

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN LAGANZON, SEBASTIAN LAGANZON AND ALEX CHALLOY, DEFENDANTS-APPELLANTS.

G.R. No. L-47118. May 21, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Juan Laganzon, Alex Challoy and Sebastian Laganzon were charged with murder in Criminal Case No. 7653 in the then Court of First Instance of Camarines Sur, thus:

"That on or about the 31st day of January, 1962, in the Municipality of Bato, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with pieces of wood and bamboo, conspiring and confederating together and mutually helping one another, with intent to kill and with evident premeditation and taking advantage of the nighttime and superior strength to better accomplish their purpose, did then and there willfully, unlaw-fully and feloniously attack, assault and strike with the said weapons one Francisco Pega, thereby inflicting upon him fatal wounds which directly caused his instantaneous death" (p. 4, rec.).

All the accused pleaded not guilty.

After trial, in a decision promulgated on February 26, 1974, the lower court found the accused Alex Challoy, Sebastian Laganzon and Juan Laganzon guilty beyond reasonable doubt of the crime of murder qualified by abuse of superior strength and sentenced "each to suffer the penalty of from seventeen (17) years, four (4) months and one (1) day, as minimum, to twenty (20) years, as maximum of reclusion temporal, and to indemnify the heirs of the late Francisco Pega, the sum of P15,000.00 Philippine Currency, to be paid solidarity by the accused, plus the costs" (p. 9, rec.).

On appeal to the then Court of Appeals (now Intermediate Appellate Court under BP 129), the decision was affirmed on September 1, 1977 as follows:

"The evidence for the prosecution, considered in the light of surrounding circumstances, point conclusively to the guilt of the appellants of the crime of murder with grave abuse of superior strength as a qualifying circumstance. The number of aggressors here point to the attending circumstance of superior force, not treachery (U.S. vs. Banagala, 24 Phil. 69). The penalty for murder as defined and punished in Article 248 of the Revised Penal Code is reclusion temporal maximum to death. In the absence of mitigating or aggravating circumstances, the proper penalty should be reclusion perpetua.

"PREMISES CONSIDERED, considering that the penalty of reclusion perpetua should be imposed, We hereby certify this case to the Supreme Court for final determination, pursuant to paragraph 2, Section 12, Rule 124 of the New Rules of Court" (pp. 74-75, rec.).

Considering the penalty imposed upon accused Juan Laganzon, Alex Challoy and Sebastian Laganzon, the case against them is now before Us for final determination, pursuant to paragraph 2, Section 12, Rule 124 of the New

Rules of Court which states that:

"Whenever in any criminal case submitted to a division the said division should be of the opinion that the penalty of death or life imprisonment should be imposed, the said court shall refrain from entering judgment thereon and shall forthwith certify the case to the Supreme Court for final determination, as if the case had been brought before it on appeal" (Rule 124, Sec. 12, par. 2, Rules of Court).

The facts according to the prosecution are as follows:

Irenea Elpides declared that in the afternoon of January 31, 1962 at about 5:30 o'clock, Francisco Pega arrived at the store owned by her located in barrio Sta. Cruz, Bato, Camarines Sur. Upon arrival thereat, Pega bought one (1) bottle of Pepsi-Cola. Moments later, Juan Laganzon, Nicasio Almasgo, Cornelio Timbang and Gabriel Gonzales also arrived. As it was already getting dark, Braga lighted the petromax lamp (T.S.N., Aug. 31, 1964, pp. 30-34).

In the meantime, Irenea went inside their kitchen. Once inside the kitchen, Irenea heard a thud from the place where the group was drinking. When she looked, she saw Francisco Pega hanging from the bench where he was seated while his feet were perched on the bench. Pega stood up meekly and immediately Sebastian Laganzon approached him and asked why he, Pega, fell down, to which Pega replied that Juan Laganzon, brother of Sebastian Laganzon, hit him on the nose. Forthwith, Sebastian Laganzon escorted Pega to the house of Escolastico Solares while Almasgo, Timbang and Gonzales went home. Only Alex Challoy stayed in the Braga store for a while as he proceeded later to the PNR station which was about 200 meters from their house (pp. 36-42, t.s.n., Aug 31, 1964).

