

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS.
FILEMON NOTARTE, NICANOR PAJAC AND JULIO PAJAC,
DEFENDANTS. FILEMON NOTARTE, DEFENDANT AND APPELLANT.**

G.R. No. L-6371. September 28, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

On 18 January 1952, at 6:30 o'clock in the evening, Benjamin Giray, his wife Luisa Yaranon and his mother Preciosa Alburan took dinner in their house at Bahian, barrio of Anongo, municipality of Catubig, province of Samar, the floor of the house being less than one meter from the ground. After taking their repast Benjamin Giray sat on a hammock. His wife and mother sat near him and the former began to peel gabe root. No sooner had they been in that position then a gun report was heard and Benjamin Giray moaned uttering these word: "Aroy, I was hit. I shall die." He staggered and fell down near the door of the kitchen and his wife ducked facing the door towards the road. In that position she saw a flash outside. She called Emiliano Robion, a brother-in-law, and heard the tramp of persons outside the house making their way toward the trail. Then she crawled toward Benjamin and found him dead with wounds in the right arm and on the back and near him three pellets and round pieces of cardboard (Exhibit C). Emiliano Robion, whose house was about four meters from that of Benjamin Giray, and who had just taken his dinner and was sitting at the door of his house, upon hearing the gun report, leaped to the yard of his house with a bolo and a flashlight, focused it on the trail near the house of his sister-in-law and saw Nicanor Pajac, Julio Pajac and Filemon Notarte, the latter in a stooped position carrying a home-made shotgun called bardog in the locality, who stood up and ran away preceded by his two companions Nicanor Pajac and Julio Pajac. The spot where he saw them and the nearest corner of the house of Benjamin was less than three meters. Then he posted himself under a coconut tree and not long after went to the house of Benjamin where he found him dead. As a result of the gunshot, which hit Benjamin Giray in the right arm and back he died almost instantaneously of syncope from acute internal hemorrhage, as testified to by Dr. Sixto Goborne who performed the necropsy. Five other lead pellets were extracted from the body of the deceased (Exhibits A and B).

An information for murder was filed against the defendants. Upon arraignment they entered a plea of not guilty.

The evidence for the prosecution establishes the facts just narrated. After the prosecution had rested its case counsel for the defendants moved for the dismissal of the information on the ground that the evidence is insufficient to prove their guilt. The Court dismissed the information as to Nicanor Pajac and Julio Pajac on the ground that the evidence failed to show conspiracy between the three defendants with the proportionate costs de oficio, but denied the motion to dismiss as against Filemon Notarte. After hearing the defendant's evidence the trial court found him guilty of murder and sentenced him to suffer reclusion perpetua, the accessories of the law, to indemnify the heirs of the deceased in the sum of P2,000 and to pay the proportionate costs. From this judgment he has appealed.

The defense of the appellant is alibi. According to him, at about 5:00 o'clock p.m. of 18 January 1952, he went to

the store of one Constancio de la Cruz in Hiboboliao, Catubig, Samar, to buy cigarettes but, as he was told that he had none to sell, he proceeded to the store of Alfredo Iramia where he was also informed that there were no cigarettes for sale. He was given, however, a stick of cigarette and he lighted it. While he was thus smoking inside the store a laborer arrived bringing a sack of rice and he helped unload it. Then he was requested by Alfredo Iramia to measure fifteen gantas of rice for Victoriano Orteza and after measuring that amount of rice he poured it into a jute sack, but discovering that the sack had a hole he asked for a needle and stitched it. At about 7:00 o'clock the wife of Iramia informed her husband that the table was set, so Iramia invited Notarte to take his dinner with them which invitation he gladly accepted after mending the hole in the sack. While they were eating their dinner he heard Iramia say that he would send to town some of his men to sell hemp. He thought it was an opportunity for him to go to town so he asked Iramia to allow him to go with his men to which request Iramia acceded. After dinner they returned to the store and he helped Iramia open boxes of canned goods for display in the shelves and after finishing the work he bade Iramia goodbye to go home but the latter told him to stay and sleep there, because it was already late, so that he could wake up early in the morning and go to town with the laborers. When he woked up early the following morning and was set to go to town with the laborers, his nephew arrived and told him that his mother was not feeling well, so he returned home.

