

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JULIO DIWA, ET AL., DEFENDANTS. JULIO DIWA, LEOPOLDO DIWA,
FRANCISCO DIWA, CATALINO PAMINTUAN, CORNELIO GARCIA,
ROBERT...**

G. R. No. L-2552. May 30, 1951

Ponente: REYES, J.

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REYES, J.:

In the afternoon of January 14, 1947, Marcelo Laquian was killed by the Huks in his farm in Dinalupihan, Bataan, allegedly at the instigation and with the connivance of his tenants. For this killing 23 persons were prosecuted for murder in the Court of First Instance of the province. Six of the accused were unknown or unidentified and were not apprehended. Of the remaining seventeen, one (Sergio Manuel) had eluded capture, another (Albino Sabino) died before trial, two (Gaudencio Nuqui and Leonardo Sanchez) were dropped from the case for insufficiency of evidence, and one (Victoriano Manacmul) was discharged so that he could be used as a State witness. Trial, therefore, was had only with respect to the rest, all of whom had pleaded not guilty. They were Julio Diwa, Francisco Diwa, Catalino Pamintuan, Cornelio Garcia, Roberto Santiago, Andres Pruna, Fernando Cruz, Venancio Batac, Deogracias Tala, and Teodoro Yumul.

After trial, Teodoro Yumul and Deogracias Tala were acquitted. But the nine others were found guilty of murder and sentenced as follows: Julio Diwa, Catalino Pamintuan, Fernando Cruz, Venancio Batac, and Leopoldo Diwa to life imprisonment, and Roberto Santiago, Cornelio Garcia, Francisco Diwa, and Andres Pruna to 10 years and 1 day of Prison mayor to 17 years, 4 months and 1 day of reclusion temporal, because of the presence of the mitigating circumstance of lack of instruction. In addition to imprisonment, all the nine were also sentenced jointly and severally to indemnify the heirs of the deceased in the sum of P2,000 and each to bear proportionate costs. They all appealed.

It is not disputed that appellants, with the exception of Venancio Batac, did not actually take part in the killing of Laquian. But they are being made to answer for the crime because of their alleged participation in the conspiracy to commit it. The trial court found that participation to be sufficiently established by the evidence of record, which may be summarized as follows:

The deceased Marcelo Laquian had his farm in General Luna Homesite, in the municipality of Dinalupihan, Province of Bataan. To cultivate this farm, he had his tenants, among them the appellants herein, and assisting him in the management of the whole farm was his overseer or encargado, the appellant Julio Diwa.

After the rice crop for the agricultural year 1946-1947 had been harvested, appellants and the other tenants of Laquian called on him at his house in the poblacion and requested permission to have his carabaos used for threshing the palay. Though owned by the landlord, the carabaos were being taken care of by the tenants. Fearful that the threshing might cause injury to the carabaos' feet and thereby render the animals unfit for work when the time came to prepare the land for the next crop, Laquian denied the tenants' request and suggested that the

threshing be done with horses. The tenants did not take kindly to this suggestion and went home in a huff. Reflecting the sentiment of all, one of them remarked that, happen what may, they would thresh their palay the way they wanted. From that day the relations between landlord and tenants became strained, and subsequent events only added fuel to the fire. First there was the dismissal of Julio Diwa as overseer and his replacement by Apolonio Dimacali. Not long thereafter, came the dismissal of Albino Sabino as tenant for threshing palay without the landlord's permission. Sabino was dismissed summarily in the presence of the other tenants, who had gone to see the landlord to reiterate their request for permission to use carabaos for threshing their palay. Incidentally, the tenants' request was also denied. The tenants became so disgusted that as soon as the landlord had left, one of them, Leopoldo Diwa, proposed to the others that the landlord be killed, and the proposal received the immediate indorsement of Fernando Cruz, Roberto Santiago, Catalino Pamintuan, Albino Sabino, Cornelio Garcia, Julio Diwa, Venancio Batac, Andres Pruna, Sergio Manuel, and Francisco Diwa. Loyal to his master, the overseer Dimacali lost no time in apprising him of this threat to his life, but the master did not seem to give it much importance.

In the days that followed, the appellants and the other tenants met daily, the meeting taking place sometimes in the house of Julio Diwa, sometimes in that of Venancio Batac, and at other times in the field near the stacks of palay. To those meetings the overseer Dimacali was invited, and learning that Dimacali had engaged one Macario Paguio to have his palay threshed by means of horses, the tenants warned Paguio that he would be doing so at his peril. Paguio took the hint and backed out from the agreement. The landlord, however was bent on the use of horses for threshing palay, and through one Maria De Balsic was able, despite appellants' threat, to employ that method in the threshing of the palay harvested by Deogracias Tala, E. de la Rosa, Juan Mendoza, and Leonardo Sanchez. This was the last straw. More determined now to do away with their landlord, the tenants, with that end in view, had one of them, Julio Diwa, contact the Huks that were then operating in the vicinity.

That was a few days before the murder. As a result, a conference was held in sitio Panga between the tenants and the Huks. At the start of the conference the chief of the Huk unit asked the tenants what their grievances were, whereupon Julio Diwa made a narration of their differences with their landlord relative to the threshing of the palay, while Andres Pruna took occasion to mention Julio Diwa's removal as overseer. Impressed that Laquian was not treating his tenants right, the chief asked what they wanted done. Julio Diwa replied that they wanted Laquian killed, and Albino Sabino added that he wanted the killing done at once. The chief then ordered that each and every one of the tenants there present be asked if he agreed to the proposition. All of them signified their assent, whereupon the chief introduced to them two of his men, Oliveros and Cavitefio, as the ones who would do the killing, and thereafter a plan was drawn as to how it was to be carried out.