Irenea also declared that at about 7:20 o'clock of the evening of January 31, 1962, she saw Sebastian Laganzon and Francisco Pega passed by her store presumably on their way to the railroad station (t.s.n., Aug. 31, 1964, p. 43).

After the Manila-bound train had left, she and her husband learned from one of their customers that Francisco Pega was ran over by the train (pp. 44-45, t.s.n., Aug. 31, 1964). Sotero Braga, Irenea's husband, substantially corroborated his wife's testimony (t.s.n., June 22 & Aug. 31, 1964).

Vitaliana Orasa, a 37 year-old fisherman, declared that in the evening of January 31, 1962, at about 7:30 o'clock he was walking on the road on his way home from the market when he saw Francisco Pega being beaten by Sebastian Laganzon, Juan Laganzon, and Alex Challoy beside the railway near the house of Tanay (t.s.n., Jan. 5, 1965, pp. 3-4). He was only 10 meters from where the three accused beat Pega and was therefore in a vantage position to witness the incident; that is, he saw the accused alternately beat Pega with blows to the head with pieces of iron and bamboo until the latter fell down to the ground (t.s.n., Jan. 5, 1965, pp. 5-6). Afterward, the accused left. Juan Laganzon proceeded to the direction of Iraya, while Sebastian Laganzon and Alex Challoy went towards the PNR station (t.s.n., Jan. 5, 1965, pp. 5-6).

Orasa testified further that after the accused had left the scene of the crime, he likewise proceeded home to take his supper. It took him only two minutes to eat his supper and not long after, he went to the PNR station in time for the arrival of the Manila-bound train in which he did work as a baggage boy. He arrived at the railroad station ten minutes before 8:00 o'clock in the evening, and found out that the Manila-bound train had already arrived (t.s.n., Jan. 5, 1965, pp. 23-25).

Not long after, he was asked by a passenger to carry his baggage consisting of several bundles and obligingly he took the task of carrying said baggages to the fifth coach of the train. After performing his job, he immediately went down from the train for the purpose of moving his bowel. He defecated beside the fence of Solares. While he was moving his bowels, he saw Juan Laganzon and Sebastian Laganzon carrying the body of Francisco Pega to

the railroad track between the second and last coach (t.s.n., Jan. 5, 1965, pp. 24-26). Immediately after Pega's body was placed across the railroad track, Sebastian Laganzon went inside the railroad station while Juan Laganzon went to the direction of his house. Orasa declared that when Pega was brought under the train he was already dead. After the Manila-bound train had left, somebody shouted: "Someone was ran over by it." (t.s.n., Jan. 5, 1965, pp. 9-10).

"Sonia Mota was presented who testified under oath that she was 13 years old, single, and resident of Divina Pastora, Bato, Camarines Sur. That on the evening of January 31, 1962, her father sent her an errand for the purpose of buying cigarettes at the store of Trinidad Estoque at about 7:00 o'clock; that in going to the said store from their house, one had to pass the railroad track and upon reaching in front of the railroad station, one had to cross the railroad track and pass towards the side of the national highway. After buying the cigarettes and while walking along the national highway, she saw three persons under a big acacia tree beating another person at a distance of 12 meters from her, more or less; that she was not able to recognize the fourth person as they were under the acacia tree and getting scared she ran home (p. 6, CFI decision; p. 9, rec.).

