

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. JOSE QUEVEDO, DEFENDANT AND APPELLANT.***G. R. No. L-2500. April 27, 1951*

Ponente: PADILLA, J.

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On 2 August 1946, at about 7:00 p.m., while the family of Ulysses Rous, consisting of his wife Teresa Rabena de Rous, his brother Luis Rous, his children Natividad, Ulysses Jr., Benita and his daughter-in-law Rosy C. Rous, was sitting at the dining table in the kitchen on the ground floor of his house situated along the national road, in the municipality of Binalonan, province of Pangasinan, and Ulysses Rous and an old woman were in the upper floor of the house, a person armed with a .45 caliber grease gun entered the northwest door of the house from the rear, preceded by a barking of the dog, warned them in Tagalog not to move or shout if they did not want to be killed and asked for Ulysses Rous. Teresa Rabena de Rous answered him also in Tagalog that her husband was upstairs. The person left and immediately two armed persons entered the kitchen, one of them asking for Paling, referring to Rafael Rous, the married son, and Natividad answered that Paling went to Manila. Not long after the first person had left the kitchen the electric light went out. A noise was heard as if a door near the one through which they had entered was being opened. The two persons asked them to light a lamp and Teresa Rabena de Rous lighted up a kerosene lamp. And then a chatter of an automatic gun and a whistle were heard. One of the two persons, who entered the kitchen after the first and asked for Rafael Rous, sensing that he had been recognized by Natividad, covered his mouth with a handkerchief. Two other persons entered the kitchen to guard them after the three had left. At the sound of the whistle the last two persons who guarded them departed in a hurry. Three minutes after, policemen appeared on the kitchen and asked Teresa Rabena de Rous about the gunshots they heard seemingly fired in her house and one of the policemen went up the house to look for Ulysses Rous followed by Teresa Rabena de Rous. As her husband could not be found in the upper floor, they went down and called him but no one answered. So they went up again and it was then when Natividad heard her father groaning. So she called the attention of a policeman who focused his flashlight outside the house and saw Ulysses Rous lying dead near a ditch riddled with gunshots and his head submerged in the water. The policemen did not allow the body of the deceased removed from the ditch until after the arrival of the Mayor, the Chief of Police and the doctor. Policeman Bruno Manuel was sent to call for Dr. Rous, a brother of the deceased, who after examining the body sent for a stretcher and had it brought up the house. Shortly thereafter the MPs arrived. Sergeant Mallari of the Military Police Command asked Teresa Rabena de Rous whether she recognized the persons who entered the kitchen of her house and she told him that she recognized one of them and it was Jose Quevedo from Caaringayan, municipality of Manaoag. The Chief of Police also asked her whether she recognized the persons who entered her house and she repeated the answer given to Sergeant Mallari. The investigation of the Chief of Police was cut short because he rushed to Aloragat to investigate a robbery committed there. The following morning, Sergeant Mallari and the Chief of Police returned to the house to resume the investigation and asked Teresa de Rabena de Rous whether she would be able to point to the person whom she recognized if brought in her presence and she said that she could recognize and point to him. The two peace officers left the house at 9:00

o'clock in the morning. At 4:00 o'clock in the afternoon, Sergeant Zacarias and the Chief of Police, Sergeant Mallari arriving later, brought Jose Quevedo to the house and Teresa pointed to him as one of the persons who had entered her house. Quevedo was brought to the MP headquarters at Urdaneta. The day following the death of Ulysses Rous, the acting Justice of the Peace of Binalonan, Jose F. Aquino, also went to the place to make an inquest and took the statement of Natividad Rous who, answering the question put to her by the Justice of the Peace as to whether she was able to recognize any one of them (referring to those who entered the kitchen of the deceased's house), said:

Yes. One man whom I know to be from Linmansangan, Binalonan, who asked where my brother Paling was. I know him by face, but I do not know his name. As soon as he perceived that I recognized him, he covered his lower face with a handkerchief.

