

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEOTIMO ALEGARME, ET AL., DEFENDANTS, TEOTIMO ALEGARME,
DEFENDANT-APPELLANT.**

G.R. No. L-20722. February 20, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, by defendant Teotimo Alegarme, from a decision, of the Court of First Instance of Zamboanga del Sur, convicting him of the crime of murder, with which he is charged, and sentencing him to life imprisonment, to indemnify the heirs of the deceased Basilio Alegarme in the sum of P6,000.00, and to pay one-half (1/2) of the costs, and acquitting his co-defendant, Adolfo Alegarme, with one-half (1/2) of the costs de oficio.

It is not disputed that, while Basilio Alegarme was walking in the road of the barrio of Dagohoy, municipality of Dumalinao, province of Zamboanga del Sur, on January 19, 1961, shortly after 11:00 p.m., someone fired at him, in consequence of which he sustained injuries which caused his death, due to the consequent hemorrhage. The issue in this appeal is, who shot him? Two persons were prosecuted as his alleged assassins, namely, his own brothers, Teotimo Alegarme and Adolfo Alegarme, likewise, known as Rodolfo Alegarme.

The main evidence for the prosecution consisted of appellant's alleged confession, Exhibit D, and the testimony of one Estelita Canencia. The latter said that, in the evening of January 19, 1961, she and Basilio Alegarme, with a number of other persons, attended the religious services held in a chapel in Dagohoy, Dumalinao, Zamboanga del Sur, in connection with the town fiesta therein; that, after the aforementioned services, she, Basilio Alegarme, his son, Felipe Alegarme, one Camila or Camilo Alegarme, and four (4) other persons, proceeded to go home, walking in single file, with Basilio Alegarme at the head thereof, carrying lighted Petromax lamp; that, as they reached a place where there were banana groves or clumps of banana trees on the road side, she saw, in one of said groves or clumps, two persons, whom she recognized as defendants Teotimo and Adolfo Alegarme; that Teotimo then had a gun aimed at Basilio, whereas Adolfo held an unsheathed bolo; that as the gun was fired, Basilio fell down slowly to the ground; that, thereupon, the other members of his group scampered away and sought cover; that she, likewise, did so, behind another banana grove, from which she saw the defendants approach the prostrate body of Basilio; that Adolfo asked Teotimo whether Basilio was still alive or not; that Teotimo replied in the negative, whereupon he and Adolfo went away; and that there was a land conflict between Basilio Alegarme, on the one hand, and the defendants, on the other.

His Honor, the trial Judge found this testimony unworthy of credence, because:

"After a perusal of the record, the Court finds insincerity in the testimony of Estelita Canencia – something not easily described, but readily recognized – that carried conviction to the mind of the court that she was not swearing to the truth. Thus she testified that the firing of the gun did not take place until after one minute from the moment she saw the gun aimed at the deceased, yet she failed to shout a warning to the deceased. Likewise, she declared that the wife of Basilio, the deceased, asked her on February 5, 1961, to narrate the incident; however, she did not execute any affidavit because she was not called for investigation. Pressed to

tell the truth, she affirm-ed that she did not tell the wife of Basilio about the incident, but perhaps Felipe, the son of the deceased, did. Realizing that her answers have placed the cause of the prosecution, in a precarious position, she vain-ly attempted to put a bright aspect of an otherwise dark situation by finally declaring that she narrated the incident to the wife of Basilio when they met on February 5, 1961. Again, asked whether she told the incident to anybody else aside from the wife of Basilio, she declared that she did not. But conscious of her falsehood, she rectified her answer by admitting with temerity that she passed on the infor-mation to ones, Major Alegarme. These circum-stances show that the witness was testifying with hesitation, labored and confused explanations. Her reticence in revealing the truth of the incident until the last hour on trial is indeed extra-ordinary and labors under grave suspicion because if she really had an intimate knowledge of the facts of the incident, she could have made a timely revelation of what she saw and could have testified with that character of singleness, certainty and clearness.