On February 1, 1962, an autopsy of the body of Francisco Pega was conducted by Dr. Theo Jayme Santy, medico-legal officer of the NBI, in the municipal hall of Bato, Camarines Sur. The findings are as follows:

"EXTERNAL FINDINGS:

"1. Clean cut lacerated wound, 3 inch. circular arch, involving the whole substance of the scalp incl. the superficial surface of the skull, producing fracture depression, 2 inches in length along the line of the wound at the occipital region to left on the median line at the level of the super-Nuchal line;

"2. Clean cut lacerated wound forehead, 1 1/2 in hairline, cutting the whole thickness of the scalp including the bone, frontal;

"3. Multiple lacerated wounds, ragged with abrasions on the malar and periorbital area of the left side;

"4. Lacerated wound 1 in. hairline, forehead, right side;

"5. Multiple abrasions, malar right side, and lateral side eyes;

"6. Multiple abrasions, upper lip, with ecchymosis;

"7. Multiple abrasions, upper extremities (hands, forearms and arms);

"8. Amputating wound, upper third of thigh, left;

"9. Ragged lacerated wound, undersurface big toe, left;

"10. Amputating wound, distal third of left, incl. fibula and tibia, right; and

"11. Multiple abrasions chest at the level of the 3rd rib, anterior clavicular line, left side.

"INTERNAL FINDINGS:

"1. Fracture of the occipital bone left side;

"2. Fracture of the 2nd, 3rd, 4th and 5th ribs left side; and

"3. Hemorrhage of the brain (Petechial) scanty.

"CAUSE OF DEATH: SHOCK, ACUTE HEMORRHAGE" (pp. 59-60, rec.).

The accused appellants interposed the defense of denial and alibi.

Juan Laganzon testified that he joined the drinking spree held at the store of Sotero Braga on the night of January 31, 1962. He told the court that he never had any quarrel with the deceased during the drinking session. His wife arrived a little later and they went home together where he spent the rest of the night (t.s.n., Nov. 12, 1973, pp. 57-63, 74-76).

Sebastian Laganzon testified that he was never at the store of Sotero Braga that night nor did he join the drinking spree. He told the court that he was an employee of the Philippine National Railways and his tour of duty was from 4:00 to 9:00 o'clock in the morning and then from 3:00 to 9:00 o'clock in the evening. He was at his office when he heard that somebody was ran over by the train. The person ran over by the train turned out to be Francisco Pega (t.s.n., April 4, 1970, pp. 46-65).

Alex Challoy testified that he came to know the deceased on the night of January 31, 1962 at the store of Sotero Braga. He contended that Sebastian Laganzon was his companion and they joined the drinking spree held in the store. He further testified that Juan Laganzon boxed Francisco Pega and that after the incident, Sebastian Laganzon and Francisco left the group. He himself left later with a baggage boy named Bonifacio Pureza and went to the PNR station to load his cargo. After the loading was done, he left on the train that night (pp. 6-10, Brief for Alexander Challoy; p. 38, rec.).

The trial court, in finding the accused guilty beyond reasonable doubt of the crime charged, relied heavily on the testimony of the eyewitness, Orasa. Moreover, the lower court conducted an ocular inspection to insure a thorough understanding of the facts testified to in court. The then Court of Appeals agreed with the findings of fact made by the trial court.

Presented before Us are the allegations of accused Sebastian Laganzon and Juan Laganzon that the trial court erred: 1) in giving credence to the testimony of Vitaliano Orasa, the supposed eyewitness to the incident; and 2) in considering the information the lower court obtained during the private talks at the ocular inspection (Brief for Sebastian and Juan Laganzon; p. 34, rec.).

