

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MODESTO BERACES, SILVINO BIACOLO, JIMMY NICOLAS AND
FELIPE VILLA, DEFENDANTS, MODESTO BERACES, SILVINO
BIACOLO, JIMMY NICO...**

G.R. No. L-25016. March 27, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

For the killing of Miguel Lomontod on the afternoon of March 7, 1959 in Barrio Ilijan, Sto. Niño, Samar, apparently attributable to differences arising from a claim for a share in the harvest by one of the accused and a dispute over ownership of a parcel of land by another, Modesto Beraces, Silvino Biacolo, Jimmy Nicolas, and Felipe Villa were prosecuted for murder in the Court of First Instance of Samar, Branch V. They were convicted and sentenced to reclusion perpetua. Hence this appeal. A careful study of the evidence of record fails to lend support to the main contention of appellants that their guilt had not been proven beyond reasonable doubt. We have no choice but to affirm.

The testimony for the prosecution was to the effect that the deceased Miguel Lomontod with his wife, Sofia Gonzaga, was on the afternoon of March 7, 1959 in the house of Jacinto Dignos in Barrio Sto. Niño, Samar. Also present were his mother, Florentina Cabantoc, together with his sister and brother-in-law, Ester Lomontod and Ceferino Moscoriola.[1] He left the place to return to his house, about a kilometer away in the same barrio, together with his wife, mother, sister, and brother-in-law at about 3:00 o'clock in the after-noon. With them was a certain Pio Pomentera. Upon reach-ing a certain intersection on the way, Pomentera placed his arm around the shoulder of the deceased and informed him that to pass by the main road would be dangerous, an abandoned narrow trail being preferable instead.[2]

The deceased, unfortunately for him as it turned out later, paid heed. They took the trail, the wife and the mother follow-ing at a distance, with the spouses Ester Lomontod and Ceferino Moscoriola taking the usual way. Soon after, Pomentera took off his arm from the shoulder of the deceased, then stepped backward and requested the deceased to wait for him.[3] As the deceased turned around to face Pomentera, a shot, apparently coming from a banana grove some ten meters away from the deceased, exploded. It found its mark, the deceased being hit on the back. He fell down and cried for help, addressing his mother. The wife instinctively took cover behind the trunk of a coconut tree nearby upon hearing the shot. Pomentera ran away.[4] The wife, from the cover afforded by the coconut tree, saw four men armed with guns emerge from the banana clump. They were the accused, now appellants Modesto Beraces, Silvino Biacolo, Felipe Villa, and Jimmy Nicolas, all of whom were known to the mother, the wife, and the brother-in-law, Moscoriola. Appellants Beraces and Biacolo each carried a carbine; appellants Villa and Nicolas had a rifle and thompson, respectively.[5] Appellant Beraces took a shot at the deceased, the bullet hitting the ground just in front of the victim. At that point, the deceased raised his left hand. It was then that appellant Biacolo took aim and fired at the deceased, hitting his ring finger. As the deceased lay prostrate on the ground, appellants left.[6]

The mother and the wife attended to the deceased, as best they could, with his sister and the brother-in-law assisting. Jacinto Dignos, who was informed of the tragedy, came, and the deceased was brought to his house.[7] The deceased, very much weakened, asked his wife and his mother to look for a motorboat so that he could be taken to Catbalogan, Samar for treatment. They proceeded to do so, but soon after, they were called by Moscoriola to return to the house of Dignos as the condition of the deceased has taken a turn for the worse. It was at that stage, with life ebbing away and death impending, that the victim told his wife in the presence of his mother and brother-in-law that the persons who shot him were the herein appellants.[8] Then he died.

Upon an examination of the body of the deceased by a sanitary inspector, Serafin Villa, bullet wounds on the back and front were found. It was his view that the wound on the back was the entrance of the bullet, and the wound on the abdomen, the exit. He also found a wound on the left-hand ring finger of the deceased. The Chief of Police of Sto. Niño, Jacinto Reyes, made an ocular inspection of the scene of the incident, accompanied by the sanitary inspector. They located three empty shells fired from a carbine; two were near the cluster of banana plants, and the third, near the place where the deceased fell.[9]

There was likewise evidence as to motive. Appellant Beraces nursed a grudge against the deceased as the latter, in 1958, had refused to give appellant his share of the harvest of rice from the land owned by one Miguel Apostol who appointed the deceased as overseer. Appellant Beraces had previously worked on the land by planting rice thereon. Between Jesus Llever, Francisco Llever and appellant Silvino Biacolo on one hand, and the family of the deceased, on the other, was a dispute over the ownership of a land pending before the Court of First Instance of Samar and docketed as Civil Case No. 4728. Appellant Felipe Villa was a constant companion of Silvino Biacolo, while appellant Jimmy Nicolas was the brother-in-law of appellant Modesto Beraces.[10]