This statement was signed and sworn to by Natividad Rous before the acting Justice of the Peace of Binalonan (Exhibit 5). In Exhibit 6, which is a typewritten affidavit subscribed and sworn to by Natividad Rous on the same date before the same acting Justice of the Peace, the statement was repeated except as to the covering of the lower part of the face by the one whom she recognized. On 5 August, before the Justice of the Peace of Urdaneta, Jose de la Cruz, a typewritten affidavit was thumbmarked by Teresa Rabena de Rous in the form of questions and answers and, among other things, she swore that—

Because of the bright light, I recognized that the first man who entered was Jose Quevedo. (Exhibit A.)

On the same day, before the same Justice of the Peace a typewritten affidavit was signed and sworn to by Rosy C. Rous who, asked whether she recognized any one of the persons who entered the kitchen of the house, answered:

Yes, the first one who entered.

Q. What is his name?

A. I do not know, but if shown to me I would know him.

Q. How is it that you can only recognize the first one who entered?

A. Because the light was bright and although I cannot remember where and when I am sure I have already seen him before. (Exhibit B.)

On 7 August, the President of the 12th Sanitary Division stationed in Asingan, Pangasinan, and two other physicians issued a certificate setting forth the result of the examination made by them of the body of the deceased. It is as follows:

- Gunshot wound with fracture of the skull reaching as far as the brain, located at the occipito-temporal region, right side;
- Gunshot wound with fracture of the skull at the occipital region, about a finger breadth from No. 1, more to the right side;
- Gunshot wound, penetrating thru and thru, at the level of the second right intercostal space along the paramedian line; bullet passed thru at the back just below spine of scapula, right side;
- Gunshot wound, penetrating thru and thru, at the right side of the lower portion of the sternum, coming out at the back of the level of the 5th intercostal space, right side;
- Gunshot wound, penetrating, thru and thru, at the second intercostal space along the paramedian line, left side, coming out at the back at the 4th intercostal space, left side;

- Gunshot wound, penetrating, at level of 2nd intercostal space, right side, near the medial border of deltoid. (No exit)
- Gunshot wound, with compound fracture with comminution involving the 2nd and 3rd phalanges, middle finger, left hand;
- Gunshot wound, thru and thru, at the lower third of the right forearm at its dorsal aspect, passing thru the ventral aspect of same at the level of the middle third;
- Gunshot wound with no exit below the right axilla and
- A bullet was extracted at the left hypochondriac region.

In view of the foregoing findings we concluded that wounds Nos. 1, 2, 3, 4, and 5 as described above, to be mortal wounds and that the cause of death was multiple internal injuries with subsequent hemorrhage (internal and external) due to said gunshot wounds. (Exhibit C.)

On 12 August, a complaint was filed by the Chief of Police in the Justice of the Peace Court of Binalonan charging Jose Quevedo and other unknown persons with the crime of murder (Exhibit 2). On the date of the filing of the complaint, to determine whether there was a probable cause to warrant the issuance of an order of arrest, the acting Justice of the Peace investigated Teresa Rabena de Rous and Rosy C. Rous. He took their statement under oath. Asked whether she recognized anyone of the men who entered her house on that evening, Teresa Rabena de Rous gave the following answer:

I did not recognize anyone of them that very night of the unfortunate incident, however I know that I have seen one of them before that, that is why I spent the whole night long thinking who the man might be and where I met him before, and then when on the afternoon of August 3, 1946, the MP Command of Urdaneta confronted us with a man I readily remembered him to be the very man who first entered our kitchen that previous night with his gun covering us and that the association of thought made me remember that he is a man by the name of Jose Quevedo of Caaringayan, Manaoag, Pangasinan. (Exhibit 3.)

Rosy C. Rous made the following statement:

At about 7 o'clock p. m. while we were eating our supper, a man entered at once at the backdoor of our kitchen with a gun, pointing the gun to us and said that if we will shout we will be killed. Then other men entered with their guns and the third man who entered with a gun asked me "Where is Paling," but my sister-in-law, Natividad Rous, answered him "He went to Manila this noon." After a few minutes the generator was put out. Then the man who entered first returned to our place after passing us and asked why the generator was put out to my uncle-in-law. He told us that we will light the lamp so that we lighted the petroleum lamp. Two of the men went upstairs and the three of them guarded us. After a few minutes I heard the sound of gunshots presumably from an automatic weapon.