On the other hand, Alex Challoy assigned the following errors:

- "1. That the trial court erred in holding that the late Francisco Pega was a victim of foul play;
- "2. That assuming *arguendo* that the said Francisco Pega was indeed the victim of foul play, the trial court erred in holding that the accused-appellant Alex Challoy was among his assailants;
- "3. That the trial court erred in disregarding totally and absolutely the testimony of accused-appellant Alex Challoy and his sole witness, Tomas Talisay;
- "4. That the trial court erred in giving credibility and evidentiary weight to the testimony of prosecution witness, Vitaliano Orasa, notwithstanding the irreconcilable conflicts in the material points in the said testimony as well as the improbable and ridiculous facts testified to;
- "5. That assuming *arguendo* that the accused-appellant is indeed guilty as held by the trial court, the trial court erred in imposing the corresponding penalty in its maximum period;
- "6. That assuming *arguendo* that the late Francisco Pega was indeed the victim of foul play, the crime committed by his assailant was homicide and not murder as held by the trial court; and
- "7. That assuming *arguendo* that the late Francisco Pega was indeed assaulted and that further assuming *arguendo* that the assailants are the three (3) accused, the trial court erred that accused-appellant Alexander Challoy has committed the same kind of crime as the other two (2) accused, Juan Laganzon and Sebastian Laganzon, considering that there is no evidence proving conspiracy and that it is not shown that it was the said accused who inflicted the fatal injury" (pp. 1-3, brief for appellant Alexander Challoy; p. 38, rec.).

WE find the appeal devoid of merit.

In finding the appellants Juan Laganzon, Sebastian Laganzon and Alex Challoy guilty with the crime of MURDER qualified by abuse of superior strength, emphasis was placed on the testimony of the eyewitness, Vitaliano Orasa.

What is the testimony of Orasa? The following is relevant:

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"Fiscal Nepomuceno:

"Q - In what particular place were you in that evening of Jan-uary 31, 1962?

"Orasa - I was beside the road.

"Q - At what time was that in the night when you were beside the road?

"A - About 7:30 in the evening.

"Q - Why were you there beside the road at that time?

"A - Because I just came from the market.

"Q - And what were you doing there at that time?

"A - I was on my way home.

"Q - Then at that time when you were on your way home, do you remember if you have witnessed any unusual event on that evening?

"A - I saw that late Isko was being beaten.

"Q - Will you state the full name of that Isko who was being beaten according to you?

"A - Francisco Pega.

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"Q - How do you know that it was Francisco Pega who was being beaten?

"A - Because I saw.

"Q - By whom was Francisco Pega being beaten?

"A - First Juan.

"Q - Will you indicate to the court who is that Juan whom you saw beating Francisco Pega?

"INTERPRETER -

Witness indicating Juan Laganzon.

"Q - With what did Juan Laganzon beat Francisco Pega?

"A - A piece of iron.

"Q - After Francisco Pega was beaten by Juan Laganzon, what happened next?

"A - Then Sebastian Laganzon struck the head of Francisco Pega.

"Q - Will you indicate to the Honor-able Court that Sebastian Lagan-zon who struck Francisco Pega?

"A - This one (witness indicating the accused).

"Q - With what did Sebastian Laganzon strike the head of Francisco Pega?

"A - Piece of bamboo.

"Q - And what happened next after Sebastian Laganzon struck the head of Francisco Pega with a piece of bamboo?

"A - Then came next, Challoy struck also Francisco Pega with a split bamboo.

"Q - Indicate to the Honorable Court this Alex Challoy if he is here now.

"A - There.

(Witness indicating the accused Alex Challoy).

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"Q - When beating was taking place, how far were you from them?

"A - 10 meters more or less.

"Q - And how were you able to recog-nize Juan Laganzon, Sebastian Laganzon and Alex Challoy at the time they were beating Francisco Pega?

"A - The night was bright" (t.s.n., January 5, 1965, pp. 3-6).