"Moreover, Patrolman Arsenal as a prosecu-tion witness testified that Felipe, the son of the deceased, who was with his father on the fateful night of January 19, 1961, told him that the deceased was in company with Marcial. Patrolman Arsenal further testified that he included in his list of witnesses Estelita Canencia. Nevertheless, Patrolman Arsenal has not investigated Marcial, nor Estelita Canencia about this case. It is interesting to note that when this case was filed on January 27, 1961, the police authorities a Dumalinao had no inkling that she will be a witness for prosecution because her name does not appear in the list of witnesses in the criminal complaint.

"On the other hand, Estelita Canencia explained that her failure to reveal the incident and perpetrators of the crime to the authorities was because she was not called for investigation. This pretension of Estelita Canencia as to her failure to reveal the incident is as thin as the cobwebs to support the truth. It should be remembered that it was Felipe, the son of the deceased, who supplied Patrolman Arsenal with the names of the companions of his father that night of January 19, 1961. Patrolman Arsenal went to the scene of crime in the morning of January 20, 1961, and conducted an investi-gation but nobody could shed light to the commission of the crime. If it is true as testified by Estelita that she was together with the deceased that night of January 19, 1961, and she was included in the list of Patrolman Ar-senal as one of the witnesses, then why was she not investigated, nor was she listed in the criminal complaint as one of the prosecution witnesses? For an answer, the record is very revealing on the point. Felipe, the son of the deceased, who furnished the police with the names of the companions of his father, subscribed to his affidavit before the. Justice of the Peace on January 27, 1961, exactly a week after the incident in question and Felipe must have had ample time to reflect and re-call the companion of his father. Felipe, however, mentioned only seven persons including himself as the companions of his father and Estelita Canencia was not one of them (Exhibit 2). No wonder Estelita Canencia could not consistently testify, as to whether or not she narrated the incident to the wife of Basilio, nor could she have informed the police of the perpetrators of the crime, because as the Court finds, she was not in the group that accompanied the deceased in going home from the chapel that fateful night of January 19, 1961.

"Furthermore, the records show that one, Capt. Alegarme an uncle of the herein accused, has another brother, who is the husband of Estelita Canencia. Stated otherwise, Estelita Canencia is the sister-in-law of Capt. Alegarme. The accused Adolfo Alegarme testi-fied that h believed Capt. Alegarme is behind this case because there are land conflicts between Capt. Alegar-me and his (accused's) father and between Capt. Ale-garme and Teotimo. The records further reveal that when the accused brothers were brought before the chief of Police of Dumalinao, the Chief of Police nodded his head and remarked: 'So you are here. I was inform-ed by Capt. Alegarme that you pretended to be tough guys of your locality.' Likewise, Estelita Canencia when ask-ed if she revealed her knowledge of the incident to any-body aside from the wife of the deceased, declared that she also informed Capt. Alegarme. It is interesting to note in this connection that as insinuated by the defense, Capt. Alegarme has always been together with the pro-secution witnesses and present when this case was call-ed for trial on various occasions. And while Capt. Ale-garme as a rebuttal witness explained that his interest in the case was to secure justice, the deceased being his nephew, all of the foregoing circumstances taken to-gether as a whole tend to, confirm the testimony of the accused, Adolfo Alegarme that his uncle,

Capt. Alegarme, is behind his being prosecuted in this case. From the foregoing circumstances and, the fact that Estelita Canencia is not only the sister-in-law but a tenant as well of Capt. Alegarme, who appears to have an unusual interest in the case, it is evident that she has an incentive to exaggerate or give false color to her testimony to please her brother-in-law and landlord. And as the facts, disclose, she has, borrowing the words of a learned authority, 'a disposition to see and report matters as they are wished for rather than as they are.' (11 Moore on Facts, 1225). The Court, there-fore, is of the opinion that Estelita Canencia is a bias-ed witness." (pp. 134-138, rec.).