Asked whether she knew any one of the men who entered the house or met any one of them before, she answered:

Yes, I have seen one of them before and if he will be shown to me I know him by face but I do not know him by name.

Q. Do you remember having seen the accused Jose Quevedo before the night of the shooting?

A. Yes, sir, I am positive that he was the first man who entered our kitchen with his gun covering us. (Exhibit 4.)

Upon these two sworn statements, the warrant of arrest was issued by the Justice of the Peace.

On 19 August, at the preliminary investigation, the testimony of Teresa Rabena de Rous was taken by the Justice

of the Peace. She was asked:

Q. You say that you know Jose Quevedo since he was five years old as you were in Anis and he in Caaringayan. On the night he entered (to) your house did you recognize Jose Quevedo that very night of the shooting?

A. No, sir, I did not recognize him.

Q. Why is it that you did not readily recognize him that night when you claim that you know him?

A. I did not recognize him readily because I got nervous and frightened.

Q. When did you remember that it was Jose Quevedo who entered your house that night of the shooting?

A. I have been thinking the whole night how come that I know that face and where I saw him before. Then the following morning the MP came and asked me whether I could remember the man. They asked me whether if confronted with the man I could recall or recognize him. I answered that I would know him if I can see him again. \* \* \*

Q. Did they show you?

A. As soon as they arrived they did not bring him in my presence but that when I looked out of the window, I readily remembered that it was the face of the man who entered that night of the shooting and then I went downstairs at once and I was asked by the MPs if it was the face of the man who entered the previous night. I answered that he was the man. When I went upstairs, my daughter-in-law wept and told me that it is the same face she saw that night of the shooting.

This statement marked Exhibit 7 was thumbmarked by Teresa Rabena de Rous before the acting Justice of the Peace of Binalonan.

Thereupon, Jose Quevedo was bound over to the Court of First Instance, where the Provincial Fiscal filed an information for murder against him only, the other alleged companions until then not having been apprehended for lack of identification. He was tried, found guilty of the crime charged and sentenced to suffer reclusion perpetua, the accessories of the law, to indemnify the heirs of the deceased in the sum of P2,000 and to pay the costs. He has appealed.

The solution of the problem in this case that engages our attention hinges on the appellant's identity—whether he was one of those who entered the house of the victim on the evening of the commission of the crime.

The trial court found that the appellant was identified by Teresa Rabena de Rous, Rosy C. Rous and Natividad Rous; that the first mentioned to the Chief of Police the name of the appellant as one of those who entered her house on the evening of 2 August; that the second pointed to the appellant in the afternoon of the day following the commission of the crime when three persons, among whom the appellant was, were brought to the house; and that although the third was somewhat hesitant on the identity of the appellant as one of those who entered their house on the evening in question when he was confronted with her by the MPs, it was due, according to her, to the fact that she was confused and nervous on account of her father's death. Nevertheless, she swore on the stand that the appellant was one of those who entered their house on the evening in question. These are the facts in support of the finding that the appellant was identified by the witnesses for the prosecution as one of those who entered the victim's house on the evening of 2 August.

According to the Chief of Police of Binalonan, Teresa Rabena de Rous told him on the very evening of the commission of the crime that it was the appellant who entered the kitchen of her house; the following morning Rosy C. Rous told him that though she recognized the first man who entered the kitchen of the house, she did not

know his name but could point to him if she would see him again; and Natividad Rous told him that she recognized the man and although she did not know his name she could point to him if she should see him again. He reported these statements to the MPC at Urdaneta and mentioned the name of the appellant to Lt. Teodoro L. Patag.

