

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AMBROSIO PAUNIL AND ALFREDO PAUNIL, DEFENDANTS AND APPELLANTS.

G.R. No. L-9328. May 28, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Cebu, Hon. Ignacio Debuque presiding, finding Ambrosio Paunil and Alfredo Paunil, guilty of the murder of Daniel Dacalos, with the qualifying circumstance of alevosia, with the aggravating circumstance of nocturnity, and sentencing each of them to reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the sum of P6,000, and to pay the costs.

The evidence shows and it is not disputed that around 9:00 o'clock in the evening of April 4, 1952, while Daniel Dacalos was standing at the door of his store, his back towards the road in front, in the barrio of Langtad, municipality of Naga, province of Cebu, he was suddenly hit with a bullet on the left arm; he was taken to the Cebu Portland Cement Company hospital at Barrio Tinaan, Naga, where he received medical attention, but this was to no avail because the following morning at 5:00 o'clock he died.

Death was caused by acute hemorrhage caused by the wounds, which were found on his person, as follows:

"1. Lacerated, "wound "with compound comminuted, fracture of the left, medial portion of the humerus; there is loss of substance.

"2. Another lacerated, wound between the left, thumb and index, finger with compound, comminuted, fracture of the first, metacarpal bone.

"3. Contusion at the left, lateral side of the thorax." (Exhibit "L".)

The place where acting mayor Dacalos had his store is along the provincial road. In front of the store across the street and around 40 meters therefrom was an artesian well near some coconut trees. The store was surrounded by other stores and houses of the store owners. On the other side of the store, beyond the artesian well, were houses of the other residents of Barrio Langtad, Naga, Cebu.

The investigation that was conducted the day following the shooting showed that the bullet must have been fired from a rifle by a person standing near a coconut tree near the artesian well. This was evident from the direction of the traces of a bullet passing along and through the bushes between the artesian well and the store of the victim. It was also found out that the bullet that hit the left arm of the deceased Dacalos, after striking his arm, struck the frame of the door of the store and was lodged therein. The two shots were fired that evening at about 9 :00 o'clock. As to which of these hit the victim it is not disclosed.

Daniel Dacalos belonged to the Nacionalista Party and was candidate for the position of municipal councilor in the general elections of 1951, but failed to get elected. On April 1, 1952, he was appointed by the then Governor

Sergio Osmeña, Jr. as acting mayor of Naga, Cebu, during the suspension of the mayor who was under investigation.

When on the evening of April 1, 1952 the appointment of Daniel Dacalos was known in the barrio, certain members of the Liberal Party, among whom were Ambrosio Paunil and Alfredo Paunil, expressed disgust over the appointment. In the store of Matilde Dacalos, which was beside the store of the deceased, Alfredo Faunil expressing disgust over the appointment of the acting mayor, said that it is useless to hold elections for the vice-mayor does not take the place of the mayor when the latter is suspended (Testimony of Julio Dacalos, t. s. n. p. 16; Id. of Eriberto Dacalos, p. 11).

At about 7:00 o'clock in the evening of April 4, 1952, Cocopati Paunil asked the deceased to allow cockfighting to continue on that day, but the mayor refused to grant the permission, saying that the same is not permitted by law. Upon hearing this, Cocopati said that something bad would happen, so Julio advised the deceased to close his store (Testimony of Julio Dacalos, t. s. n. pp. 23-24).

The night of the shooting, when the Constabulary soldiers undertook to investigate the possible authors of the shooting, both Ambrosio Paunil and Alfredo Paunil were taken in for investigation and they were continuously investigated on various days after the incident, showing that suspicion fell on them.

The most important witness for the prosecution is Santiago Emnace, a laborer, who resided around 300 yards away from the artesian well. According to this witness, on the evening in question, he and his wife had stayed until around 8:00 o'clock in a store on the road, drinking Pepsi Cola. At 8:00 o'clock they returned to their house and upon finding that there was no water in the jar, Santiago walked back to the artesian well bringing with him a can. He passed by the house of Paterno Abella, where Santiago saw four persons playing pool. As he approached the artesian well he saw persons standing on the way, one of whom was Ambrosio Paunil, his compadre, who greeted him. Beside him he saw Alfredo Paunil. The distance where Ambrosio and Alfredo were was about 10 brazas from the artesian well. After filling the can with water Emnace went home and on his way back he again saw the brothers Paunil still in the same place. Upon reaching home, he asked his wife to help him lower the container, but just at that moment, he heard a "bang", a rifle shot. He sat down and then went down below to answer a call of nature. There he heard a second rifle shot, and after that, he heard the cry of a woman saying "Help Daniel Dacalos."

