

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FABIAN ULITA, ET AL., DEFENDANTS. SANTOS ULITA, SERAPIO
ULITA, BERNARDINO ULITA, ALFREDO ULITA, AND ISABELO
PACAMALAN, APP...**

G.R. No. L-12655. June 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Fabian Uлита, Santos Uлита, Alvaro Uлита, Jose Uлита, Serapio Uлита, Bernardino Uлита, Alfredo Uлита, Isabelo Pacamalan, Eduardo Malana, Hipolito Asuncion, Joaquin Gammad, and Fausto Caballes, were charged in the Court of First Instance of Cagayan, with the crime of murder for the killing of Guillermo Tagayuna. Eduardo Malana, Hipolito Asuncion, Joaquin Gammad, and Fausto Caballes were later excluded from the information, on motion of the Fiscal, for lack of evidence. Fabian Uлита pleaded guilty upon arraignment. After trial, the court found Santos Uлита, Serapio Uлита, Bernardino Uлита, Alfredo Uлита, and Isabelo Pacamalan guilty of the crime charged, but finding one mitigating and no aggravating circumstance, sentenced each of them in accordance with the Indeterminate Sentence Law, to suffer the penalty of 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum, and to pay ¼ of the costs. Jose Uлита and Alvaro Uлита were acquitted. Fabian Uлита, having pleaded guilty and voluntarily surrendered, was sentenced to suffer the penalty of 4 years, 2 months and 1 day of prision correccional, as minimum, to 10 years and 1 day of prision mayor, as maximum, and to pay ¼ of the costs. Fabian did not appeal.

On their part, Santos Uлита, Serapio Uлита, Bernardino Uлита, Alfredo Uлита, and Isabelo Pacamalan appealed to the Court of Appeals. However, said court, in its resolution of April 10, 1957, elevated the case to this Court, in view of its raiding that the murder committed by appellants was aggravated by evident-premeditation, without any mitigating circumstance to offset the same and, therefore, the penalty imposable is at least life imprisonment which, under existing law, it is not authorized to impose.

Pending appeal with this Court, counsel for appellants submitted a motion for new trial based on newly-discovered evidence consisting of the affidavits of the prosecution witnesses Macario Constantino and Concepcion Urita, retracting from the testimony they had given in the lower court, action on which was deferred by resolution of this Court of January 19, 1959, until the case can be considered on the merits. These affidavits, we now find, are without merit. In them, the affiants merely recites that their testimony in open court was not true and that it was given only because they (the two recanting witnesses) were included in two previous cases of malicious mischief and less serious physical injuries filed by the Uлитas against the deceased Guillermo Tagayuna and more than 25 others. It appears, however, that these two minor cases were filed, the first on August 18, 1952 and the other on September 2, 1952 or more than five (5) months before the killing of Tagayuna, and in the first, the defendants were acquitted on October 17, 1952. Besides, not all the present accused were complainants in those two cases. The pretense, therefore, that these two witnesses testified as they did during the trial of the case only because they were "mad at the accused" is too flimsy to merit serious consideration. In the case of People vs.

Farol, et al., (G. R. Nos. L-9423 and L-9424 prom. May 30, 1958), we held that—

"* * * resort, to the use of affidavits of recantation * * * is becoming rather common. Appellate courts must therefore be wary of accepting such affidavits at their face value, always bearing in mind that the testimony which they purport to vary or contradict was taken in an open and free trial in the court of justice and under conditions calculated to discourage and forestall falsehood, those conditions being as pointed out in the case of U. S. vs. Dacir (26 Phil. 507) that such testimony is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course of a solemn trial in an open court; that the witness is subject to cross-examination, with all the facilities Afforded thereby to test the truth and accuracy of his statements and to develop his attitude of mind towards the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the intonation of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness.' Unless there be special circumstances which, coupled with the retraction of the witness, really raise a doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to a criminal litigation and the administration of justice would be at the mercy of criminals and the unscrupulous. * * *."

