

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE V.
FRANCISCO APARATO, DEFENDANT-APPELLANT.***G.R. No. L-725. February 03, 1948*

Ponente: PERFECTO, J.

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The lower court found appellant guilty of the murder of Silverio Almazan and sentenced him to reclusion perpetua, to indemnify the heirs of the deceased in the amount of P2,000.00, and to pay the costs.

Three witnesses testified in direct evidence for the prosecution and the substance of their testimonies is as follows:

1. Jose Enriquez, 30, married, sailor, resident of Lumangbayan, San Teodoro, Mindoro, testified that while he was in the house of Silverio Almazan, at about 9 o'clock in the evening of April 3, 1946, the dogs around the house were barking and the pigs were running under the house. After that I saw Francisco Aparato right where I was standing. Near the hole where I was. At the right of the house. Aparato was under the house. I saw Francisco Aparato inserting the point of the rifle through the floor. I shouted, gun! gun! Immediately I heard shots. I heard Silverio Almazan cry, 'I am wounded.' The wife, Felisa Zamora, took hold of Almazan and laid him on a mat. Almazan asked his wife to call for a doctor and report the matter to the barrio lieutenant of Lumangbayan. I was ordered by Felisa Zamora to go to Lumangbayan, to call for a doctor and the barrio lieutenant. Witness was able to report to the barrio lieutenant but he did not see any doctor. He did not comply with the request of Felisa Zamora, because "I was afraid because Francisco Aparato might be around the house and kill me also." At the time of the shooting, Felisa was "eating right near the place where Francisco Aparato placed his gun." When Silverio was shot, "he was sitting on a stool leaning near the small table." The witness identified the accused because "when Francisco Aparato was looking up, I saw his face and there was a lamp on the stove that gave light on the face of Aparato." The stove was "near the stairs on one side of the house." It was located "outside of the ground floor of the house." The lamp "was on the stool near the ladder" about two meters from the place of Aparato. On that night the witness did not return to the house of Almazan. He returned the next morning, when I saw any people in the house and I saw Silverio Almazan dead. He went to the house to visit Osias Almazan, a friend who was sick. He remained in the house "more or less five hours." He arrived at 6 o'clock and remained in the house "about one-half hour." After the shooting, which he heard "about 9 o'clock in the evening." He remained many hours in the house to help boil water for the sick and look for herbs for medicine. "It was only on April 3," when the witness happened to go to the house of Silverio Almazan. At the time the shot was fired "I was standing right near, because we have just finished eating." He was not conversing with Silverio Almazan or with his wife. He was standing for about 20 minutes when the shot was fired. "I was then cleaning my hand and lighting my cigarette and later on I heard the shot. I have already lighted my cigarette and smoked when the shot was fired." Since he saw somebody under the house until the shot was fired more or less two minutes had elapsed. Although he saw a man under the house with a rifle for two minutes, he never gave any warning to Almazan. The witness knows that Moises Aparato, brother of the accused, was killed in San Teodoro, and Silverio Almazan was

suspected as one of the killers, and notwithstanding said knowledge, he did not warn Silverio about the presence of the accused "because I was afraid I might be killed." Exhibit I is an affidavit the witness signed on April 3, 1946, before the mayor of San Teodoro, Tomas Mendoza. The portion of said affidavit underlined with blue ink, to the effect that the witness suddenly saw the end of the gun which was suddenly fired by Aparato who also suddenly ran towards the road "is not true." Said portion reads as follows:

"* * * ay sa biglang pagkakita ko sa dulo ng baril na siyang pinalampas sa ibabaw ng sahig ay namasdan kong bigla na si Francisco Aparato ang bumaril at biglang tumakbo pagkaputok na tungo sa carsada. * * *"

The witness cannot tell how long one minute is, and does not know the meaning of two minutes. He heard Silverio saying "Francisco Aparato did not stop to avenge against me." The floor of the house was of bamboo, spaced at about half an inch. The place not covered by mat has a width of one or two brazas. The witness finished the third grade, but he does not know how many seconds there are in a minute, how many minutes in an hour and how many hours in one day.