The place where Emnace went to answer the call of nature is a patch of unplanted cornfield near the house. After hearing the second shot and the cry of the woman calling for help, he heard the barks of dogs passing near the place where he was to move his bowels. He sat down to find out what was the cause of the barking", and with the help of the moonlight he saw Ambrosio Paunil and Alfredo Paunil running across the plowed field, towards the house of Alfredo. Alfredo was then carrying with him a rifle, Cal. 30, presumably the same rifle that Emnace had seen many times in the possession of Alfredo Paunil and which the latter had some time previous received from Pio Tesalona and delivered thru Lucero Samoro. Witness had actually seen the rifle delivered, to Alfredo Paunil, with some bullets. At about 9:00 o'clock that evening, the moon was about as high as the sun at 2:00 or 3:00 o'clock in the afternoon, and according to Emnace the sky was clear and he easily identified the accused as they were near the artesian well and as they were running away to the house of Alfredo Paunil.

Another witness for the prosecution is Eriberto Dacalos. According to this witness, that evening of April 4, he and various companions, among whom were Paterno Abella, Lucrecio Samoro, Francisco Baricuatro and Celestino Lapitan, were playing pool at the house of Paterno Abella. At about 9:00 o'clock, they suddenly heard a shot and thereupon Eriberto Dacalos ran out of the pool house, with the purpose of going home and intending to pass the artesian well because that was the way towards his house. But as he approached the artesian well, a second shot

was fired and upon directing his eyes towards the place of the explosion, he saw Alfredo Paunil in the act of lowering the rifle with which he had fired the shot.

The third witness for the prosecution is Silvino Abayata. He stated that about 9:00 o'clock that evening, he was in the store of Daniel Dacalos, the victim. At that time Daniel was standing at the door of the store, facing the store with his back towards the road. While in that position, he suddenly heard a shot which was fired from the artesian well. He directed his attention thereto and saw two persons standing near the artesian well, although he did not know who they were. He declared that the artesian well is 40 brazas from the store and that persons near the well could be seen from the store.

A fourth witness called for the prosecution was Paterno. Abella. But this witness, at the beginning of the examination, unexpectedly became hostile. It is a fact, however, that on the 9th of April, 1952, he subscribed an affidavit before the assistant provincial fiscal of Cebu, pertinent portion of which is as follows:

"Q. 4.-Who shot Mayor Daniel Dacalos?

A.-I did not see the one who shot. But when I went down from our house after I heard the shout for help, I saw two men walking toward the sea from the coconut tree near the artesian well in front of the store of Matilde Dacalos. These men according to what I recognize by their "way of walking, were Alfredo Paunil and Ambrosio Paunil. The one ahead was Ambrosio and the one behind him was Alfredo who was carrying a gun in his right hand. Before long¹ after I saw them, they ran toward the sea and they were followed by a dog which was barking. Because of my fear, I returned immediately to Kadaggitan." (Exhibit Q-1.)

Attempt was made by the defense to involve witness Santiago Emnace in contradictions, between his testimony and his affidavit which he swore to on April 6, 1952 before Captain Lumbre and the municipal judge. But upon comparing the affidavit and the testimony rendered in court, We find no difference as to the substantial and material facts about the case, which would indicate that his testimony in court is not entitled to credit as to substantial facts. This is the most important part of his affidavit:

"Q. On that evening what happened in the barrio where you live?

"A. What I know was only when I went home from the store with my wife and child. When we arrived in our house which is situated in the seashore of Langtad, I looked up our jar, and when I saw that there was no water in the jar, I told my wife that I would fetch water in the artesian, well. My "wife told me to hurry up and I answer yes, and then I proceeded, and when I saw compadre Ambrosio and Fredo Paunil who are brothers, When they saw me that I was bringing with me a can water container, he told me to hurry up because no water might come out from the artesian well. I told him, 'compadre, water will come out if I push the artesian well up and down', and when I pushed it and my can water container was already filled up, I carried it on my head and then I walk. When I passed by the same road, they were still there, and then I continued walking and these persons were squatting on their feet. When I arrived home, I told my wife to help me out in unloading" the can water container. After she helped me I place the can water container. Before my child received the water can container I heard two shots which were successive and which was the only thing I have heard. When I heard the shot, inasmuch as it was a moonlight night, I saw them running carrying a rifle. When they ran, they went direct to the seashore, and they were followed by the dog. * * *." (Exhibit "1-K").

