

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALFREDO ALBAN ALIAS FRED, ET AL., DEFENDANTS. ALFREDO
ALBAN ALIAS FRED, DEFENDANT AND APPELLANT.**

G.R. No. L-15023. March 29, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

Defendant-appellant Alfredo Alban, alias Fred, appeals from the decision of the Court of First Instance of La Union (in Criminal Case No. 2090) convicting him of the crime of murder, for the killing of Teofilo Boado, and sentencing him to suffer the penalty of reclusion perpetua and to pay indemnity in the sum of P6,000.00 and costs.

The evidence for the prosecution discloses that at around 8 o'clock on the night of July 16, 1956, two men, with handkerchiefs over their faces below the eyes, came up the house of Teofilo Boado at barrio San Julian, municipality of Agoo, La Union. Teofilo and his wife Marcela Dacanay, who had gone to sleep, were awakened. Marcela got up and lighted 2 kerosene lamps. With one of the lamps, Marcela went to the dining room, where she met the two men. As they advanced towards her husband, Marcela recognized appellant, although with a mask (handkerchief) below the eyes, as one of the two intruders. Appellant had a small gun, white in color. All of a sudden Marcela heard shots. Turning back, she saw her husband Teofilo fall upon the floor. She thereupon rushed to him, picked him up, and placed him on a mat, and shouted for help. Not long after, Sgt. Silvestre Boado, Patrolman Francisco Balancio, Genaro Calonge, and others came. As the victim was being helped, he spoke saying "You arrest Fred (appellant herein Alfredo Alban), the son of Juan (Juan Alban) and Paer (Rafaela Boado), because he was the one who shot me." The victim was brought to the Doña Gregoria Memorial Hospital at Agoo, and was immediately attended to by Dr. Clemente Vergara. Meanwhile, two policemen were dispatched to apprehend appellant, as the suspected perpetrator of the crime. Appellant, who was found in the house of his uncle Dionisio Boado in the game barrio of San Julian, was taken to the presidencia (municipal building) of Agoo. Later, the victim was brought to the Bethany Hospital at San Fernando (La Union) for blood transfusion, where not long after he expired. At around 10:30 o'clock of the same night, prior to the transfer of the victim at Bethany Hospital, Patrolman Francisco Balancio took down his (victim's) statement. Written in Ilocano, it was translated into English as follows: "Fred (appellant Alfredo Alban), the son of Juan (Juan Alban) and Paer (Rafaela Boado) was the one who shot me. His companion is thin and small, but I cannot recognize him." (Exh. C-1.) However, because of the victim's condition, upon advice of the attending, physician, the statement was not signed by him (victim).

The defense is alibi. Appellant claims that on the night in question, at around 7:30 to 8:30 o'clock, he was in the house of Felino Dumo in the same barrio San Julian, Agoo, listening to the radio program "Tawag ng Tanghalan", while waiting for his (Felino's) family to finish eating their supper. Leaving Felino's house, while said radio program was still going on, he proceeded to the house of his uncle Dionisio Boado, which was just across the street from his (Felino's) house. He then took his supper, smoked a cigarette, and retired for the night. Sometime later, he was awakened by his sister Emerita Alban-Panis, when two policemen called at their house, at around

10:00 o'clock looking for him. The policemen told appellant that the mayor and the chief of police of Agoo, wanted to talk to him regarding Congressman Cases. He willingly went with them and, upon reaching the municipal building, he was met by Sgt. Silvestre Boado, whom he asked where the mayor was. Pointing a finger at him, he (Boado) said, "Do not talk because, verbally speaking, you shot old man Pelo (Teofilo Boado)". That night, appellant was made to sleep in the office of the chief of police. The next day, he was investigated by two Philippine Constabulary men.

We find appellant's alibi in this case to be weak and unconvincing. In the first place, his version of the incident is insufficient to overcome the clear, positive, and straight forward testimony of the victim's wife, Marcela Dacanay, who recognized and identified him as the person who shot the deceased Teofilo Boado. It can not be seriously contended that Marcela was mistaken as to appellant's identity because previous to the incident in question, she had seen him (appellant) on two occasions. Besides, as pointed out by the trial court, "The mask below his eyes did not sufficiently hide his identity, due to his exposed forehead and physical appearance. Furthermore, the two kerosene lamps could have sufficiently lighted the house to enable . . . the widow to identify and recognize the defendant" (Page 17, Decision). Moreover, appellant was named by the deceased immediately after being shot, which circumstance, the trial court considered as part of the *res gestae* (See *U.S. vs. Macuti*, 26 Phil., 170; *People vs. Palamos*, 49 Phil., 601; *People vs. Portente*, 48 Phil., 971; *People vs. Reyes*, 52 Phil., 538; *State vs. Wagner*, 61 Me. 195; *Ford vs. State* 50 S.W. 350; 3 *Moran*, *Comments on the Rules of Court* [1952 Ed.] 363-375). On this point, the trial court aptly observed:

"However, the outcry of the deceased naming his assailant immediately after he was shot can be considered as part of the *res gestae*. His statement was made when the deceased had no time or opportunity to concoct and contrive any falsehood. Under the mental and physical condition of the deceased at the time he made the identifying statement naming the accused as the assailant, it can be safely said that the statement was spontaneous and reflected the truth." (Pages 15-16, Decision.)