And in the case of *People vs. Ubiña et al.*, (97 Phil., 515), we stated that "it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous-witnesses." This Court has, likewise, invariably and consistently refused to entertain and grant motions for new trial based on affidavits of retraction by witnesses, because of the inherent improbability of the alleged new versions of the commission of the crime, as well as the easiness and facility with which such affidavits are obtained (*People vs. Monadi, et al.*, 97 Phil., 575; *People vs. Aguiro, G. P.*, Nos. L-12123-24, prom. July 31, 1958), and the probability of their being repudiated later (*People vs. Galamiton, G. R. No. L-6302*, prom. August 25, 1954). It is not also improbable that said schemes are conceived and carried out for a consideration, usually monetary. (*People vs. Francisco*, 94 Phil., 975.) We find, therefore, no reason for seriously considering, much less acceding, to the appellant's motion for new trial.

Coming now to the merits of the case, according to the evidence and as found by the trial court, at about 9 o'clock in the morning of January 24, 1953, Guillermo Tagayuna and Macario Constantino went to the fields at Pallagao, Gattaran, Cagayan. While Tagayuna, followed by Constantino at a distance of seven (7) meters, was walking along a narrow trail where there were plenty of tall grasses called tanglares, Santos Uлита, armed with a bolo, suddenly appeared from behind the grasses and hacked Tagayuna's right arm. Then Fabian Uлита, Bernardino Uлита, and Alvaro Uлита who also were hiding among the tall grasses rushed at him from behind, on the left side, and hacked his back with their bolos. Alfredo Uлита then hacked his right leg, causing him to fall to the ground in kneeling position. While in this position, Serapio Uлита, Jose Uлита, and Isabelo acamalan rushed at him. Jose then hacked his left arm and his head, while Serapio and Isabelo hacked his right arm. The boloes used by the accused were of the kind known as calasiaos. Tagayuna shouted for help. Constantino did likewise, having been stunned by the suddenness of the attack, but nobody came to help them. Constantino then ran away in the direction of the road. Upon seeing him, Fabian and Alvaro, with boloes in their hands, chased him, but upon reaching the curve of the road, they gave up. Constantino then turned around and at this instant, he saw the accused hacking Tagayuna while they encircled him. The latter died as result of the wounds inflicted on him by the accused. Thereafter, the

accused fled.

After the killing, police corporal Isidro Ventura of Gattaran repaired to the scene of the crime. He saw the dead body of Tagayuna in the rice field. He prepared a sketch (Exh. "N") of the scene, and found within a radius of 5 meters around said body ("1" in Exh. "N") ten (10) fresh footprints.

A bolo (Exh. "I"), which was one of the 3 boloes entrusted by Santos Urita and his brothers to Meliton Daniel in San Vicente, Gattaran shortly after the incident, and surrendered by the latter to Chief of Police Andres Bucaling, was discovered to have dried blood stains on its blade.

Appellants were apprehended under a warrant of arrest only a week later as they fled to, and hid in different places after, the commission of the crime.

A post-mortem examination of the cadaver of Tagayuna made by Dr. Antonio Nolasco showed that the victim sustained 21 wounds in various parts of his body. (Exhs. "O", "P", and "P-1".) Of these wounds 14 were inflicted on the frontal side and 7 on the dorsal side. Wound No. 3 (Exh. "P") inflicted frontally on the parietal region, Wound No. 15 (Exh. "P-1") inflicted dorsally on the neck, cutting the principal veins and arteries, and Wound No. 16 (Exh. "P-1") also inflicted on the neck, were all necessarily mortal. Wound No. 7 (Exh. "P"), completely severed the middle fingers of the victim, and Wound No. 8 (Exh. "P") completely severed his left forearm. All these wounds appear to have been inflicted from different sides and directions of the body of the victim and by more than one person. Dr. Nolasco attributed the death of Tagayuna to severe hemorrhage.

Appellants Serapio, Santos, Alfredo, and Bernardino are brothers; while appellant Isabelo Pacamalan is their brother-in-law. (The other accused who were acquitted, Jose and Alvaro are also their brothers, while Fabian, who pleaded guilty, is the son of Jose.) There was a standing controversy between the Urita family and Tagayuna over the ownership of a parcel of rice land in Pallagao, Gattaran.