Upon the other hand, appellant repudiated his alleged confession, Exhibit D, alleging that it had been secured through duress, in addition to setting up an alibi. He, Adolfo Alegarme, Dioscoro Alagenio and Gregorio Pial testified that the four (4) of them, together with Adolfo's wife and their child had spent the evening of January 19, to 20, 1961, in the house of Adolfo, who had asked their help because said child was very ill. Defendants further testified that, upon learning, the next morning, about Basilio's death, Adolfo conveyed the news to his sister, who, in turn, relayed it to appellant herein, and then the three (3) of them proceeded to the scene of the crime, where they found Patrolman Arsenal and many people around Basilio's body that Arsenal said he would help them locate the killer, and then brought them to the poblacion, where, upon seeing the defendants, the Chief of Police, Eutiquio S. Codilla, remarked: "So you are here. I was informed by Captain Alegarme that you pretended to be tough guys of this locality;" that as Arsenal and Adolfo left the place to buy something, there was a commotion in the place where appel-lant had been left; that when Adolfo and Arsenal returned thereto, Codilla was beating up appellant, who had bruises and contusions on his face; that Codilla continued manhandling appellant, where-as Arsenal proceeded to box him; that Codilla, likewise, pulled Adolfo by the left hand and boxed him on the left eye; that, then, defendants were detained in the municipal jail, where Codilla warned them he would kill them should they not admit their guilt; that, later on, appellant was brought to the office of Codilla, who produced the statement, Exhibit D, already typewritten, in English; that, without translating its contents into the native dialect, Codilla bade him to sign it, if he wanted to be spared of further maltreatment; that appellant obeyed because his whole body was already aching; and that, when he was brought to Justice of the Peace, Inocentes L. Fernandez, appellant refused to sign Exhibit D.

Although the lower court did not believe the evidence in sup-port of the defendants' contention, it has been established, through the testimony of said Judge Fernandez, that appellant was brought before him by Codilla, so that he (appellant) may swear to the truth of the contents of Exhibit D; that as said officer proceeded to read Exhibit D and translated its contents into the Visayan dialect, he noticed that there was, at the foot thereof, a signature; that since the same had to be affixed in his presence, Judge Fernandez cross-ed out said signature, and then bade appellant to sign the document; and that, appellant replied he would "think it over," and, hence, the Judge wrote, on the lower left margin of Exh. D, the words "accused not willing to sign in my presence" and then placed his initials thereon.

This notwithstanding, His Honor, the trial Judge, convicted appellant herein upon the theory that

"x x x the confession of the accused, as affirm-ed by Patrolman Arsenal, Chief of Police Codilla and by a witness for the defense, Justice of the Peace Fernandez, which, as the Court finds was not vitiated by co-ercion, is confirmed by the undisputed facts of record. That the corpus delicti has been fully established can not be denied. The death of the victim, Basilio Ale-garme, is admitted. In addition thereto, the Court finds grave and conclusive circumstantial evidence, based upon proven facts, such as the land conflict between the accused and Pablo Diano, wherein the deceased was a witness in favor of Diano; the repeat-ed intimation of accused Teotimo Alegarme to Generose Diano, wife of Pablo Diano, that he will chop to pieces his brother, Basilio; the information given by the accused to Patrolman Arsenal that his shotgun (paliuntod) used in the killing of his brother was hid-den by the cliff and his wife knew where it could be found; the fact that his wife got the shotgun from where it was hidden and surrendered the same to Patrolman Arsenal upon demand; and

that while accused Teotimo Alegarme denied having given such information to Patrolman Arsenal about his wife knowing where the shotgun was kept, accused failed to deny ownership of the gun in question. While these circumstances standing alone by themselves may be insufficient to convict the accused Teotimo Alegarme of the crime of murder; however, they certainly do serve to embark the question of his innocence with uncertainty and suspicion, and when taken in connection with his confession, positively inspire belief in the truth of said confession and is, therefore, sufficient to warrant the conviction of the accused Teotimo Alegarme of the crime herein charged."

