

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MARIANO DELIMIOS ALIAS BIGOTE, EUGENIA DELIMIOS AND
BERNARDO TARIMAN AHAS BENNY, DEFENDANTS AND
APPELLANTS.**

G.R. No. L-7839. May 29, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Mariano Delimios alias Bigote, Eugenia Delimios and Bernardo Tariman alias Benny were charged with the crime of robbery in band with homicide in an amended information filed in the Court of First Instance of Camarines Sur. Upon arraignment the three defendants entered a plea of not guilty. Florentino Dacuba, Armando Cadag, Jesus Bordejoes alias Jesse, Federico Babasa alias Decoy and Salvador Sulit, Jr., the co-defendants charged with the crime in the amended information, were still at large at the time of the filing thereof. On 25 March 1953, upon motion of the Provincial Fiscal the amended information was dismissed as to Florentino Dacuba, Armando Cadag and Salvador Sulit, Jr. After trial, on 27 July 1953 the Court rendered judgment finding the defendants guilty of the crime charged and sentencing each of them to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Cecilio Iriola in the sum of P6,000, to indemnify Lee Yat in the sum of P164, without subsidiary imprisonment in case of insolvency, and to pay the costs. The defendants appealed to this Court. On 10 November 1955 this Court dismissed the appeal interposed by Bernardo Tariman.

The evidence for the prosecution shows that at about 7:00 o'clock in the evening of 27 September 1950 Eugenia Delimios, Mariano Delimios and Bernardo Tariman, the first armed with a knife and the last two with bolos, entered the store of Lee Yat at barrio Hanauan, municipality of Ocampo, Camarines Sur and said: "Do not make noise, we are going to get what we want." Upon seeing Gaspar Peralta inside the store, Mariano pulled his right shoulder, hit him on the head with a "baji" (palma brava) held by his right hand and with the bolo in his left hand aimed to strike him, and asked him what he was doing there. Gaspar answered that he was buying something. Bernardo asked Mariano if Gaspar was their enemy. Gaspar answered he was not. Felix Brazal, who came to the place with Eugenia, Mariano and Bernardo, at a distance of about ten meters from the store, saw Bernardo about to strike Gaspar with his bolo and "palma brava" while Mariano was touching Gaspar's right shoulder with his bolo. Felix asked the two why they were doing that to Gaspar and told them not to do harm to him because he was a good man. He took aside Gaspar to the road and advised him to leave the place to avoid trouble and embarrassment. Gaspar went home. Bernardo struck with his bolo the box containing rice in the store. Then the three took from the stand ten packages of different brands valued at P40, two boxes of canned salmon and sardines valued at P38, two sacks of rice valued at P86 and Lee Yat's wrist watch valued at P40. Tito Crucillo who was at his store about 45 meters from that of Lee Yat heard the noise coming from Lee Yat's store, so he came out of his store and from a distance of about five meters from Lee Yat's saw what Eugenia, Mariano and Bernardo were doing inside Lee Yat's store. He immediately went to report the incident to Cecilio Iriola, the barrio lieutenant. Upon hearing the report of Tito, Cecilio took his gun and put on his badge and together with

Tito went to the place. Meanwhile at Lee Yat's store, Eugenia called for the truck parked a few meters away and with the aid of Mariano and Bernardo started loading the goods they took. Upon reaching the store of Juan Salve about 150 meters from Lee Yat's, Cecilio fired his gun and upon reaching Lee Yat's store he fired again and shouted, "I am the barrio lieutenant." Mariano and Bernardo laid flat on the ground face downward. When Cecilio reached the spot where the two laid, they rose and struck him with their bolos. Then Mariano ordered his companions to get on the truck and speed away. Cecilio called for help saying that he was struck by Mariano Delimios and Bernardo Tariman with their bolos. When Tito came to his aid he found him sitting in a reclining position supported by his two arms on the ground and his feet stretched forward. Asked who his assailants were he answered that they were Mariano Delimios and Bernardo Tariman. He brought Cecilio to the house of Mrs. Pelagia Bacay Moll, a nurse, where he expired. The next day, 28 September 1950, Dr. Servillano Olano, president of the 4th and 6th Sanitary Divisions, made an autopsy on the cadaver and reported on the external and internal examinations he made, as follows:

Wound No. 1— Left ear divided horizontally, a 5 cm. portion was left hanging, the inferior portion still attached to the main body of the ear.

Wound No. 2—A clean cut wound on the posterior side of left shoulder of about 6 by 4 cm. and one cm. deep. The head of the humerus was scrapped.

Wound No. 3—A clean cut wound on the center of the left deltoid muscle of about 3 by 1 cm. and one cm. deep.