Prosecution witness Orasa testified clearly and positively on the criminal overt acts of the appel-lants. While there might be some inconsistencies in his testimony, the same involved minor and inconsequential details. WE agree with the Solicitor General that Vitaliano Orasa; who never went to school, was in all likelihood testifying in court for the first time. He took the witness stand almost three (3) years after the occurrence of the incident and in all probability, he must have forgotten some details as to how the crime was committed by the appellants. It is a truism that the most candid witness oftentimes commit mistakes and incur inconsistencies on his declarations, but such honest lapses do not necessarily impair his intrinsic credibility. Moreover, well-settled is the rule that inconsistencies and contradictions incurred by an illiterate witness in the course of a lengthy examina-tion will not affect the credibility of his testimony (People vs. Provo, L-28347, 37 SCRA 19 [Jan. 20, 1971]). The contradictions in the declarations of a witness when trivial, cannot be ascribed to an insidious attempt to distort the truth. Far from being evidence of falsehood, they could justifiably be regarded as a demonstration of a good faith and a confirmation of the fact that the wit-ness was not a rehearsed witness (People vs. Alcantara, L-26967, 33 SCRA 812 [June 20, 1970]).

The primordial consideration is that a witness must have no motive to implicate an accused to the commission of a serious crime. The records show that Orasa had no such motive. If he did testify for the prosecution, it was all due to his desire to tell the truth. As held in People vs. Borbono (76 Phil. 702), "the absence of evidence as to an improper motive actuating the principal witness for the prosecution strongly tends to sustain the conclusion that no such improper motive existed and that his testimony is worthy of full faith and credit."

Against the case presented by the People, the defense of alibi was set up by the accused.

The evidence of record demonstrate that the alibi of the three accused cannot be given any weight. WE quote with approval the findings of the trial court which show clearly the material inconsistencies of the defense witnesses:

"The corroborating witness for accused Alex Challoy, Tomas Talisay, contradicted the testimony of the accused Alex Challoy in that there were only two (2) baggage boys who helped him with his two (2) cartons and three (3) small sacks. While Challoy said, he had the other seven (7) sacks of dried fish taken to the station at 6:00 P.M., and accused Challoy did not mention the other baggage boys except Bonifacio Pureza in direct testimony but merely said, and another one; that Pureza was with him until the train came and until the same left. In fact, he did not identify Tomas Talisay.

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"One patent and material in-consistency is the fact that the accused, Alex Challoy, was with him (Talisay) at the station January 31, 1962, from 7:45 to 8:20 o'clock that evening for the strong reason that the accused Alex Challoy testified that at about 7:00 P.M. of January 31, 1962, he was introduced to the late Francisco Pega at the store of Mr. and Mrs. Sotero Braga located at the barrio of Sta. Cruz, Bato, Camarines Sur, and drank wine with Francisco Pega, Juan Laganzon, Sebastian Laganzon, Cornelio Timbang, Nicasio Almasgo, and Gabriel Gonzales. He left the store after the incident between Juan Laganzon and the late Francisco Pega with Bonifacio Pureza to the PNR Station at 8:20 o'clock that same evening of January 31, 1962. In fact, Mr. and Mrs. Sotero Braga positively stated that Alex Challoy and Sebastian Laganzon came together before 6:10 P.M. that same evening at their store. Moreover, the whole record of this case, there is no showing that the train was delayed at the station of Bato up to 8:20 P.M. of January 31, 1962. On the basis of the testimonies of Tomas Talisay and the accused Alex Challoy, the Court is not convinced that the accused Challoy took the Bicol Express that evening of January 31, 1962.

"On his side, accused Sebastian Laganzon alleged that on January 31, 1962, he was a regular employee of the PNR Station of Bato, Camarines Sur as station helper x x.

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"On January 31, 1962, the train that was expected to arrive was the Bicol Express and scheduled to come at 8:04 P.M.. On this date, January 31, 1962 he (Sebastian Laganzon) went to the PNR Station at 3:20 P.M. to take charge of the freight cargoes. He denied that at about 6:20 o'clock P.M., he was with Alex Challoy at the store of Sotero Braga where they drank wine. xx x

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"How could the accused Sebastian Laganzon be in his office at 6:00 P.M. of January 31, 1962, when at about 6:10 P.M., he and Challoy joined the drink-ing spree at the store of Mr. and Mrs. Sotero Braga? This fact was not only testified to by the owners of the store but by the accused, Alex Challoy, no less,