It was on the basis of the testimony for the prosecution coming from the mother, Florentina Cabantoc, the wife, Sofia Gonzaga, and the brother-in-law, Seferino Moscoriola, that appellants were convicted of the crime charged, the lower court rejecting the defense of alibi relied upon by them. As noted in the decision: "On the other hand, the defense put up by the accused is alibi, a defense which is said to be the weakest, seldom believed for given weight, except (1) when the identity of the accused has not been positively made, and (2) when the evidence is airtight, which means that there was physical impossibility for the accused to be in the place where the incident took place because they were in another place which makes it physically improbable for them to be at the place of the incident. Modesto Beraces claims that he was in [Barrio] Baras with his co-accused Jimmy Nicolas, together with Marcos Orongan and Fortunato Orongan, a place only three kilometers away from the scene of the incident. Silvino Biacolo claims to be in [Barrio] Cabonga-an making sled together with Dioscoro Bransuela, also three kilometers away, more or less, from the place of the incident. Felipe Villa claims that he was in [Barrio] Cabonga-an on March 6 and 7 together with Perito Branzuela cementing the house of Venancia Biacolo. Marcos Orongan corroborated the alibi of Silvino Biacolo, while Silvino Biacolo corroborated the alibi of Felipe Villa." [11] The lack of persuasive character of such a defense was explained in the decision thus: "The Court is not impressed by the alibi put up by the accused. It is far from airtight so to speak. True Modesto Beraces claims that he was in [Barrio] Baras with his co-accused Jimmy Nicolas, now his brother-in-law, but Barrio Baras appears only to be three kilometers away from the place of the incident and it takes barely two hours to negotiate the distance. Felipe Villa was in [Barrio] Cabonga-an only two kilometers away from the scene of the incident while Silvino Biacolo likewise was in [Barrio] Cabonga-an. Considering the distance of the place where all the accused claim they were during the day of the incident it is not improbable that they could have been in the place of the incident, commit the act imputed against them, then return in the place where they claim they were, negotiating the distance in a short time." [12]

1. It is significant that in this appeal the attack on the correctness of the lower court decision is centered on the

proposition that the prosecution failed to prove beyond reasonable doubt the guilt of the accused. Appellants would have this Court disregard the findings of the trial judge as to the weight to be given the evidence of record. That such a power exists is not to be denied. It is equally undeniable that unless a fact or circumstance of weight or influence has been shown to be disregarded by the lower court there is no justification for its judgment as to the credibility to be attached to the testimony offered by the witnesses being disturbed. So this Court had occasion to reiterate in the relatively recent case of *People v. Gumahin*.^[13] Thus: "The findings of the lower court embodied in a well-written decision cannot only stand the test of the most rigid scrutiny but also has in its favor the well-settled principle that as far as credibility is concerned, the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies will be accorded the highest degree of respect by this Tribunal."^[14] Appellants were unable to demonstrate that such a principle should not be paid deference.

2. It is likewise stressed in this appeal that the lower court should not have considered the identification of appellants as coming within the concept of a dying declaration. It is not denied, as it could not be denied, that immediately after the victim had pointed to appellants as the perpetrators of the crime, he died. When his mother and his wife were called back from a mission to get a motorboat so that the deceased could be taken to Catbalogan, he was lying at death's door. What was uttered then did come from a man who was mortally wounded and who was least likely to pervert the truth, conscious as he was that he was about to join his Maker. It would be to flout the well-accepted doctrines announced by this Court time and time again as to what is a dying declaration, if under such circumstances the lower court would be held as having committed an error in giving credence to the statement made by the deceased. That we are not disposed to do.^[15]

WHEREFORE, the decision of the lower court of January 20 1965 convicting appellants of the crime of murder and sentencing each of them to suffer the penalty of reclusion perpetua, with the accessories of the law, is affirmed, with the only modification that the indemnity to the heirs of Miguel Lomontod should be in the sum of P12,000.00 for which appellants are liable jointly and severally.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Castro, Teehankee, Villamor, and Makasiar, JJ., concur.
Barredo, J., no part.

[1] T. s. n. , Dec. 12, 1960, pp. 5-6; t.s.n., Feb. 6, 1961, pp. 33-34 and t.s.n., Feb. 7, 1962, pp. 52-53.

[2] Ibid, pp. 6-7; pp. 34-35; and pp. 53-54.

[3] Ibid, pp. 7-8; pp. 35-36; and pp. 54-55.

[4] Ibid, pp. 8-9, 12; pp. 36-37; and p. 55.

[5] Ibid, p. 9; p. 37; and pp. 55-56.

[6] Ibid, pp. 9-10; pp. 37-38; and p. 57.

[7] Ibid, p. 10; p. 38; and pp. 55-57.

[8] Ibid, p. 10; p. 39; and pp. 58-59.

[9] Ibid, p. 5 and pp. 81-82. Also Exhs. C, C-1, and D.

[10] Ibid, p. 40 and pp. 28-29.

[11] Decision of the lower court, Appendix to the Brief for the Appellants, p. 33.

[12] Ibid, p. 34.

[13] L-22357, Oct. 31, 1967, 21 SCRA 729. Citing *People v. Tila-on*, L-12406, June 30, 1961, 2 SCRA 653; *People v. Curiano*, L-15256-57, Oct. 31, 1963, 9 SCRA 323 and *People v. Lumayag*, L-19142, Mar. 31, 1965, 13 SCRA 502.

[14] Ibid, pp. 735-736.

[15] Cf. *People v. Devaras*, Feb. 27, 1971 citing *United States v. Castellan*, 12 Phil. 160 (1908); *United States v. Mallari*, 29 Phil. 14 (1914); *People v. Chan Lin Wat*, 50 Phil. 182 (1927); *People v. Ancasan*, 53 Phil. 779 (1928); *People v. Serrano*, 58 Phil. 669 (1933); *People v. Mabassa*, 65 Phil. 568 (1938).

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