Felisa Zamora, 30, married, housekeeper, resident of Mahal na Pangalan, Calapan, Mindoro, testified that "our dogs on that night (April 3, 1946, 9 o'clock) were barking and the pigs were running under the house. I was then eating, Jose Enriquez shouted, gun! gun! A shot was heard. My husband was hit. when he was shot, he stood up from the stool and felt his breast and we then held him and laid him on the mat. He said 'Francisco Aparato did not stop to avenge against me.' He asked us to call for a doctor because his situation was serious and to report the matter to the barrio lieutenant. I asked Jose Enriquez who was then our visitor to call for a doctor. He let a few moments pass before going away because he was afraid he might be killed." Silverio died at about 12 o'clock in the evening. The witness executed an affidavit before the justice of the peace of San Teodoro, Mariano Basa on October 5, 1942, to which she affixed her thumbmark. Her thumbmark appears in Exhibit 2, the contents of which were read to her by the justice of the peace. All that was read was all she knows about what happened in her house on April 3. The words uttered by her husband that "Francisco did not stop to avenge against me" were not inserted in the affidavit "because I was afraid that if I put everything in the affidavit, Francisco Aparato might kill us all." She did not see who fired the shot. Prior to April 3, 1946, Jose Enriquez used to go to her house "within two months', about two time's." When the shot was fired "I had not yet finished eating." At the time she "was boiling water for the sick." The stove was "on the ground." There was a stove standing and above the stove the light was placed. The lamp illuminated the ground floor of the house. "My husband was being suspected of having killed Moises Aparato who was found dead on the street." Jose Moises was in the house since "about 7 o'clock in the evening."

Angel Navarro, 45, married, Maternity Clinic physician, resident of San Teodoro, testified that Exhibit B contains what he found on the body of Silverio Almazan. He saw four wounds. Silverio died due to hemorrhage as a result of the fatal wounds Nos. 2 and 3. The four wounds were produced by only one shot. The bullet went to the right armpit- and upward obliquely inward until it comes out into the external clavicular joint, where the third wound appears showing the exit of the bullet which later on caused a slight abrasion on the lower joint of the mandible.

The prosecution closed its evidence with the presentation of Exhibit A, and an unidentified empty capsule; the medical certificate Exhibit B, and the death certificate Exhibit C, and Exhibit D, the decision in criminal case No. 2557, People vs. Francisco Aparato. It appears that on February 17, 1937, appellant was sentenced from six months and one day of prison correccional to six years and one day of prison mayor for homicide, for having killed, while intoxicated, Galicano Giron on November 1, 1936, the killing having been attended by three mitigating circumstances.

The substance of the testimonies of the witnesses for the defense is as follows:

1. Rustico Kaliwanag, 45, married, laborer, resident of Baco, Mindoro, testified that he went with chief of police Arsenio Zulueta and Emilio Triambulo to layagao to hold a political meeting, which started at 8 o'clock in the evening of April 3, 1946. Triambulo was the chief speaker and the witness was the second. The meeting was held near the schoolhouse of the barrio. It lasted up to about 16 o'clock. After the meeting one of the persons with whom the witness shook hands was Francisco Aparato, whose companion was Pedro Enriquez. When the witness arrived at the place of the meeting he saw Aparato there. The accused was present during the meeting, as they were "standing near me." The witness held several positions in the government—clerk, municipal sanitary inspector, municipal secretary, mayor, and notary public. During the meeting, the accused was standing at the right of the witness.

2. Alfonso Flores, 32, married, sergeant of police, resident of Baco, testified that at about 5 o'clock in the afternoon of April 3, 1946, while he was in his house, he saw Francisco Aparato. He was accompanied by Pedro Enriquez. They were talking. They went to the house of Adela Raturat. Then they "returned to my house. He asked if he can sleep in my house. He told me he would go to take his supper in the house of Adela Raturat." The witness again met Aparato in front of the schoolhouse where a public meeting was held at about past 7 o'clock. The meeting lasted up to about 9:30, and during the meeting Francisco Aparato "was near us." Pedro Enriquez was also there. After the meeting the people did not disperse right away. They remained seated and conversing. Francisco Aparato was with me. He went together and he even asked me to sleep with him. Pedro Enriquez went with them. They slept in the house of my mother. My house is very small, 30th houses were near. He slept in my house. After leaving Francisco Aparato and Pedro Enriquez to sleep in the house of his mother, the witness saw them again the next morning. The distance between Lumangbayan and Mayagao, Baco "is more or less 12 kilometers." To go from one place to another, the route is "along the beach." Another route is to take the road but then it is necessary to go to Calapan first and then get the interior road. The witness used to go from Mayagao to Lumangbayan and it took him about 3 hours. There were four rivers to be crossed. At the meeting "there were very few people." The toastmaster was Emilio Triambulo. The second speaker was Francisco Benitez and the third was Rustico Maliwanag.