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"The testimony of Juan Laganzon that Alex Challoy and his brother, Sebastian Laganzon, were not at the store of Sotero Braga drinking wine with Cornelio Timbang, Nicasio Almasgo, Gabriel Gonzales and Francisco Pega between 6:10 P.M. to 7:20 o'clock P.M. of January 31, 1962, was a deliberate lie for the indisputable fact that not only Sotero Braga and his wife testified positively that Alex Challoy and Sebastian Laganzon were at their store on this precise time but no less than the accused Alex Challoy said otherwise. The allegation of the accused, Juan Laganzon that the reason why he did not return to the PNR Station after he was fetched by his wife from the drinking spree at the store of Sotero Braga was the fact that he had no chickens that afternoon of January 31, 1962. This point of fact is --- likewise -- a pathological lie because Demetrio Magalona sold to him ten (10) chickens at the parada which is 1/2 kilometer away from the PNR Station. For the ten (10) chickens, Magalona categorically testified, Juan Laganzon paid him P20.00 at P2.00 each" (pp. 27-33,

decision of CFI; p. 9, rec.).

It is a fundamental rule that findings of the trial court relative to the credibility of the testimony of the witnesses, as well as the witnesses themselves, are entitled to high respect, and therefore, generally sustained by the appellate court. The only exception arise when it could be shown that the trial judge has overlooked or misinterpreted any fact or circumstance or weight and value as to impeach his findings or call for a different finding (People vs. Surban, 123 SCRA 232-233; People vs. Balmaceda, 87 SCRA 94; People vs. Cunanan, 75 SCRA 15; People vs. Ancheta, 60 SCRA 333; People vs. Geronimo, 53 SCRA 246; People vs. Abboc, 53 SCRA 54; People vs. Espejo, 36 SCRA 400). Such findings of facts by the lower court should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine the real evidence (People vs. Amoncio, L-49069, 122 SCRA 687 [June 22, 1983]; People vs. Barros, L-34250, 122 SCRA 34-35 [May 3, 1983]; People vs. Chavez, L-55830, 121 SCRA 806 [April 28, 1983]; People vs. Santos, 94 SCRA 277; People vs. Balili, 92 SCRA 552; People vs. Macaraeg, 53 SCRA 285; People vs. Catalino, 22 SCRA 1091). The matter of assigning value to declarations at the witness stand is best and most competently performed by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the defendant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false (People vs. Bermudez, 57 SCRA 629). WE find no reason to depart from the above rulings as the trial judge took pains to separate the relevant testimonies from the irrelevant.

WE have repeatedly held that alibi is unavailing once the accused is positively identified by one without motive to charge falsely said accused especially with a grave offense that could bring the death sentence to the culprit (People vs. Remollo, L-31330, 123 SCRA 210 [June 29, 1983]; People vs. Dimatulac, L-35099, 122 SCRA 47 [May 3, 1983]; People vs. Gamayon, L-25486, 121 SCRA 643 [April 28, 1983]; People vs. Moreno, 85 SCRA 649; People vs. Jamero, 75 SCRA 131; People vs. Esmael, 37 SCRA 601; People vs. Mabaga, 28 SCRA 780; People vs. Reyes, et al., 17 SCRA 309; People vs. Dasig, 93 Phil. 618; People vs. Pili, 51 Phil. 965). Alibi is taken with caution because it is easy to concoct and fabricate. In the instant case, riot only were the accused identified by the prosecution witness, their defense of Alibi yielded material inconsistencies as well.

The trial court even went to the extent of going to the place of the incident, particularly where the People's principal witness Vitaliano Orasa defecated and from which place he saw herein appellants maul and beat up Francisco Pega. WE find nothing irregular with the procedure adopted by the trial Judge. When the prosecution presented its evidence, the trial court was presided by Judge Perfecto Palacio, but when the defense presented its evidence, the court was already presided by Judge Delfin Vir. Sunga because the former Judge had retired. An ocular inspection was conducted by Judge Sunga on February 8, 1974. If at all, the trial Judge should be commended. The said ocular inspection removed whatever doubts the trial court had. WE add to this the fact that the observations of the counsels for the defense were included in the report made by the court (pp. 924-927, Crim. Case No. 7653 rec.).

