

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. BENITO VALERIANO, ET AL., DEFENDANTS.***G.R. No. L-4306. April 25, 1952*

Ponente: TUASON, J.

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In a well-written decision Benito Valeriano and Ernesto Capistrano, the appellants, were, by the Court of First Instance of Bulacan, found guilty of murder and qualified by treachery and sentenced to reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the sum of P6,000, and each to pay 1/3 of the costs. In the same decision, a third defendant, Alberto Silverio, was acquitted on the grounds that his confession had been obtained through violence and intimidation by the constabulary, and the rest of the evidence against him was insufficient to warrant conviction.

Delfin Bartolome was shot and killed at about 8 o'clock on the night of February 6, 1950, at a fishpond, of which he was overseer, in Binuangan, Obando, Bulacan. Towards midnight, the accused Benito Valeriano, who was a municipal councilor of Obando and lived in Binuangan, reported the crime to Lt. Jovito Pesayco of the Philippine Constabulary, who happened to be in the poblacion. With Sergeant Buenaventura Viray and a private of the same force, the chief of police of Obando and Benito Valeriano, Lt. Pesayco forthwith set out for the scene of the killing. And with the aid of a flashlight and a carbide lamp, Lt. Pesayco and his companions found blood and two or three empty carbine on or near the spot.

Early the next morning, Pesayco and Viray returned with a squad of soldiers to the fishpond and found 71 more empty shells of different types and caliber, including 60 for Garrand rifles, six for carbines and five for .45 pistols.

All these shells and those recovered the night before, together with Valeriano's licensed .45 Colt which the constabulary had confiscated, a Garrand said to have been surrendered by Ernesto Capistrano, another Garrand taken from Alberto Silverio, and two carbines taken from Loreto Merciadès and Simplicio Burgos, were sent to Camp Crame in Quezon City for ballistic examination. The results of the examination will be stated in the latter part of this decision.

There was no eye-witness to the crime. Dionisio Bartolome, a brother of the deceased, saw five armed men deployed along one of the dikes of the fishpond and two others uprooting plants shortly before volleys were heard in the barrio, but the court did not believe that this witness recognized, as Dionisio said he did, any of those people. This testimony eliminated, there is only circumstantial evidence against the accused, besides Capistrano's confession. Sufficiency of this circumstantial evidence and this confession is the main point at issue.

The trial court found the following facts and testimony to have been established beyond reasonable doubt.

Delfin Bartolome had planted bungalow seedlings on land which was in litigation between Valeriano and Bartolome's employer. On January 4, Valeriano told Bartolome to pull out those plants but Bartolome removed only some of them. The next day Valeriano complained to the municipal mayor and the mayor sent for Bartolome

on the 6th and ordered him to clear the place of all his plants, which Bartolome promised to do the following day. Before that, on New Year's eve, Valeriano with the help of other persons had destroyed some dikes of the fishpond which was in Bartolome's care and dumped the earth on Bartolome's oyster beds.

Captain Jose G. Fernandez, chief of the ballistic and chemistry section of the constabulary general headquarters, made a comparison of the five pistol empty shells, Exhibit "E", with the cartridges of two projectiles which he fired from Valeriano's .45 automatic, found in each case more than seven points of congruence in the accidental striations or signatures between the evidence and the test cartridges. He followed the same process with reference to the other empty shells and discovered that 18 garrand cartridges each bore more than seven points of identity with the rest cartridges fired from Exhibit "B", Capistrano's rifle. From these similarities, Captain Fernandez concluded that the five .45 caliber empty shells, Exhibit "E", belonged to Valeriano's pistol and the 18 Garrand shells to Capistrano's rifle, explaining that seven points of congruence were enough to support such conclusion.

According to Lt. Pesayco, while he and his soldiers were gathering empty shells on the beach he noticed Valeriano pick up some. He stated that this accused did not hand his find over to Pesayco but the lieutenant did not mind what Valeriano did because the latter, who was not yet suspected of any part in the crime, was a municipal councillor and, besides, the constabulary already had enough specimens.

Valeriano on the night of the killing was seen eavesdropping outside the house of the deceased while an inquest is going on inside, and appeared very nervous.

On the 18th of June, the two appellants and several companions, one of whom was the chief of police, came to the office of one Gerardo Samson on Rizal Avenue in Manila "trying to make a compromise of the case x x x and requesting Samson to see Bartolome's father." The day before that, the municipal mayor, the chief of police and one Tomas Sanchez visited Delfin Bartolome's father for the same purpose.