In this connection, Arsenal testified that, while he was investigating the occurrence, at the scene of the crime, on January 20, 1961, at about 8:30 a.m., the defendants arrived, accompanied by a woman; that defendants, who were then crying, inquired about the identity of the killer; that Adolfo was then brandishing a bolo whereas appellant had a bolo tucked in his waist; that Arsenal bade them to throw their boloes away, and defendants obeyed that when Arsenal invited them to come with him to the municipal building, they gladly did so; that the three (3) of them proceeded to the boarding house or restaurant in which Codilla stayed where they had their dinner; that, thereafter, Codilla bade Arsenal to buy cigarettes, bringing Adolfo Alegarme with him which Arsenal did; that upon his return, together with Adolfo Alegarme, Codilla told them that appellant had confessed his guilt; that Arsenal then patted appellant on the shoulder and inquired of him why he had not admitted his guilt at the scene of the occurrence; that appellant explained that he was ashamed to confess in the presence of other people; that appellant further confided that he had hid the gun, with which Basilio had been killed, in a thickly wooded place near his (appellant's) house, known to his wife; that, subsequently, Arsenal went to appellant's house and bade his wife to produce the gun; that, there-upon, appellant's wife went out and returned later with a box containing a dismantled shot gun, Exhibit A, which was later assembled by the police.

Codilla, in turn, said, that, when Arsenal and Adolfo Alegarme left to buy cigarettes, he (Codilla) asked appellant why he had killed his brother Basilio; that, thereupon, appellant cried and then answered that he "could no longer endure," because he had "already spent a lot of money" in his suit against Basilio, who had "squatted our land;" that, upon the return of Arsenal and Adolfo Alegarme, he (Codilla) bade Arsenal to place the defendants under detention, in jail; and that the next day, he (Codilla) took appellant's statement Exhibit D.

The testimonies of Codilla and Arsenal are of doubtful veracity. Indeed, the prosecution, in the lower court, would have us believe that, upon the departure of Arsenal and Adolfo Alegarme, to buy cigarettes, and without any preliminary steps or questions, Codilla asked appellant, point blank, why he had killed Basilio Alegarme, and that appellant, in turn, readily admitted that he had done so because he "could no longer endure" it. To say the least, this is unnatural. What is more, it is inconsistent with several facts established by the very prosecution, namely: 1) that defendants went to the scene of the occurrence, while policeman Arsenal was investigating the same; 2) that defendants were then crying and armed with boloes, at the same time inquiring about the identity of their brother's assassin; 3) that Arsenal evidently felt that defendants were so excited and bent on avenging the death of their brother that he deemed it best to disarm them; and 4) that defendants were, in Arsenal's own words, glad to go with him to the municipal building, where further investigations were supposed to be conducted. Although, each one of these circumstances, when considered singly and independently of the others, could possibly be of artificial nature and be compatible with a guilty conscience, they strongly suggest the contrary, when put together and considered collectively.

If at all, the one direct question, allegedly propounded by Codilla to appellant – without any feelers or preliminaries, and without any evidence whatsoever, at that time, that he had committed the crime charged – as to why he had killed Basilio, suggests that Codilla had, seemingly, prejudged appellant guilty. This is corroborated by the fact that Codilla had ordered Arsenal to take Adolfo with him, on the pretext of buying cigarettes, for the now obvious purpose to be, alone with appellant, so that nobody – except Codilla and appellant can now testify on

how he (appellant) had been "persuaded" to make his alleged confession. It may not be amiss to point, out that the litigation, between the deceased and the defendants, concerning a land, had been decided before the occurrence in favor of the latter, who, accordingly, had no reason to take the law into their hands.

Appellant's alleged shotgun, Exhibit A, does not suffice to justify the decision appealed from, there being no competent evidence that the cartridge found at, the scene of the crime and the shots that had killed Basilio had come from said firearm, the only evidence connecting the latter with the former being the testimony of Estelita, which admittedly is incredible. Moreover, the defense, particularly, appellant's wife, denied that she had delivered to Arsenal said Exh. A, which, by the way, is a home-made dis-mantled shotgun.

At any rate, the circumstances surrounding the case manifestly preclude a finding of appellant's guilt beyond reasonable doubt. In fact, based upon the same evidence, the lower court acquitted Adolfo Alegarme, and the brief for the prosecution frankly admits "that the evidence for the prosecution failed to produce (the) moral certainty" necessary to convict appellant herein.

WHEREFORE, as recommended by the Solicitor General, the decision appealed from should be, as it is hereby, reversed, and the case against appellant Teotimo Alegarme, accordingly, dismissed, with costs de oficio.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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