The version of the defense regarding the incident is as follows:

On January 24, 1953, at about 7 o'clock in the morning, Fabian Urita went to harvest palay on the land leased to him by one Servillano. He was followed later by 6 women, relatives of his. He was harvesting on the northern part of the ricefield near a path, 30 meters away from the women when he saw Tagayuna approaching. Upon seeing him, Fabian unsheathed his bolo and stuck the same to the ground. Tagayuna went near him saying: "What, are you harvesting here also loco?" to which Fabian answered: "I am harvesting my little ripe palay, Tata. I have to harvest a little because you have harvested the one I planted on the controverted land." Tagayuna then retorted: "You did not plant anything there, loco," and Fabian replied: "Why not? You had it harvested." Infuriated by Fabian's reply, Tagayuna rushed at him with a club he was holding at the time. Instantly, Fabian picked up his bolo and hit Tagayuna's right arm below the right wrist, causing the latter to drop his club. Then he delivered blows which Tagayuna tried to parry with his hands; then he hacked him several times on his left arm until it was severed and gave him a "backhand stroke" which hit Tagayuna on the head, neck, and back. Then he hit him twice on the knee, severing the same on the second blow and causing the minor wounds described in Exhibit "O", all done in the heat of anger. When Margarita Natividad (wife of Alfredo Urita) and her companions saw Fabian hacking the deceased, they ran away, and while running, they saw 4 PC soldiers on the road. When asked why she was running, Margarita answered: "Fabian and Guillermo are fighting."

After hacking Tagayuna to death, Fabian saw Constantino and thereupon chased him. After chasing him, Fabian walked through the rice fields. Thereafter, he saw 4 PC soldiers. He then surrendered to them saying: "I am coming to surrender. I killed Imong," at the same time delivering his bolo (Exh. "G") to Corporal Malana. While Fabian was being guarded by Caballes, Malana saw more than 30 followers of Tagayuna, armed with boloes,

walking toward them. He then collected 5 boloes from them. Not long thereafter, Benita Mamuad, wife of Tagayuna, arrived and went directly to Fabian saying, "Vulva of your mother Fabian, you killed my husband, I will kill you also." Then she picked up some hardened earth and threw it at Fabian, angrily shouting: "Vulva of your mothers, the Ulitas. Even women, children and men, I will send all of you to jail." She also uttered bad words to the PC soldiers.

Appellants' defense is alibi, as follows:

Isabelo Pacamalan testified that when Fabian Uлита killed Tagayuna, he was at home lulling his baby to sleep; that it was his wife who informed him about the killing; that in the afternoon of the same day, Serapio Uлита dropped at his house and asked him to go with him to town (Gattaran), to advise Atty. Mandac regarding the incident; and that the latter told him not to return to Pallagao for several days, to give the followers of Tagayuna time to cool off.

Serapio Uлита, alleged that he was at home convalescing from an illness ("pasma"); that he learned about the incident from his wife, who got the information from Margarita Natividad; and that as he was afraid to remain in his house, he went to town (Gattaran) with his brother-in-law, Isabelo Pacamalan, and saw Atty. Mandac, who advised them to stay away for a while, which they did, until their arrest a week later.

Santos Uлита declared that he was cooking when Margarita Natividad informed him about the incident and warned him not to go down their house; that his wife, Juanita Baraquio, was then in bed, as she had delivered 5 days prior to the incident; and that at 2 o'clock in the afternoon of the same day, his brothers Jose, Bernardino, and Alfredo fetched him, and they went to Tuguegarao for the purpose of informing Atty. Singson that Fabian had killed Tagayuna, returning therefrom at lunch time the following Monday.

Bernardino Uлита averred, that he was then at home cooking when Margarita Natividad informed him about the killing; that his wife had just delivered and was then in bed at the time; and that in the afternoon of the same day, he went with his brothers Jose Santos, and Alfredo to Tuguegarao in order to inform Atty. Singson about the incident.

Alfredo Uлита stated that he was plowing near his house when his wife, Margarita Natividad, informed him about the incident; and that in the afternoon of the same day, he went with his brothers Jose, Santos, and Bernardino to Tuguegarao to advise Atty. Singson about the killing.

Appellants have assigned 11 errors allegedly committed by the trial court, all of which we believe converge en one main issue, namely, whether the evidence adduced by the prosecution warrants the conviction of appellants of the crime charged. It is a question of credibility of the state witnesses. Where the issues is one of the credibility of witnesses, the rule is that appellate courts will not generally disturb the findings of the court a quo considering that it is in better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the hearing, 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. Binsol, et al., 100 Phil., 713; 53 Off. Gaz., 3045; People vs. Villaroya, et al., 101 Phil., 1061.)