Angelina Bartolome testified that Delfin was her brother and Ernesto Capistrano her husband's brother; that she and Capistrano lived in her mother-in-law's house in Binuangan; that the day following her brother's murder, Capistrano took out a pair of trousers and a shirt from the common wardrobe, wrapped them up, and left; that before leaving Capistrano said for her "to take care of everything"; that about a week later Capistrano returned, tapped her on the back, requested her to forgive him, and said that he did not know if he could still come back. Angelina Bartolome also testified that on the night soon after the shooting, Capistrano rushed into their gate, and motioned her to go upstairs when she asked him what the blast was about, assuring her that "it was nothing."

Capistrano's confession was signed and sworn to before the justice of the peace. It had been written in the office of the constabulary headquarters in Lolomboy, Bulacan. It stated that in the afternoon of February 6, Capistrano, Loreto Merciadès, Simplicio Burgos, Delfin Gutierrez and Alberto Silverio were requested by Valeriano to go with him after supper with their firearms, to pull out the bungalow which Delfin Bartolome had planted; that as they were engaged in removing the shrubs, Dionisio Bartolome passed in a banca and spotted them; that shortly thereafter Delfin Bartolome appeared and walk towards the place where they were hidden; that in that instant he, Benito Valeriano, Alberto Silverio, Loreto Merciadès and Simplicio Burgos opened fire.

From this chain of circumstances and Capistrano's confession, we are in full agreement with the court that the appellants are guilty as charged.

Captain Fernandez's opinion is severely criticized because it is based on similarities between the evidence and the test cartridges with no explanation of the dissimilarities. Granting that the witness' examination is in itself incomplete and inconclusive, yet, considered with the rest of the evidence and the absence of any probability that others could have perpetrated the crime, the identities revealed by the said examination supply sufficient basis for

linking the defendants' weapons to the shooting under consideration.

Capistrano said the gun he had surrendered was dismantled, not Exhibit "B", but Angelina Bartolome, Capistrano's sister-in-law who lived in the same house with him, was certain that this was the gun which Capistrano kept in the house and she used to see. The insinuation of tampering with or substitution of guns and cartridges is based on conjectures. The fact that, according to Captain Fernandez, only some of the cartridges were "positive" and the points of identity he found were, according to the defense, far from complete, is the best refutation of counsel's suspicion.

With reference to Valeriano's motives, what the witnesses said regarding the quarrel between this defendant and the deceased might sound too trifle to drive an ordinary man to take a human life. But as the learned trial Judge said, "our criminal jurisprudence is replete with examples of cases wherein for a much lesser cause life had been taken." Then there was the possibility which could not be ruled out, that there might have been incidents between Valeriano and Bartolome more serious than those of which the witnesses were aware. It is to be remembered that Valeriano and Bartolome lived in the same barrio and may have met frequently. Whatever the motive, Valeriano's exhortation to residents of his barrio not to buy bread from the deceased's brother, who was a baker, is a clear index of the bitterness of Valeriano's hatred.

Purificacion Bartolome was not cross-examined and no evidence whatever was introduced to rebut her testimony that the appellants with the help of influential people made a last-minute effort to have the case dropped by Bartolome's relatives. Although the matter was already in the hands of the fiscal and there was no probability that the defendants would have attained their objective even if Bartolome's relatives had given in to pressure, the mere attempt was a strong indication of guilt, as was held in *People vs. Supe and Cruz*, G.R. No. L-16, January 31, 1946.

Loreto Merciares' and Simplicio Burgos' escape is presumptive proof of complicity in the crime. But these men had no reason of their own to do away with Bartolome. If they participated in the slaying they must have done so for someone else who disliked the deceased. Upon the record only Valeriano could have been that one, who by his position could have wielded much influence over his constituents. This theory fits in with Capistrano's confession.

Capistrano's affidavit is fatal to his defense. Capistrano does not claim to have been the subject of improper treatments by any law-enforcement agents. What he said was that on entering the headquarters after he was arrested for questioning, he saw or met Alberto Silverio, who had been arrested before him, and was warned by Silverio of what was coming to him if he did not obey whatever the constabulary would tell him to do. The trial court believed that "this was nothing but an afterthought," resorted to in an endeavor to destroy the damaging effects of injudicious admissions. It seems indeed out of the ordinary and sensible police practice that Silverio would have been allowed by the guards to talk with Capistrano before Capistrano had been grilled. It is even more improbable that Silverio would have dared tell Capistrano of his awful experience in the presence of men who or whose fellow soldiers had tormented him.

In view of the foregoing, the appealed decision is affirmed, with costs.

Paras, C.J., Feria, Pablo, Bengzon, Montemayor, Reyes, and Bautista Angelo, JJ., concur.

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