On the question as to whether Francisco Pega died as a result of the beatings made by the accused or because he was ran over by the PNR train, Vitaliano Orasa testified that Francisco Pega was already dead when the latter was carried by the Laganzon brothers to the railroad tracks. The following testimony of Orasa to that effect is relevant:

"FISCAL NEPOMUCENO:

Do you know what was the condition of Francisco Pega when he was brought by Sebastian Laganzon and Juan Laganzon to the railroad track?

"A - The two of them carried Francisco Pega, one holding the head and the other the feet.

"Q - How did they place the body on the railroad track, parallel to the railroad track or what?

"A - Across the railroad track.

"Q - What I want to know what was the condition of Francisco Pega when he was placed on the rail-road track, was he alive or was he dead already at that time?

"A - He was dead already.

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"Q - How do you know that Francisco Pega was already dead at that time when his body was being placed across the rail?

"A - Because they were carrying him.

"Q - When Francisco Pega was being carried by Juan Laganzon and Sebastian Laganzon, do you know if Francisco Pega was moving or not?

"A - Not moving.

"Q - At the time they laid his body across the rail, was his body moving?

"A - Not moving.

xx xx xx

"Q - When they left the body of Francisco Pega across the rail, did Francisco Pega move after his body was left across the rail?

"A - No sir" (t.s.n., Jan. 5, 1965, pp. 10-11.

Further, Dr. Theo J. Santy declared that relative to the injuries suffered by the deceased, wound no. 1 in Exhibit "A" (Necropsy Report) involved "the whole substance of the scalp including the superficial surface of the skull, producing fracture depression, 2 inches in length along the line of the wound at the occipital region to the left of the median line at the level of the supernuchal line"; that the said wound could have been caused by a hard blunt instrument like a "palomaria" or a piece of wood; that the wound was fatal because of the internal injuries; and that death could be the consequence of said wound. Thus, WE quote the relevant portions of Dr. Santy's testimony:

"FISCAL ALFREDO REYES:

"Q - In this Exhibit 'A' you have your external findings, 1 clean cut lacerated wound, 3 inches circular arch involving the whole substance of the scalp including the superficial surface of the skull, producing fracture depression, 2 inches in length along the line of the wound at the occipital region of the left of the median line at the level of the supernuchal line. Will you please show that to your body?

"A - This wound is located on the head. Wound no. 1 left of the median line in the level of the supernuchal line at the back of the head. Circular wound 3 inches involving the whole substance of the scalp, skin and hair, the skull, producing a deep fracture.

"Q - What instrument could have been used in wound no. 1?

"A - This wound being clean cut could have been caused by a hard blunt instrument.

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"Q - With that kind of wound, it is fatal?

"A - Because of the internal injury sustained, this could have been not necessarily immediately fatal, but it may

result to death.

"Q - In your estimate how long will the victim live?

"A - Because this wound is situated immediately within the region of the cerebellum or the small brain being the balancing organ as well as the prolongation of the brain to the spinal cord where the center of the circulation as well as the respiration, this may not take a long time before the individual dies. It will not take time before the person dies. It will not take time before the individual dies. It is not necessarily immediate, but it will result to death later.

xx xx xx"

(pp. 16-17, June 21, 1966 t.s.n.).

WE now go to the issue of conspiracy.

"A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it" (par. 2, Art. 8, Revised Penal Code).