As to whether the deceased had enough knowledge and sufficient opportunity to know and identify appellant when he (deceased) was shot, the trial court stated:

"After going over the evidence, the Court believes that the deceased was in a position and had the opportunity to name and identify the accused as the assailant. There are circumstances and compelling reasons to support this stand of the Court. The accused is a native of barrio San Julian, within the vicinity where the deceased has been a resident also. The deceased could have known the defendant for a long time. Not only that, they were related to each other, as the accused is the son of Juan Alban and Rafaela Boado. Every now and then, the accused, although temporarily residing in Manila used to come to their barrio during election time and on other occasions. That same afternoon before the night of the killing, the accused and the deceased were in the store of Mrs. Guadalupe Saliut in barrio San Julian, with the former in conversation with Patrolman Calonge and telling stories to the people gathered thereabout. The deceased had no grudge against the defendant, for the former to impute so grave a crime to the accused. And if the deceased did not see and recognize the defendant, he could not have named the latter as his assailant. It is also obvious that when the accused used a mask, the purpose was to hide his identity from the deceased and the wife, who knew him. But the accused was mistaken because the deceased and the wife recognized him just the same. The mask below his eyes did not sufficiently hide his identity due to his exposed forehead and physical appearance. Furthermore the two kerosene lamps could have sufficiently lighted the house to enable not only the deceased but also the widow to identify and recognize the defendant."

Secondly, appellant and the other defense witnesses failed to adduce any valid or cogent reason why Marcela Dacanay (victim's widow) would perjure herself and testify falsely against appellant (See *People vs. Gonzales*, et al., 76 Phil., 473; *People vs. Macalindong*, 76 Phil., 719).

Lastly, granting for the sake of argument that appellant was at his uncle's house on the night of the occurrence of the crime, it was not physically impossible for him to have been at the scene of the crime and to have committed it as well. As pointed out by the trial court, "defendant's claim that he was at Felino Dumo's house before 8 o'clock and, thereafter, went home to sleep later, had necessarily failed. At best, he only proved his presence in barrio San Julian and San Nicolas between 7:30 and 9:00 in the evening of the killing, without positively showing that it was impossible for him to go to and be at the house of Teofilo Boado, which according to the defendant himself is only 500 meters away from his house." (Page 18, Decision.) It has been repeatedly held by this Court that to establish an alibi, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time, that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place. (U.S. vs. Oxiles, 20 Phil., 587; People vs. Palamos, 49 Phil., 601; People vs. Resabal, 50 Phil., 780; People vs. Niem., et al., 75 Phil., 668.)

The appeal, therefore, presents no issues of law, but merely involves the credibility of the various witnesses. In this connection, the rule is well-settled that where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, considering that it is in a better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it is shown that it has overlooked certain facts of substance and value that, if considered, might affect the result of the case (People vs. Berganio, et al., G.R. No. L-10121, prom. December 29, 1960, citing People vs. Binsol, et al., 100 Phil., 713; 53 Off. Gaz., 3045). In the instant case, the trial Judge made a complete analysis of the testimonies of all the witnesses (prosecution and defense), which we find amply supported by the evidence on record.

As to appellant's alleged inability to handle a gun due to his cut fingers on the right hand, and the failure to give him a paraffin test despite his repeated requests, suffice it to quote the following finding of the trial court, to which we fully agree:

"The defendant even attempted to show that he could not have fired a gun with his right hand due to his physical deformity as some of his fingers are missing. But as the Court observed, it is not difficult for him to squeeze the trigger of a pistol or revolver with the remaining fingers of his right hand. And if he did not use his right hand, it is possible that the accused actually used his left hand in holding the gun and in shooting the deceased. The widow could have mistakenly stated the right hand as the one used by the accused considering that the incident happened under exciting conditions.

"The accused tried also to capitalize (on) the fact that the paraffin test he requested to prove his innocence was not accomplished. This fact did not weaken the position of the prosecution for there was already sufficient identification of the defendant as the one who shot the deceased." (Page 18, Decision.)

Finally, as to appellant's contention that the trial court committed an error in failing to appreciate the absence of motive on his part in the commission of the crime, we concur with the following observation of the trial court:

"Absence of motive to kill the deceased on the part of the defendant has been insinuated by the defense. But while motive should be proven whenever possible for it is one of the most important aids to complete proof of the commission of the crime, it is not absolutely necessary and indispensable where the evidence is such as to justify a conviction. In the instant case, the identification of the accused by the deceased and the widow warrants a conviction and renders the proof of motive not necessary." (Pages 17-18, Decision.)

In the circumstances, we find appellant, as did the trial court, guilty of the crime of murder, qualified by treachery, as he shot the victim Teofilo Boado, who was unarmed, suddenly and without any warning, thereby insuring the accomplishment of the crime, without risk to him (appellant) arising from the defense which said victim might

have offered (People vs. Godines Martinez, 106 Phil., 597; People vs. Ambahang, et al., 108 Phil., 325). The aggravating circumstances of dwelling (People vs. Ruzol, 100 Phil, 537; 53 Off. Gaz., 5627) and use of disguise (People vs. Piring, 63 Phil., 546, People vs. Galamiton, G.R. No. L-6302, prom. August 25, 1954) attended the commission of the crime, which circumstances, are not offset by any mitigating circumstance, there being none. However, for lack of the required number of votes, the maximum penalty of death can not be imposed.

Wherefore, the judgment of the trial court is hereby affirmed, with costs against the defendant-appellant. So ordered.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Dizon JJ., concur.

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