Wound No. 4—A ;clean cut semi-circular extensive wound at the center of the left forearm of about 11 by 7 cm. in dimensions, reaching and scraping a portion of the ulnar bone. The soft tissues form a semi-circular flap which fall when one moves the arm.

Wound No. 5—A clean cut wound 10 by 5 cm. and one cm. deep at the left side of the body on the level of the 8th rib, exposing portions of the 7th, 8th, 9th and 10th ribs. This wound was found later to be non-perforating.

Wound No. 6—A similar wound as No. 5 but on the right side and fracturing the 8th rib about 2 cm. from its attachment in the spinal column. This wound was ground also to be nonperforating.

Wound No. 7—A clean cut wound 8 by 4 cm. and 2 cm. deep on the right hip region.

Wound No. 8—A clean cut circular wound of about 4 cm. in diameter and almost reaching the tibia, located about 8 cm. below the right knee.

Wound No. 9—A clean cut linear wound running medially downwards about 6 by 2 cm. about 12 cm. below right knee joint. The tibia was almost cut.

Wound No. 10—A clean cut linear wound running medially downwards about 7 by 3 cm. almost cutting the tibia, situated about 5 cm. below left knee.

Wound No. 11— A clean cut linear wound running medially downwards about 14 by 7 cm., cutting the tibia and fibulae and the anterior tibial artery, situated 2 cm. below wound No. 11. On section, the body was found to be Very pale and contains little adipose tissue. Lungs and heart normal. Stomach empty.

Wounds Nos. 5 and 6 were found to be non-perforating. No other peculiarities in the rest of the body having any direct relation with the occurrence of death were observed.

CONCLUSIONS

From the foregoing necropsy findings, it may be reasonably inferred:

1. That, in view of the blood lost as indicated, due to the numerous wounds and cutting of the anterior tibial

artery, Cecilio Iriola died from syncope secondary to profuse bleeding from said artery and numerous wounds found.

2. That, judging from the nature of the cadaveric changes, the period of time that had elapsed from the moment of death until the time of autopsy must be about 18 hours.

3. That Wound No. 11, because of its extent and depth, (cutting the anterior tibial artery) and location may be classified as very severe wound but not necessarily mortal.

4. That prompt medical attention of the deceased may have prolonged or even saved his life. (Exhibit A.)

The evidence for the defense shows that at about 3:30 o'clock in the afternoon of 27 September 1950 Eugenia Delimios, accompanied by her four year old child, went to barrio Hanauan, municipality of Ocampo, Camarines Sur, to make some purchases. At the store of Chua Luy, she bought on credit the following: 10 gantas of rice, 6 cans of salmon, 6 cans of sardines, 1 package of cigarettes (matamis), 5 Kilos of sugar and 1/4 kilo of garlic, which were packed in three bundles and brought by Chua Luy's helper outside the store beside the road. From there she went to a store run by a Filipino opposite Lee Yat's where while talking with the storekeeper, Cecilio Iriola appeared brandishing and swinging his bolo a little less than a yard long. When she was told that their stock of rice was for retail of a few gantas only, she left and proceeded to Lee Yat's store. She bought fish worth P1 from Valeriano Camilo and after receiving the fish and the change from the vendor, she went back to the Lee Yat's store. Cecilio Iriola, Gaspar Peralta and Tito Crucillo followed her. Eugenia talked with Lee Yat who quoted a sack of rice at P23 which quotation he later on reduced to P22.50 when she haggled with him. She bought 2 sacks of rice, 6 packages of cigarettes, 2 dozen cans of sardines, 2 dozen cans of salmon, for which she was charged P95.20. Lee Yat packed the goods she bought and brought out the two sacks of rice. At this juncture Cesar Era came in and asked her whether she already had received the compressor to which question she answered in the affirmative. Eugenia took out from her vanity case 4 P20 bills, 2 P5 bills and 1 P10 bill which she placed on the table to pay for the goods bought. As Lee Yat was handing to her the change of P4.80, Cecilio addressed Eugenia in Bicol, "Mrs. give the change to us." When she paid no attention to him, Cecilio asked her, "Where is the change I was asking from you?" In answer, she rebuked him for begging despite his strong physique, which remark angered Cecilio. Eugenia stopped an ALATCO bus passing by and the conductor named Anayan and the driver named Exequiel Patriarca alighted to load Eugenia's packages. As the two, with the aid of Cesar Era, started to load them, Cecilio stopped them, threatening to do harm to them if they should disobey him. The three desisted. When Eugenia picked up the bundle of canned goods, Cecilio Iriola snatched it away from her. Eugenia dropped the bundle scattering the canned goods on the ground Cecilio took the fish wrapped in a piece of paper which Eugenia bought, while Tito and Gaspar picked up the bundles containing the rest of the goods she purchased and deposited them inside the store of Lee Yat, with instruction not to give them to anybody. The bus driver drove on leaving Eugenia behind. . At about 5:30 o'clock in the afternoon, a bus of the BITRANCO passed by and Eugenia boarded it to go home to Higfiaroy. On her way she met a truck on which her husband was riding. He had left Higfiaroy to go to Hanauan to meet her upon receipt of the information about the incident from Exequiel Patriarca. She signalled the truck to stop, transferred to it to join her husband, and returned to Hanauan. On their way, they stopped at the store of Dominador Nunez at barrio Osini at the instance of Felix Brazal who made some purchases there. Resuming, they reached Hanauan at about 6:30 o'clock in the evening where Eugenia and her husband Mariano alighted in front of Lee Yat's store, There she pointed to him the bundles belonging to her which she failed to bring home. She told Lee Yat that she would get them already. Lee Yat at first refused to allow her to get them, saying that they were deposited in his store by Cecilio Iriola. Mariano protested to Lee Yat and asked him why he would not allow his wife who purchased them from him to get what she owned. Lee Yat finally yielded. Mariano carried the sacks of rice and the bundles of goods bought by his wife to the truck while his laborers Felix Brazal, Federico Babasa, Jesus Bordejos and Armando Cadag stayed on top of the truck and