The last named officer says that at the headquarters of the Military Police Command in Urdaneta and at the preliminary investigation conducted by the acting Justice of the Peace of the municipality of Binalonan, Teresa Rabena de Rous pointed to the appellant as one of the persons who entered her house on the evening her husband was killed; and that Rosy C. Rous pointed to the appellant as one of those who entered their house on the evening her father-in-law was shot. But in another part of his testimony he says that when he investigated Teresa Rabena de Rous, she told him that she recognized the face of the person who entered her house but did not know his name and that when the appellant was brought before her it was then when she said that it was the appellant (p. 13, t. s. n. Boquiren).

Thus, Teresa Rabena de Rous told the Chief of Police that on the evening of the commission of the crime she recognized the appellant as one of those who entered the kitchen of her house on said evening; she pointed to the appellant when Sergeant Zacarias and the Chief of Police brought the appellant, together with two other persons, to her house in the afternoon of the following day; she repeated the same statement in her affidavit of 5 August (Exhibit A) ; and she pointed to the appellant at the headquarters of the Military Police in Urdaneta and at the preliminary investigation conducted by the acting Justice of the Peace of Binalonan on 19 August. However, about the time Exhibit A was sworn to, Teresa Rabena de Rous told Lieutenant Patag that although she recognized the face of the person who entered the house, yet she did not know his name, and it was only when the appellant was brought in her presence that she said he was one among those who entered the kitchen of her house. On 12 August, when the Justice of the Peace took Teresa's testimony to find out whether there was probable cause to justify the issuance of a warrant of arrest, answering the question put to her as to whether she recognized anyone of those who entered her house on the evening her husband was killed, she said she did not (Exhibit 3). And again on 19 August, at the preliminary investigation conducted by the acting Justice of the Peace of Binalonan, answering one of the questions put to her during the investigation, she said she did not recognize the appellant in spite of the fact that she had known him since he was five years old (Exhibit 7).

The trial court finds that, that part of the testimony given at the preliminary investigation just referred to, to the effect that she did not recognize the appellant on the evening of the commission of the crime, is illogical, because she could not have stated that fact, after stating in a previous answer that the appellant was "one of the men who passed direct through the kitchen door near the stairs \* \* \*." The trial court conjectures that the typist who translated from Ilocano to English the testimony of Teresa Rabena de Rous at the preliminary investigation must have committed a mistake, or purposely made a wrong translation for unknown reasons. On the stand, questions were put to Teresa and the following answers were given by her:

Q. \* \* \* one of the questions here says, "You say that you know Jose Quevedo since he was five years old as you were in Anis and he in Caaringayan. On the night he entered your house did you recognize Jose Quevedo that very night of the shooting," was that question asked to you?

A. Yes, sir.

Q. And according to this exhibit, the answer to that question read to you and which you admitted was asked to you, was, "No sir, I did not recognize him," do you remember now having made that answer?

A. No, sir, I did not make that answer. What I said was this, "I had been thinking sir, because I did not like to commit sin against God, why I know the face and I came to remember; it seems to me I have seen that face in barrio Anis." (pp. 68-69, t.s.n. Gaspar.)

Natividad Rous, a very intelligent girl, testifies that although she recognized the man who entered the kitchen door of their house, she forgot his name but could recognize him if she should see him (p. 82, t.s.n. Boquiren). She further testifies that she recognized two persons, the first was from Caaringayan, Manaoag, as she revealed to the Chief of Police (pp. 92, 94, 102-103, ts.n. Boquiren), and the second, who covered his mouth, was from Linmansangan, Binalonan (pp. 92, 93, 96, t.s.n. Boquiren); but in the afternoon of 3 August when three men, including the appellant, were brought before her, she said that none of them entered the kitchen of their house on the evening of 2 August (p. 96, t.s.n. Boquiren); that on 12 August, when at the MP barracks in Urdaneta she was confronted with six men, including the appellant, and asked whether anyone of them entered their house on the evening of 2 August, she said that none of them entered the kitchen of their house on that evening (pp. 97, 98, t.s.n. Boquiren). Her explanation that she committed a mistake because she was confused and frightened is not satisfactory, for on the very night of the commission of the crime she told the Chief of Police that she had recognized one of the persons who entered the kitchen of their house as one from Caaringayan, Manaoag (p. 103, t.s.n. Boquiren).

