford Pedro Reyes the opportunity to over-hear their conversation. The story is so unnatural and so contrary to human ways to be accepted. The testimony of Pedro Reyes concerning the incident in the pabasa itself, before the shooting, does not in any way involve any one of the two assailants.

The testimony of Orsino would incriminate only Severino Austria. (56). But there is serious doubt as to whether he was really able to identify his assailant to be Severino Austria. According to him, the assailant was wearing a buri hat, and according to several witnesses, the night was dark. Under the circumstances, it was naturally very difficult for him to identify his assailant. As a matter of fact, when Orsino was confronted by Austria in the fiscal's office, he was not able to identify Austria. The testimony of Austria on this matter, brought up when he was cross-examined by the fiscal, appears uncontradicted and unchallenged. The prosecution did not even call Orsino to belie the testimony of Austria.

The testimonies of Fidel Martinez and Segundino S. Quintans as to the supposed oral admission of Vicente Gatchalian and the written statement Exhibit E signed by Severino Austria, are completely valueless because of the uncontradicted testimonies of the two appellants to the effect that they were maltreated, tortured and threatened to be killed. To make the intimidation more effective, three shovels were supplied at hand for the digging of the graves intended for the appellants. Neither Martinez nor Quintans ever dared to testify again to rebut the declarations of Gatchalian and Austria as to the intimidation and third degree to which they had been subjected and in relation with which they had shown visible and tangible marks on their bodies, such as the black spots and scars which they exhibited at the trial. Sgt. Macasaquet was singled out by appellants as one of those who inflicted the maltreatments and torture, and yet the prosecution dared not to call Sgt. Macasaquet to the

witness stand to deny the declarations of the two appellants.

Orsino testified that the shooting took place in front of the place where the pabasa was being held and in the presence of many people. Not one of those many who had witnessed the shooting was called by the prosecution to testify as to who did the shooting and how it took place, with the single exception of Orsino. The failure to present such eye-witnesses has greatly weakened the very doubtful testimony of Orsino as to his having allegedly identified his assailant.

As regards Maximino Austria, there appears on record his uncontradicted testimony that he was not arrested, but had surrendered himself upon learning that he was being sought by the MPs. Such conduct cannot be expected from one with guilty conscience, but from a person who has nothing to be afraid of.

Appellants' guilt not having been proved beyond all reasonable doubt, they are entitled to acquittal. We vote for their immediate release from confinement.

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