In the earlier case of *People vs. Ging Sam* (94 Phil. 140), it was held that "for conspiracy to exist, there must be an agreement among the conspirators concerning the commission of a felony." But this requirement does not actually mean that agreement must be in writing or express, it being sufficient that it be implied from the acts of the conspirators tending to show their common design to commit the crime. Previous acquaintance among the conspirators is not even necessary, nor is it required that each take part in every act, or that all shall know the exact part to be performed by the others in the execution of the conspiracy. Conspiracy need not be established by direct proof as it can be inferred from the acts of the appellants (*People vs. Balane*, L-48319-20, 123 SCRA 614-617, [July 25, 1983]; *People vs. Muñoz*, 107 SCRA 313; *People vs. Cercano*, 87 SCRA 1; *People vs. Roncal*, 79 SCRA 509; *People vs. Cabiling*, 74 SCRA 285; *People vs. Ogapay*, 66 SCRA 210). It is enough that, at the time the offense was committed, participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances (*People vs. Garduque*, L-10133, July 31, 1958; *People vs. Binasing*, 53 O.G. 5208).

WE find that there was conspiracy because the accused had the same purpose and were united in the execution of the crime of MURDER. The evidence point to the conclusion that all the accused attacked the deceased with the intention of killing him. While it is true that accused Alex Challoy was not seen with the two other appellants carrying the body of the deceased and placing it across the railroad tracks to simulate a train accident, the fact is that the victim was in all probability already dead because the victim did not move before the train ran over him. The crime had already been consummated and the subsequent act of the Laganzon brothers was to cover up the crime. And even if the victim was still alive when placed across the railroad tracks, he was so unconscious or so helpless that he could not move to avoid the oncoming train. The crime is still murder.

Moreover, We already held in the case of *People vs. Cagod* (81 SCRA 110) that the finding of abuse of superiority implies conspiracy. The evidence for the prosecution, considered in the light of the attendant circumstances, point conclusively to the guilt of the appellants of the crime of murder with grave abuse of superior strength as a qualifying circumstance. The three accused, armed with clubs and truncheons, took advantage of their combined strength to maul and kill Francisco Pega.

MURDER as defined in Article 248 of the Revised Penal Code is punished with reclusion temporal to death. Article 64 of the same Code provides:

"In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions

of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravat-ing circumstances:

"1. When there are neither aggravat-ing nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period."

The then Court of Appeals, speaking through then Justice Lorenzo Relova (now Associate Justice of this Court), correctly meted out the penalty of reclusion perpetua to the accused.

On February 27, 1984, We received from the Office of the Provincial Fiscal of Camarines Sur a letter informing this Court of the death of accused Sebastian Laganzon in Bato, Camarines Sur on January 16, 1980 (p. 313, rec.). The death of Sebastian Laganzon as shown in the Certification of the Local Civil Registrar of Bato, Camarines Sur dated July 29, 1983 (pp. 232, 234, rec.) is also confirmed by the widow of the victim (p. 223, rec.). Under the circumstances, the case against Sebastian Laganzon is dismissed only insofar as his criminal liability is concerned.

WHEREFORE, THE DECISION APPEALED FROM IS HEREBY AFFIRMED WITH THE MODIFICATION THAT THE THREE DEFENDANTS-APPELLANTS INDEMNIFY THE HEIRS OF THE DECEASED FRANCISCO PEGA IN THE AMOUNT OF THIRTY THOUSAND (P30,000.00) PESOS. THE CASE AGAINST THE DECEASED APPELLANT SEBASTIAN LAGANZON IS HEREBY DISMISSED ONLY INsofar AS HIS CRIMINAL LIABILITY IS CONCERNED. COSTS AGAINST DEFENDANTS-APPELLANTS JUAN LAGANZON AND ALEX CHALLOY. SO ORDERED.

Fernando, C.J., Teehankee, Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., and De la Fuente, JJ., concur.

Aquino, J., concurred. The proper penalty is reclusion perpetua as opined by the Court of Appeals.

Concepcion, Jr., J., on leave.

Abad Santos, J., concurred with the outstanding that the decision appealed from and which is affirmed in that of the then Court of Appeals.

Relova, J., no part.

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