Attempt was also made to discredit this principal witness by the fact that immediately after the shooting he was given work in the Engineering Department of the City of Cebu and had since then begun to live there. This was done evidently for the purpose of insuring his loyalty to the cause of the Government in the case against the accused. We have noted, however, that Ambrosio Paunil was a foreman in the Cebu Portland Cement factory and that he exercised some influence over laborers among whom was Santiago Emnace. Judging by the fact that some of the witnesses for the prosecution have turned hostile at the time of the trial, the act of the Government in giving

work to this principal witness to insure his loyalty to the cause of the prosecution may not be considered censurable; it was indeed necessary to protect the interests of justice. Anyway the defense subjected the witness to a very intense and searching examination, in which Emnace clearly did not budge an inch as to the fact that he saw the appellants near the well before the shooting, and saw them afterwards running away towards the house of Alfredo Paunil, Ambrosio ahead of Alfredo and the latter carrying the rifle that had been in his possession.

That Alfredo Paunil had a rifle in his possession at the time of the shooting is also borne out by the testimony of Lucrecio Samoro. According to him the said rifle had formerly been in his possession during the Japanese Occupation; that the rifle was given to Pio Tesalona, who later gave the rifle to Alfredo Paunil (thus corroborating the testimony of Santiago Emnace about the delivery of the rifle by Pio Tesalona to Alfredo Paunil). This witness was also shown the slugs which were found at the scene of the shooting and he declared that the same kind of shells were used by him. in the rifle in question. With the testimony of this witness, it is not necessary that the rifle itself should have been produced. The rifle was seen by three persons, witnesses for the prosecution: Eriberto Dacalos, soon after the second shot was fired, then by Santiago Emnace, as Alfredo and Ambrosio Paunil were running away from the scene of the shooting, and on various occasions previous to the shooting same rifle was seen in the possession of Alfredo Paunil both" by Lucrecio Samoro and Santiago Emnace.

We are satisfied by and large by a careful reading of the testimonies of the witnesses for the prosecution that notwithstanding the discrepancies on minor and unimportant details and circumstances, there can be no reasonable ground to believe that their testimonies are false and fabricated. We are satisfied that on the whole they point to no other individuals as authors of the crime but Ambrosio Paunil and Alfredo Paunil, as these were the only persons seen near the vicinity of the place from where the shots were fired at or about the time of the incident of the shooting and because they also had the motive to act as they did, as well as the means with which to carry out the deed.

The next question that poses solution is, Does the evidence submitted by the defense destroy the credibility of the witnesses for the prosecution to such an extent as to create a reasonable doubt that the accused-appellants are the ones who actually perpetrated the deed? No less than 9 witnesses in addition to both the accused-appellants testified for them. Paterno Abella, owner of the house where pool was being played at the time of the shooting, testified that when the first shot was heard all of the five playing pool, including Eriberto Dacalos, Lucrecio Samoro, Francisco Baricuatro and himself laid down prone on the ground, thus seeking to discredit the testimony of Eriberto Dacalos that the latter, upon hearing the first shot, ran away from the house in the direction of the artesian well to go home. But Abella's testimony is contradicted not only by that of Eriberto Dacalos but also by the testimony of Francisco Baricuatro, appellants' own witness, who instead of corroborating the declaration of Abella that Lucrecio Samoro and Eriberto Dacalos also laid prone on the ground, corroborated, that of Eriberto Dacalos to the effect that the latter and Lucrecio Samoro ran away together upon hearing the first shot. Besides, as already adverted to in the consideration of the evidence for the prosecution, in his affidavit (supra) Paterno Abella declared that he recognized Ambrosio Paunil and Alfredo Paunil, the latter carrying a gun in his right hand, both walking near the artesian well and afterwards after the gunshots were heard, saw them ran away towards the sea followed by a barking dog. Lastly, Abella is a cousin of both appellants and while he may have originally wanted to testify to the truth, he might have later on changed his mind and instead of testifying for the prosecution moved over to the other side as witness for the defense.

Witness Francisco Baricuatro, for the defense, was introduced merely to prove, on the part of the defense, that witness for the prosecution Eriberto Dacalos and another one, Lucrecio Samoro, upon leaving the pool house directed their steps towards the house of Lucrecio Samoro. Granting that this statement is correct, it does not necessarily mean the two continued running to the house of Lucrecio; it does not discount the possibility that

Eriberto, after running away in the direction of the house of Samoro, may have directed his steps towards the artesian well, as he testified, and as the artesian well was on the way to his house. The same witness was also presented to show the condition of the moon on that night, but his testimony is of no consequence because the weather observer in Cebu City was in better position to testify how high was the moon at 9 :00 o'clock in the evening of April 4, 1952. This is Manuel Bonjoc, who himself was introduced as witness for the defense.