Policarpio Jabonillo, a corporal of the 17th MP stationed at Urdaneta, testifies<sup>1</sup> that on 4, 7 and 10 August 1946, he led Natividad Rous to the guardhouse where the appellant, his father, the three Cadingas brothers and enlisted men on duty were gathered, except on 7 August when the appellant's father was not in the guardhouse, and asked her to point to any one of them as among those who entered their house on the evening of 2 August, and she said that none of them entered their house on that evening (pp. 181, 182, 183, 184, ts.n. Gaspar). The third try at identification was done in the presence of Lt. Teodoro L. Patag who asked Natividad Rous to point to the man whom she recognized that evening of 2 August (p. t.s.n. Gaspar).

Rosy C. Rous testifies that on the evening of 2 August, she recognized the appellant as the first to enter the kitchen of their house but did not know his name (pp. 115, 119, ts.n., Boquiren).

The testimony of Teresa Rabena de Rous, taken together with her previous sworn statements, reveals that she was not sure that the appellant was among those who entered her house on the evening her husband was killed. Of course, that of Natividad Rous cannot be relied upon. And that of Rosy C. Rous does not merit any credit. On the evening of the commission of the crime she heard her mother-in-law mention the name of the appellant to the Chief of Police; so that she already knew his name, and yet on 5 and 12 August, when she said she recognized the appellant as one of those who entered their house on the evening when her father-in-law was killed, she persisted in saying that she did not know his name (Exhibits B and 4). She was new in Binalonan, she having married Rafael Rous in April 1946, and had no occasion to know the appellant well to enable her to recognize him.

The appellant sets up an alibi to the effect that on the day of the commission of the crime he was in the house of Narciso Rumuar situated in the barrio of Laoac, municipality of Manaoag, playing black-jack from 3:00 p.m. until 10:00 p.m. when they stopped and went home after Narciso Licuanan, the banker, had won all the money of the betters, and never went down the house except for a few minutes to answer a call of nature. This alibi is supported by the testimony of some of those who took part in the gambling. The trial Court found the alibi perfect and for that reason did not believe it.

The motive which the trial court believed had prompted the appellant to commit the crime with which he is charged was an alleged ill feeling entertained by him towards the deceased who, after acquiring by purchase in 1943 a parcel of agricultural land from the aunt of the appellant named Emeteria Pregillana de Quevedo, refused to resell it to her.

For that reason the latter brought an action in 1945 against the deceased which was then pending trial in the Court of First Instance of Pangasinan (Civil Case No. 8980). Furthermore, sometime in April 1946, when Teresa Rabena

de Rous went to the land together with Ambrosio Ramos and Felipa Quevedo to cut firewood, the appellant appeared at the place and told his aunt Felipa to discontinue cutting firewood, and for that interference Teresa Rabena de Rous bawled out the appellant. In our\* judgment this is insufficient motive. It could not have urged and prompted the appellant to kill Ulysses Rous. The appellant's aunt was the party who should be resentful because of the deceased's refusal to allow her to redeem the land she had sold to him. If the appellant took offense at being chided by the wife of the deceased, his ill feeling must have been towards the wife and not the husband—the deceased. The appellant is not only a high school graduate but also a university student who took up education. It is difficult to believe that for such a flimsy motive as the refusal of Ulysses Rous to allow Emeteria Pregillana de Quevedo to redeem the land she had sold to him, in which the appellant could have no interest because she had children, the appellant would decide to do away with Ulysses Rous. According to Teresa Rabena de Rous she knew the appellant since boyhood. If the appellant had made up his mind to do away with Ulysses Rous, certainly he would not appear at the house undisguised. We are not morally certain that the appellant was among those who entered the kitchen of the house of the Rous family at 7:00 p.m. of 2 August. We hesitate to deprive a man of his liberty for 30 years upon doubtful evidence on his identity.

The judgment appealed from is reversed, the appellant acquitted, with costs de oficio.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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