helped him get the sacks of rice and bundles of goods as he raised them up. When Mariano was raising up the first sack of rice, a shot was fired, followed by another, coming from the direction of Naga City. Eugenia saw Cecilio approaching the truck armed with a gun and a bolo. When Mariano was loading the last sack of rice Cecilio shouted at him, "Why did you get that?" and struck her husband with a bolo on the right leg. Mariano turned around to the right and fell. As he was about to fall Cecilio dealt him another blow. Upon seeing that Mariano was being attacked, his men aboard the truck jumped to the ground. Cecilio chased Felix Brazal. At that moment Bernardo intercepted Cecilio and grappled with him. Cecilio tried to strike Bernardo but the latter was able to parry his blow and wrest his bolo from him. Cecilio ran away and Bernardo picked up Mariano whom he carried to the truck. They brought him to Tigaon and later to Goa where he was treated by a physician. He was subsequently transferred to the provincial hospital at Naga City where he was medically examined. Dr. Diosdado P. Lahum, senior resident physician, issued the following certificate:

April 16, 1951

TO WHOM IT MAY CONCERN:

This is to certify that Mariano de Limios, 40 years old, male, married, and a resident of Tinambac, Camarines Sur, was physically examined in this hospital on Sept. 28, 1950, at 11:30 A.M.

1. Wound, incised, 3 inches long, sutured, scalp, left temporal region.
2. Wound, incised, 3 inches long, sutured, hand, right, dorsal aspect.
3. Wound, incised, 4 inches long, sutured, directed transversely, right leg, lower 3rd.

The right leg was fluoroscoped on August 29, 1950. The following finding was noted:

1. Complete oblique fracture of lower 3rd fibula, right.

The patient was confined in this hospital from September 28, 1950, and was discharged from the hospital with slight dermal wound. Plaster cast was applied over the right leg on October 29, 1950, and was removed on January 3, 1951. The patient was then able to walk over the removal although with slight difficulty. (Exhibit 4-Delimios.)

A careful review of the evidence leads us to give more credence to the evidence for the defense. It is hard to believe that the three defendants would commit robbery in the center of the barrio. where there are several stores. The prosecution attempted to show that at 7:00 o'clock in the evening of 27 September 1950, the three defendants, together with Jesus Bordejos alias Jesse and Federico Babasa alias Decoy, who are still at large, went to the barrio of Hanauan to commit the robbery charged in the amended information. On the other hand, the evidence for the defense shows that at 3:30 o'clock in the afternoon of that day, the appellant Eugenia Delimios, accompanied by her four year old child, went to the barrio to make some purchases, but was prevented by Cecilio Iriola from taking home what she had purchased, because he was angered by the refusal of Eugenia Delimios to give him the change of F4.80 that Lee Yat handed to her after paying for her purchases in his store. According to Felix Brazal, upon whom the trial court placed much reliance, at 5:00 o'clock in the afternoon of that day, after his work in Hignaroy was over,, he asked Mariano Delimios for rice but the latter told him to go to Hanauan where his wife was. This part of the testimony of Felix Brazal corroborates the evidence for the defense that before the incident which resulted in the death of Cecilio Iriola, Eugenia Delimios went to barrio Hanauan to make some purchases. Felix Brazal further testified that he asked for rice from Mariano Delimios because he was not given his pay for the work he had done in the construction of the bridge in Hignaroy. So at 6:00 o'clock in the evening, he boarded the truck used by Mariano Delimios and went with him to Hanauan. This testimony again tallies with the evidence for the defense that after learning from Exequiel Patriarca the incident that took place between his wife and