3. Pedro Enriquez, 21, single, sailor, resident of Tacligan, San Teodoro, testified that at 2 o'clock in the afternoon of April 3, 1946, Francisco Aparato and himself left Tacligan bound for Pola, Mindoro. They did not reach Pola that day. They went to Mayagao by hiking along the beach. They arrived at Mayagao at 4 o'clock in the afternoon. "We stopped at the house of Sergeant Flores at Mayagao. We went to the house of Adela Raturat to ask them to cook food for us." Then "we went away to the house of Alfonso Flores," to which the latter acceded. After the conversation, "we returned to the house of Adela Raturat to take supper. After eating, we went down and hang around. We heard the bell ringing and we were informed that a meeting will be held." It was the school bell. At about 7 o'clock they went to the meeting. The meeting was held in front of the school building. During the meeting Aparato and the witness were together near the door of the school building. They were hearing the speeches of the speakers. They went home at about 11 o'clock with Sergeant Flores. The next morning they woke up when the sun was already shining. "We went to the house of Adela Raturat and took our coffee" and then they proceeded to the house of Sergeant Flores and "bade him goodbye. We went to Calapan." They arrived there at 9 o'clock in the morning. From there they took a truck bound to Pola, where they went to get a sailboat "which my brother was buying to take to Tacligan." From Tacligan it takes 3 1/4 hours to reach Lumangbayan, and From Tacligan to Mayagao about 3 hours. At the meeting Rustico Maliwanag spoke in favor of Osmeña for president.

4. Carlos M. Veridiano, 30, married, first lieutenant, infantry, provincial adjutant, MPC, Mindoro, identified Exhibit 3 as the affidavit of Rustico Maliwanag; Exhibit 4, as the affidavit of Pedro Enriquez; Exhibit 5, the affidavit of Francisco Aparato; Exhibit 6, the affidavit of Adela Raturat; Exhibit 7, the affidavit of Alfonso Flores; Exhibit 8, the recommendation made by the witness concerning the investigation he made, of the case against

Francisco Aparato, where the fitness states that "all the evidence points that Francisco Aparato was in Mayagao, Baco, when the incident happened." Francisco Aparato was detained four days after the crime was committed.

5. Francisco Aparato, 28, single, resident of Tacligan, San Teodor, Mindoro, sawyer, testified that in the afternoon of April 3, 1946, at 2 o'clock, he and Pedro Enriquez made a trip intending to reach Pola. At about 5 o'clock, they arrived at barrio Mayagao. We met Sergeant Flores. We were invited to go up the house. I told him that I would return. We went to the house of Adela Raturat. We requested her to cook food for us. When Adela Raturat was cooking food for us we returned to the house of Alfonso Flores. We went to tell him that we are going to sleep in the house. We returned to the house of Adela Raturat to take our supper which they took at 6 in the afternoon. After taking our supper we went down to hang around the house of Adela Raturat. We heard the bell ringing. We learned that that bell was calling for the people to attend the meeting. Pedro Enriquez and myself went to the meeting, in front of the school building of Mayagao. They arrived there at 7 o'clock. The meeting started at 7:30. Rustico Maliwanag, Emilio Triambulo, and Francisco Benitez spoke at the meeting. The meeting lasted up to 9:30. The witness attended the meeting. "Pedro Enriquez was near me." There was also Alfonso Flores. "When the meeting was finished, the people did not at once disperse and we were still talking with each other. At about 11:30 in the evening when the people were going to their respective homes, Rustico Maliwanag introduced himself to us and after that we started to go home." His companions were Alfonso Flores and Pedro Enriquez. At the house of the mother of Alfonso Flores "we were furnished with pillows, mats and blankets." Alfonso did not sleep with them, but they saw him the next morning at about 6 o'clock. The witness and companions proceeded to Calapan with the intention of going to Pola. He was arrested on July 4 at 11 o'clock in the evening in barrio Bonbon, Calapan. He was investigated the next day and he signed an affidavit in Tagalog. He was never released since then. It is not true that he went under the house of Silverio Almazan at about 9 o'clock in the evening of April 3, 1946. "Jose Enriquez has long entertaining a grudge against me because of Galicano Giron, his uncle," for whose death the witness was prosecuted and "I admitted my guilt." The witness entertained no grudge against Silverio Almazan as he was believing that "Silverio Almazan could be utilized by me as my witness with regard to the death of my brother who was killed by Juan Bae, because of the affidavit which he subscribed to before Lieutenant Ani. In going from Tacligan to Pola, Mayagao is the first place to be reached. The accused went with Pedro Enriquez to be one of the sailors to bring a batel from Pola to Tacligan.

6. Numeriano Ani, 39, first lieutenant, investigation and intelligence officer, MPC, testified that on March 29, 1946, he administered the oath of Silverio Almazan. Exhibit 9 is the affidavit of Almazan. Francisco Aparato signed Exhibit 10.