After a careful appraisal of the evidence, we agree with the trial court that the guilt of the appellants has been proved beyond reasonable doubt We believe that Fabian Uлита pleaded guilty as the sole author of the crime charged, in order to save his close relatives from imprisonment. His story cannot be believed at all. As the trial court observed:

"Fabian Uлита claims that Guillermo Tagayuna rushed at him when he was harvesting palay and hacked him (Tagayuna) right then and there. But Tagayuna's cadaver was found where there was no palay and his legs

were stuck into the deep mud up to the thighs. This, fact explodes the theory of self-defense, complete or incomplete. * * *

We believe that the killing of Tagayuna actually took place as narrated by the prosecution witness Macario Constantino who testified in direct, positive straightforward and credible manner. His testimony has corroborated in many respects. Concepcion Urita testified that on the morning in question, when he was on his way to the rice fields; he saw the 8 accused, armed with boloes, fleeing from the scene of the crime towards their houses, shouting: "We have killed him" (referring to Tagayuna). Policeman Isidro Ventura, who drew a sketch of the place where the dead body of Tagayuna was found, saw at least 10 fresh footprints near said body, which, was stuck in a muddy spot, with tall grasses (tanglares) all around. The number and location of the wounds (21 in all and in various parts of the victim's body) show convincingly that Tagayuna's assailants were many and that the wounds could not have been inflicted by only one person. The bolo (Exh. "I") one of the 3 boloes which were entrusted by Santos Urita and his brothers (Serapio, Bernardino, and Alfredo) to Meliton Daniel at the latter's house in San Vicente, Gattaran, was found by chief of police Andres Bucaling to have on its blade dried blood stains. It was not Fabian alone but the entire Urita family that had bad blood with the deceased due to the ownership of certain rice lands. As a matter of fact, the Uritas had vowed to kill Tagayuna. During the planting season, prior to the incident, they were overheard by Constantino to have told the deceased: "We will bury you in one of the rice paddies" (Itambac da ca ditoy). As to the immediate motive of the killing, it will be noted that on January 23, 1953, or the day before the incident, there arose the question of whether the Uritas or the Tagayuna group should harvest the palay on the disputed land between Jose Urita and Tagayuna, and the PC soldiers had ordered the deposit of the harvest with the barrio lieutenant, until the settlement of the dispute. The Uritas must have deeply resented this, as they had been thereby deprived of the fruits of their labor in planting the palay. They are, therefore, the ones to have reason to likely start hostilities and not the deceased. The fact that the accused fled a few hours after the commission of the offense, clearly indicates their guilty minds, (U. S. vs. Alegado, 25 Phil., 510; U. S. vs. Sarikala, 37 Phil., 486; U. S. vs. Virrey, 37 Phil., 618; People vs. Manalo & Atienza, 46 Phil., 572; People vs. Wilson et al, 52 Phil., 907; People vs. Gucor, 86 Phil., 157; 47 Off. Gaz. 1621.) We quote with approval the trial court's finding on this point, to wit:

"That the said accused fled a few hours after the commission of the crime, is an eloquent proof of their guilt—especially when six, of them went directly to their respective attorneys for advice, and two of them went to the friendly P.C. soldiers for protection. What need was there for four of them to go to Atty. Singson in Tuguegarao to advise him of the killing of Tagayuna by Fabian? What need was there for two of them to go to Atty. Mandac to tell him the same thing? To ask both attorneys to defend Fabian only? If they were afraid of retaliation: from the followers of Tagayuna, like Alvaro Urita, they would just have sought the protection of the P.C. soldiers in Pallagao, thus avoiding expense and trouble."

Coming to their defense of alibi, it should be noted that the respective residences of the accused "where they claim they were at the time of the killing are in the immediate vicinity of the scene of the crime. Besides, it has been stated that alibi is at best a weak defense and cannot prevail over the testimony of truthful witnesses. The reason is that alibi is easy of fabrication (People vs. Badilla, 48 Phil., 718) especially between parents and children, between relatives, as in the present case, and friends, and even between those not so related (People vs. De Asis, 61 Phil., 384; People vs. Japitana, 77 Phil., 175). Indeed, even in those cases where proof of the alibi is well-supported by the testimony of witnesses, the alibi would not be credited when the identity of the accused as the persons who committed the crime is fully established by clear, explicit, and positive testimony, (U.S. vs. Pascua, 1 Phil., 631; U. S. vs. Hudieres, 27 Phil., 45), as in this case.