Cecilio Iriola, Mariano went to Hanauan in his truck and on the way he met his wife who transferred to his truck and returned to Hanauan. The trial court gave credence to the testimony of Felix Brazal because he was a laborer of Mariano Delimios in the construction of the bridge in Higñaroy and that notwithstanding the fact that he was under his employ, he testified against Mariano Delimios and his wife. However, the fact that he had a grudge against the Delimioses because according to him he was not paid his wages as laborer and failed to get the rice which he needed for him and his family was overlooked by the trial court.

Another witness whose testimony was relied upon by the trial court is Lee Yat. However, the latter withheld from the Court certain facts such as the incident that took place between Gaspar Peralta and the two male defendants inside his store before the alleged robbery was committed, he having testified that Gaspar was inside the store when the alleged robbers arrived. On cross-examination, he testified that he did not hear any noise outside his store after the alleged robbers had left and after closing his store. It is hard to believe that he did not hear the shooting and the shouts of Cecilio Iriola for help when he was wounded. It is also hard to believe that his wife who was in his store when the robbers arrived was able to leave the store to go to a nearby restaurant and come back later after the store was closed, because the alleged robbers who were armed, according to the evidence for the prosecution, would not have allowed her to leave the store to enable her to call the police for help.

The testimony of Tito Crucillo loses its reliability in view of the fact that he was with Cecilio Iriola in the store of Lee Yat extorting money from the appellant Eugenia Delimios.

If the evidence for the prosecution is to be believed in its entirety, the wounds inflicted upon Mariano Delimios would have no explanation because, according to that evidence, Cecilio Iriola did not strike or hit Mariano Delimios with his bolo. On the other hand, the evidence for the defense shows that when the last sack of rice was being raised by Mariano Delimios to be placed on board the truck, Cecilio Iriola attacked Mariano Delimios with his bolo and hit the latter on the lower part of the right leg above the heel. Commenting on this testimony of Mariano Delimios, the trial court stated that if it is true that Cecilio Iriola struck with his & bolo Mariano Delimios, both standing, he would not have hit him on the right leg, lower 3rd, and for that reason his testimony was not given credence. But the trial court overlooked the fact that the day following the incident Mariano Delimios was examined by Dr. Diosdado P. Lahum and in addition to the wound on the right leg, 3rd, he was wounded on the scalp, left temporal region, and hand, right" dorsal aspect.

The defendant spouses were engaged in the construction work with a fair income. This fact, taken together with the other circumstances of the case, engenders and creates a serious and reasonable doubt that they would go to the extent of robbing a Chinese vendor of two sacks of rice, ten packages of cigarettes, two boxes of canned salmon and sardines and a watch, all valued at P154. What really happened, as may be gleaned from the evidence presented by the prosecution and the defense, was that when Eugenia was prevented by the deceased and his companions from bringing with her the goods she had purchased, which were deposited by them in the store of Lee Yat, she returned to Hignaroy. On the way she met her husband who was on his way to aid her after Exequiel Patriarca had informed him of what happened to her and upon reaching Lee Yat's store at Hanauan got what rightfully belonged to her. Upon being informed that she was back with her husband to get them, Cecilio Iriola hurried to the store and as he approached the place fired his gun twice, perhaps to scare them away and to prevent them from getting the goods which he had left and deposited in the store of Lee Yat. The prosecution attempted to establish that Mariano Delimios and Bernardo Tariman struck Cecilio Iriola with their bolos. On the other hand, the evidence for the defense shows that Mariano Delimios did not strike Cecilio Iriola, because after the latter struck Mariano Delimios on the right leg, the latter turned around to the right and fell. The wounds inflicted upon Cecilio Iriola were caused not by Mariano Delimios but by his companions who jumped from the truck probably to stop the fight, most likely by Bernardo Tariman who grappled with the deceased Cecilio Iriola.

Upon the whole evidence we cannot conclude and find the appellants guilty beyond reasonable doubt of the crime charged in the amended information, and for that reason we reverse the judgment appealed from and acquit the appellants Mariano Delimios and Eugenia Delimios, with the proportionate costs de oficio.

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

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