7. Jose Quizon, 48, married, provincial fiscal of Mindoro, testified that he did not receive the affidavit of Silverio Almazan.

8. Augusto Valencia, married, justice of the peace of Pinamalayan, Bongabon, Mindoro, testified that he had seen the affidavit of Silverio Almazan in the possession of Lt. Ani, who delivered it "to the provincial fiscal, Mr. Jose Quizon, in my presence. I happened to accompany him (Lt. Ani) because I was urged by the relative of Moises Aparato who was killed to act as their lawyer." The delivery took place before the end of March, 1946.

The defense offered as documentary evidence Exhibits 1 to 10.

The testimonies of the two witnesses offered by the prosecution as rebuttal are as follows:

Emilio Ponce, 51, widower, resident and acting chief of police of San Teodoro, testified that he has experience in coming from San Teodoro to Baco by walking. From Lumangbayan to Mayagao "regularly, it takes not more than 2 1/2 hours." Four rivers have to be traversed. When it is high tide, one of them has to be crossed by the width of the river is about 8 meters.

Roman Abaca, 35, married, resident of Pulangtubig, Baco, Mindoro, testified that at about 10:30 in the evening of April 3, 1946, two men approached his house, one unknown to him and the other Francisco Aparato. "I asked where they came and Francisco Aparato said that they came from Lumangbayan going to Calapan." After the conversation they separated. The witness only learned that he was testifying in this case on June 7, 1946, when the widow of Silverio Almazan requested him to testify. Before said date, he did not meet her. The house of the witness is 4 kilometers from Lumangbayan. When Felisa Zamora went to request him to testify, she came from Mahal na Pangalan, Calapan. She came alone. The witness did not learn about the killing of Silverio Almazan even at the time he was testifying.

In order to prove that appellant was the person who shot Silverio Almazan at 9 p.m. on April 3, 1946, the testimony of Jose Enriquez was presented. It appears to be unconvincing. No one corroborated him. Not even the widow Felisa Zamora who had the same opportunities under which Jose Enriquez is alleged to have been able to identify appellant. If Enriquez was able to recognize appellant through the split bamboo floor, Felisa could have also recognized him.

The fact that she had the same opportunities to notice the person who had fired the fatal shot, and notwithstanding, failed to corroborate Enriquez as to the identity of the criminal, makes Enriquez assertion that he was able to recognize the appellant unbelievable. That Felisa failed to testify having seen any person under the bamboo flooring or anyone running from the place to the road, casts doubt as to the allegation of Enriquez that he was able to recognize the person who fired the shot by the light coming from above the stove.

Without attributing to Enriquez the malicious intention of testifying falsely, we can understand that he might have committed an honest mistake. It has been proved, without any doubt, that he has been entertaining a grudge against appellant, because the latter killed Galieano Giron, uncle of Enriquez. His grudge created a prejudice against appellant as a killer. From said to prejudice it was easy for him to mentally jump the conclusion that no other could have fired the shot that killed Silverio Almazan than appellant himself, and, from the conclusion, to arrive at the conviction that he actually saw appellant as the one who fired. That he had undergone such mental process, made probably by the psychological operation of association of ideas and feelings, is easily understandable.

Doubt as to the testimony of Enriquez that he was able to identify appellant as the one who fired the fatal shot at Silverio Almazan turns into a firm disbelief when we consider the air-tight alibi proved by the witnesses for the defense. The record manifests the fact that some time after appellant was arrested and in his investigation, he testified that he had nothing to do with the killing and that at the time it took place he was attending a political meeting in front of the school building of Mayagao about 12 kilometers from Lumangbayan, the scene of the crime, a distance needing from 2 1/2 to 3 hours of walking, the only means of travel between the two places. The several witnesses for the defense were investigated, without appellant having the opportunity of talking first with them, because he remained in prison even up to the time of the trial of the case, and in the investigation, all said witnesses, the majority of whom testified at the trial, corroborated appellant as to his presence at the political meeting at Mayagao. According to the testimonies of said witnesses, the meeting started at about seven and lasted for more than two hours. After the meeting they did not disperse right away. Appellant remained in the place up to eleven, when he left with Pedro Enriquez and police sergeant Alfonso Flores.

For all the foregoing, with the reversal of the appealed decision, appellant Francisco Aparato is acquitted of the murder of Silverio Almazan and, upon promulgation of this decision, it is ordered that he be immediately released from imprisonment.

Moran, C.J., Paras, Feria, Pablo, Hilado, Briones, and Tuason, JJ., concur.

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