The testimony of Victoriano Orteza is unreliable for although he is a brother-in-law of the victim, his wife being the tatter's sister, yet he had a grudge against the deceased for not giving her share in the estate of their deceased mother; and because Victoriano Orteza considered Alfredo Iramia as his "boss" who was interested in freeing the appellant for services the latter had been rendering to him in his store. Apart from this, there was no impossibility for the appellant to have absented himself unnoticed from the store of Alfredo Iramia and after shooting Benjamin Giray returned thereto, the distance from the store to the house of the victim being only three kilometers.

Counsel for the appellant discourses on the reaction of Emiliano Robion who hearing a gunshot and fearing he might be killed could not have done and seen what he testified to, to wit, jumped from his house with a bolo and flashlight, focused it and saw three persons in the yard of the house, and concludes that Emiliano Robion did not testify to the truth. There was nothing unusual and abnormal in the reaction of Emiliano Robion who upon hearing the gun report and call of Luisa Yaranon, his sister-in-law, jumped from his house to see who had discharged the firearm and after seeing Filemon Notarte with a home-made shotgun to hide under a coconut tree and after losing sight of the three malefactors to repair to the house of his brother-in-law where he found him dead.

There was a motive imputable to Filemon Notarte. Five days before the tragic death of Benjamin Giray, in the house of Alfredo Iramia, Bienvenido, brother of Filemon, had an altercation with Benjamin, who said "I am already here now that you are propagating that you are going to kill me, tell him that I am here waiting for him," and Bienvenido retorted saying "If it is Filemon who has a grudge against you, you try to meet him and talk to him." Not long after that exchange of hot words between Bienvenido and Benjamin, Filemon arrived at the place but fortunately Benjamin had left. Informed by Nicanor Pajac about Benjamin's angry words, Filemon said "You wear skirts because you are like women. . . If I were here during the fight you will see my ability ... It will not take long. . ." This incident is testified to by Cresente Ribo, corroborated by Luisa Yaranon de Giray and Filomeno Rodriguez, the vice-mayor of Catubig.

Appellant contends that the testimony of Emiliano Robion, Cresente Ribo and vice-mayor Filomeno Rodriguez should not be given credence, because Robion was denounced by him to the mayor of Catubig for registering as voter in two precincts in the elections of 1951. Cresente Ribo, who testified to the incident of 13 January 1952 in the house of Iramia, had an unpleasant incident with the appellant who took his bolo and slapped his face, because he shouted causing disturbance in one of the meetings of the Liberal Party. Vice-mayor Filomeno Rodriguez testified against him because of political rivalry, the said vice-mayor belonging to the Nacionalista Party, and he

to the Liberal Party, in Catubig. He also claims that Emiliano Robion's testimony cannot be relied upon because some witnesses for the defense testified that on different occasions they had heard him say that as the S night was dark he had not recognized the killers of Benjamin. The testimony of the witnesses just referred to was denied by Emiliano Robion and Antonio Alburan. The next day after Benjamin Giray was shot to death, patrolman Jose de Asis went to the scene of the crime to investigate. Emiliano Robion told him that he saw the appellant and his two companions the previous night in the yard of Benjamin's house when the latter was shot. And the same was repeated in his statement sworn to before the justice of the peace of Catubig, Samar, on 20 January 1952.

The fact that Benjamin Giray was killed by a gunshot on the night of 18 January 1952 while sitting on a hammock in his house after taking his dinner and that he died as a result of that gunshot which hit him in his right arm and on the back perforating his body and causing his death as a result of syncope from internal hemorrhage is not disputed. The only point discussed and argued by the appellant is whether Emiliano Robion really saw him on the night in question in the yard of the deceased's house, which is only four meters from that of Robion, in a stooped position carrying a home-made shotgun called bardog in the locality, who after Robion had focused the flashlight on the trail and recognized him stood up and ran away to the rice-field toward Hibobolia. Emiliano Robion testified that he knew the appellant since boyhood. The ill-feeling Robion might have harbored toward the appellant for the latter's report on the former's registration in two precincts in the elections of 1951 for which after all he was not prosecuted,[1] could not have been enough motive or reason to impute to the appellant the commission of a serious crime. And there being a motive on appellant's part to do away with Benjamin Giray because of the incident that took place five days before the latter's tragic death, the finding of the trial court that the appellant shot Benjamin Giray to death is amply supported by the evidence. The crime was committed with treachery because the shot was fired from behind.

The judgment appealed from is affirmed, with costs against the appellant.

Bengzon, Acting C.J., Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment affirmed.

[1] P. 119, t.s.n.

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