In the morning of January 14, 1947, Laquian went to his farm and had his overseer round up all his tenants and all his carabaos in their custody. This done, Laquian told his tenants to deliver to him their palay in exchange for his carabaos. This gave rise to a heated exchange of words between Laquian and Catalino Pamintuan, and no agreement was reached. At noon time Laquian left to take his lunch, but told the tenants that he was coming back in the afternoon. Albino Sabino, one of the tenants, on his part, went to the Huk's camp to report what had happened, and came back accompanied by Oliveros and Cavitefio. These two were well armed.

Laquian returned to the farm after 4 o'clock that afternoon and immediately sent for Dimacali. While he and Dimacali were conversing, an unknown man, notable for his bulk, came and stopped under an acacia tree about 4 meters away from them. Shortly thereafter, just as Laquian had started for the threshing place, another man who had come from the house of Venancio Batac approached him and took hold of his right hand while the bulky man took hold of his left. The two then asked Laquian who he was and on being assured that he was Laquian himself they shot him three times, inflicting upon him three fatal wounds.

Seeing Laquian fall, Dimacali took refuge under the house of Deogracias Tala and thereafter reported the incident to Laquian's widow who, in turn, notified the police. Going to the scene of the crime together with the widow, Dimacali and others, the chief of police there found the cadaver of Laquian together with three empty shells which he delivered to the MPC.

According to the doctor who examined the cadaver of Laquian, the latter had sustained three fatal wounds, any one of which could have caused instant death. The doctor also found on the face of the deceased powder burns indicating that he was shot at close range.

Implicated in the murder of Laquian the appellants were ordered arrested upon information given by the overseer Dimacali, but were subsequently ordered released because the fiscal did not consider the overseer's statement sufficient to warrant prosecution. Some months thereafter, however, the appellants were arrested as suspects in connection with the murder of Macario Barin and Jose David and brought to San Fernando, Pampunga, for investigation by PC agents. The appellants denied participation in those other murders; but when it became known that they were tenants of Laquian the agent Ricafort shifted the investigation to the Laquian murder. In the investigation the appellants, except Leopoldo Diwa, admitted knowledge of the murder and subscribed statements to that effect. Brought to the farm of the deceased to have them reconstruct the crime, they reiterated what they had already confessed.

The above narration is borne out by the signed confessions of all the appellants except one (Leopoldo Diwa, who does not appear to have made one; since he was not among those brought to San Fernando in connection with the Barin and David murder) as well as by the testimony of several witnesses. And while the appellants claim that these confessions were prepared without their intervention and that they were made to sign them through force and violence, this claim is denied by the witnesses for the prosecution and is made improbable by the fact that each of the affiants in his confession tried to exculpate himself or minimize his own participation in the crime and tried to throw the whole blame upon the others, a thing which would not have been permitted if the confession had been put in their mouth by the investigating officer. Moreover, the confessions contained details which could hardly have been invented by the investigator,

But independently of the confessions, we have the testimony of Apolonio Dimacali, overseer of the deceased, concerning the appellants' grievances with the latter in connection with the threshing of their palay; the testimony of Benito Baluyot, vice-squadron commander of the Huks, concerning appellants' meeting with the dissidents and the agreement arrived at in that meeting; and the testimony of Victoriano Manacmul, the accused who was excluded from the complaint so that he could be a witness for the Government, who also testified regarding the tenants' meeting with the Huks, where it was decided to kill Laquian. We find nothing of weight in the objections raised by the defense against the testimony of these witnesses.

The defense complains that the preliminary investigation made in this case was not in accordance with law, because instead of confronting the appellants with the witnesses against them, the prosecution merely presented the alleged confessions of some of the appellants without adducing proof of the corpus delicti. But it does not appear that the defense made timely objection to this alleged irregularity, and the rule is that, where, as in this case, no such objection was raised at the opportune time but on the contrary the defense had announced itself ready for trial by actually asking for the early setting of the hearing, defects or irregularities in the conduct of the preliminary hearing are deemed waived. (22 C. J. S. 535.)

During the pendency of this case in this Court the defense has filed three motions for new trial based on alleged newly discovered evidence. The first motion is based on the affidavits of two Huk soldiers under the custody of the constabulary in Bataan to the effect that the Huks killed Laquian of their own accord without any suggestion

from anybody. But, as the Solicitor General observes, while the affiants tried to exculpate appellants, who are Huk sympathizers, they did not expose themselves to any danger of being contradicted by those to whom they attribute the killing of Laquian, who were beyond the reach of the law as fugitives from justice. The same may also be said of the affidavit supporting the second motion for new trial. This affidavit is madeo by one who alleges to have been captured by the Huks and made to accompany some Huk soldiers who were allegedly sent by their chief to ask rice from Laquian and returned empty-handed. Though two other affidavits of alleged Huks were later presented by way of corroboration, evidence of this kind is one that could be easily invented without danger of contradiction and is not free from suspicion. The third motion for new trial is based on affidavits of alleged Huks serving sentence in Muntinglupa to the effect that Laquian was killed because of his refusal to give rice to the dissidents and that appellants had nothing to do with the killing. These affidavits deserve no greater weight than those attached to the other motions. The evidence of record shows that Laquian was admittedly in the good graces of the Huks. He not only advised his tenants to join the PKM organization, but he even gave this organization his house in Culis and a typewriter. It is not likely, therefore, that he would have had trouble with the dissidents if appellants had not denounced him to them as a bad landlord and asked that he be put to death. In fine, the evidence offered in the motions for new trial is not such as would, if admitted, change the result of the case.

In our opinion the evidence adduced at the trial sufficiently supports appellants' conviction for the crime of murder, and there being no good reason to change the penalty imposed below, the judgment appealed from is hereby affirmed, with costs against the appellants.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor and Jugo, JJ., concur.

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