There is reason to believe that the accused had conspired to kill Tagayuna. The form and manner in which the attack was accomplished (People vs. Tiam, et al., G. R. No. L-36, prom. August 29, 1946) and the gravity and

seriousness of the wounds inflicted on the deceased (People vs. Reyes, 47 Phil., 635), showed unity of action and purpose. And it is understandable that a community of interest should exist among the accused, as they were all closely related to each other by blood (People vs. Monadi, et al., supra.) It is not, therefore, difficult to see that they had strong reasons to hate him and adopt measures, even radical, to liquidate him.

There can also be no doubt that treachery was present in the commission of the crime, which qualifies the killing of Tagayuna to murder. It was conclusively shown that the latter was suddenly intercepted and assaulted by the accused who were then hiding in the surrounding tall grasses (tanglares), thereby employing means, methods, or forms in the execution of the crime which tended directly and specially to insure its execution without risk to themselves arising from the defense which the offended party might make. (Art. 14-16, Revised Penal Code.) When an assault is made with a deadly weapon upon an unarmed and unsuspecting victim who has given no immediate provocation for the attack, and under conditions which make it impossible for him to evade the attack, flee, or make defense, the act is properly qualified as treacherous; and the homicide resulting therefrom is murder. (People vs. Pengzon, 44 Phil., 224; People vs. Sombilon, 83 Phil., 630; 46 Off. Gaz. [Sup. 11] 83.) It is to be noted that there is here present the circumstance of abuse of superior strength. However, under the circumstances of the case, we deem it absorbed by the element of treachery.

The trial court found that the aggravating circumstance of evident premeditation was not attendant in the commission of the crime, for the reason that the incident of January 23, 1953, one day before the killing, was not an act manifestly indicating that the accused clung to their determination to kill the deceased. According to the court, it was a mere altercation regarding which of the parties (the Ulitaz and Tagayuna) should get the palay harvested on the land in question. We disagree with the trial court in this regard. According to its own findings, "the way the ambushade was made, showed a well-predetermined and premeditated plan." Tagayuna was hacked on the arms in order that he could not defend himself. Then they cut his legs so that he could not escape. And when he was already disabled, they surrounded him and hacked him to death. The intention of the accused to eliminate Tagayuna began during the last planting season, before the incident, when the accused told him: "We will bury you in one of the rice paddies." They decided to carry it out on January 23 1953, when the question arose as to who should get the harvest. The best solution to their problem was to eliminate Tagayuna. They therefore planned to ambush him the following morning, knowing that he would return to the land in question. These circumstances satisfy the requisite of evident premeditation, to wit, "a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to harken to its warnings. (U. S. vs. Gil, 13 Phil., 530; People vs. Bangug, 52 Phil., 87.) The fitness of the place selected by the accused and the manner in which they inflicted the wounds on the deceased, all are evidences of such premeditation as to satisfy the requirement of the statute that it be evident. (U. S. vs. Ricafor, 1 Phil., 173.)

The trial court appreciated the mitigating circumstance of passion and obfuscation in favor of appellants, because it believed that when the harvest of the land which had been cultivated by appellants was ordered deposited with the barrio lieutenant by the PC soldiers, they were deprived of the fruits of their labor and, were, therefore, naturally infuriated and obfuscated. But, in order to consider this mitigating circumstance, it is necessary that there be clear proof of the existence of an act both unlawful and sufficient, to produce such condition of the mind. (U.S. vs. Pilaes, 18 Phil., 87; U.S. vs. Sarikala, 37 Phil., 486; People vs. Alanguilang, 52 Phil., 663.) It will be noted that Jose Ulita, the eldest of the Ulita brothers, has consented to the making of such a deposit on January 23, 1953. We believe that the order for the deposit of the harvest cannot be considered unlawful or sufficient to cause obfuscation on appellants. (See People vs. Noynay, et al., 68 Phil., 893.)

In view of the foregoing we find the appellants guilty of the crime of murder aggravated by evident premeditation,

without any mitigating circumstance. However, for lack of the required number of votes for the imposition of the supreme penalty of death, the appellants are hereby sentenced to reclusion perpetua, and to indemnify jointly and severally the heirs of the deceased Guillermo Tagayuna in the sum of P6,000.00.

Thus modified, the decision appealed from is affirmed, with costs against the appellants. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Gutierrez David, JJ., concur.

Padilla, J., took no part.

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