Another witness for the defense is Marcelo Pacquiao. He declared that after the second shot in the evening he went to the house of Alfredo Paunil to ask for a cigarette and that he saw Alfredo then sleeping in the hall of the house. The purpose he had in going seems to be so insignificant and trivial to believe that it was sufficient cause for the supposed visit. He also declared that Santiago Emnace was not in the vicinity of the place of the shooting on April 4, 1952, because when Santiago Emnace was being investigated Emnace disclaimed any knowledge of the incident because he had gone to Bayran on the evening in question for the purpose of curing a boy, son of one Filomeno. We cannot give much credit to the testimony of this witness as the record discloses that as early as April 6, 1952, Emnace already executed this affidavit wherein he declared that he actually was at the scene of the shooting and had actually seen Alfredo Paunil and Ambrosio Paunil and had seen them also running to the house of Alfredo Paunil (Exhibit "1-K".) We also note that no other witness was introduced to corroborate this witness' statement that Emnace was in Bayran on the night in question. The best witness should have been the parents of the child who was treated by Emnace.

Both appellants submitted evidence that they were in their respective houses at the time of the shooting on the night in question. Each of the appellants' testimony to that effect is corroborated by his wife. Susana Sayson, wife of Ambrosio Paunil, declared that when she heard the second shot on April 4, she woke up her husband Ambrosio who was then sleeping; that at about 12:00 o'clock that evening, the Chief of Police went to their house and called Ambrosio for questioning. Elaborating on her husband's whereabouts, she declared that he arrived at 6:00 o'clock of that day and a little time thereafter had dinner, after which he went to sleep. In this testimony, she is corroborated by Asuncion Viray, who pretended to have been in the house of Ambrosio listening to the radio. She declared that after the second shot Ambrosio was awakened by his wife, and that Ambrosio peeped out thru the window, went to the balcony, and asked his neighbors what had happened. Another witness who sought to corroborate the supposed stay of Ambrosio at the time of the shooting is Concepcion Anxper, who supposedly was at the house of Ambrosio since 4:00 o'clock in the afternoon of that day. This woman testified that after Ambrosio had asked a neighbor whether there was shooting, Ambrosio went back to sleep and did not wake up until 12:00 o'clock when the police came.

Saturnina Alforque, wife of Alfredo Paunil, testified in the same manner for her husband, declaring that at the time the shots were heard Alfredo was in the house sleeping until Marcelo Pacquiao came asking for cigarettes. She also declared that Alfredo Paunil had gone to sleep early that evening because he had been playing-basketball in the afternoon. She further declared that Alfredo did not take supper that evening because when he arrived he had, stated that he had already taken in bread.

The court cannot give much weight to the testimonies of the accused themselves and to those of the witnesses introduced by them to support their alleged stay in their respective houses at the time of the shooting. The witnesses were either relatives' or friends. What appears to us rather strange is that the two accused should be doing practically the same thing, sleeping at a very early hour of the night. Their presence in their respective houses just after the shooting and the fact that they returned to bed after having learned of the shooting, instead of coming out to see what was the cause of the shooting, indicate or reveal a presence of a guilty mind. Had they been actually and really innocent they would not have been asleep at such an early hour as 9:00 o'clock, and as they were neighbors of consequence in the barrio, their conduct tends to create suspicion, because instead of

making inquiries in the surroundings of the place of the incident, to find out the cause thereof, they purposely stayed at home pretending to be asleep. In any case, we are satisfied that the evidence that the defense has submitted in support of the denial and the alibi is insufficient to overcome the overwhelming testimony of the witnesses for the State, to the effect that they were the only ones at the scene of the shooting at the time thereof.

For the foregoing considerations we find that the accused-appellants were the only persons present at the place where the shots that killed Daniel Dacalos were fired, at the time of the shooting and that as they were provided with a rifle using the same bullets as the slug that hit Dacalos, their guilt of the murder of acting mayor Daniel Dacalos must be deemed proved beyond reasonable doubt. The crime is qualified by alevosia. Nocturnity cannot be considered as an aggravating circumstance because it is included in the qualifying circumstance of alevosia. That both the accused are guilty is evident from the fact that they acted jointly at the time of the attack and must have been impelled by the same desire and intent to assassinate their victim and had conspired to do so. The Solicitor General agrees that no mitigating circumstance has been proved.

Wherefore, the sentence imposed upon the appellants by the trial court is hereby affirmed, with costs.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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