

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE REPATO AND FELICIANO NATAD, DEFENDANTS. JOSE REPATO, DEFENDANT AND APPELLANT.***G.R. No. L-17892. September 29, 1962*

Ponente: PAREDES, J.

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Jose Repato and Feliciano Natad were charged before the CFI of Pangasinan, with the crime of Murder. After trial, the court a quo returned a verdict of guilt against Jose Repato and sentenced him to suffer reclusion perpetua, to indemnify the heirs of the deceased Prudencio Vallo, in the sum of P6,000.00 and to pay one-half (1/2) of the costs, and acquitted Natad, on reasonable doubt.

In the early morning of September 1, 1960, the body of Prudencio Vallo was found on the side of the barrio road at Bacacleo, Aguilar, Pangasinan. An autopsy performed by the Municipal Health Officer, Dr. Cecilio Balbao, showed that Vallo sustained three bullet wounds, thru and thru, one in the brain, one in the chest and one in the back; the skull (frontal region) was crushed up to the temporal region; left eye swollen with ecchymosis and the right eye ecchymotic (Exh P.). Five (5) empty shells and three (3) lead slugs, the latter dug out of the ground (Exhibits B, B-1 to B-4, C, C-1 to C-2), were found about 1 1/2 feet to 3 meters away from the body of the victim.

The prosecution, thru the testimony of Crispin Vinluan, proved that on the evening of August 31, 1960, a picnic was held in the house of his son Macario Vinluan, and attended by Primitivo Daño, Eliseo de la Cuadra, Fidel Rosario, Hipolito Rosario, accused Jose Repato and Feliciano Natad, councilor Bonifacio Tamesa, barrio lieutenant Florentino Ordoña, and Dominador Repato. Dog meat and gin were served. After the eating and drinking, the deceased Prudencio Vallo begged leave to go ahead. When Vallo was still at the stairs, Jose Repato told the crowd, "Do not consider that Prudencio Vallo was among us in this picnic", and thereupon followed Vallo, accompanied by Feliciano Natad. After Jose Repato and Natad had left, the remaining members of the group also dispersed, witness Crispin Vinluan following Tamesa, Ordoña and Hipolito Rosario. Five or ten minutes later, Crispin heard a gun report coming at a distance of about 20 meters from where he was. He knew Jose Repato was the one who fired the shot because he saw him (Repato) carrying a carbine caliber 30 (Exhibit A) at the picnic and he actually saw him fire at Vallo. He recognized Repato, because the moon was clear and bright (at full moon). After the first two shots, Vallo fell and while in such position, the other accused Natad struck Vallo with a stone, although witness did not see what part of the body of Vallo was hit, because he then ran away. While running away, he heard three (3) more gun reports coming from the direction where Vallo was shot. He knew both Repato and Natad since childhood and they were all from the same barrio.

Macario Vinluan, Crispin's son, affirmed that the persons mentioned by his father attended the picnic; that after the deceased Vallo left, he was followed by the two accused; that later on, the other visitors left; that 3 or 5 minutes sooner, he heard two gun shots, followed by three more. Some 5 minutes, after the shooting, Jose Repato and Feliciano Natad ran to his house and the former told him: "Keep silent because we have killed Doding and do

not mention that he was one among those who came here", and requested him to hide the carbine (Exhibit A); and as Macario refused to do so, the accused themselves hid it near his (Macario's) house under a banana plant and covered it with grasses; that on the following day, he reported the matter to the PC Headquarters, and guided the constabulary officer to the spot where the carbine was concealed; and that he had known the accused Repato and Natad for a long time. Eliseo de la Cuadra corroborated Macario's declaration.

Anastacio T. Zamuco, Justice of the Peace of Bugallon, Pangasinan, testified that he is the owner of the carbine (Exhibit A); that on August 12, 1960, he sent a note (Exh. Q) to the Chief of Police of Aguilar, asking him to fetch the two accused Repato and Natad, because they forcibly took the carbine, then being used by his guards in his mine at Maralitan. Luciano Paulo, the guard, declared that the carbine (Exhibit A) was forcibly taken by the accused Repato and Natad from him, in the afternoon of August 5, 1960; and that he only reported the incident to the owner (Judge Zamuco), 8 days thereafter, because he was waiting for Lorenzo Fernandez, the other guard, to arrive from Manila.

The carbine Exhibit A, the blank cartridges and lead slugs (Exhibits B, B-1 to B-4, C, C-1 and C-2) gathered from the scene of the crime, were sent to Camp Crame for ballistics examination and it was found that the said blank cartridges and slugs were fired from the same carbine Exhibit A (Exhs. D, to M).

Appellant's defense is alibi. Denying participation in the crime, appellant testified that on August 5, 1960, he went to Manila to look for a job and stayed in the house of Nora Ayeras at 1480 Franco, Tondo, until September 5, 1960, when he returned to Aguilar where he was apprehended by the PC Officers; that Macario and Crispin implicated him, because they entertained a grudge against him; that said grudge arose when a certain Raymundo Austria was accused of acts of lasciviousness committed on the wife of Macario; that when Macario asked him to testify and he refused, Macario said he was siding with Austria; and as a result of this refusal, they had a heated discussion which almost ended in a fist fight. To support his alibi, the appellant presented his brother Miguel Repato, his co-accused Feliciano Natad and Nora Ayeras, a housewife from Franco street, Tondo, Manila. Miguel Repato declared that there was no party in the house of Macario Vinluan on the night of August 31, 1960 and that the party which he attended was held at an earlier date, but his brother Jose Repato (accused) was not present then. Nora Ayeras told the court that during the period from the first week of August, 1960 to September 5, 1960, the accused Jose Repato lived in her house in Manila, but used to go out, morning and afternoon, everyday, looking for a job.

The appellant contends that the lower court erred—(1) In lending credence to the State witnesses; (2) In disregarding the defense of alibi; and (3) In holding that the guilt of appellant had been established beyond reasonable doubt.

As appropriately stated by the Solicitor General:

"The denial by appellant of his presence at the picnic is of doubtful veracity and cannot overcome the positive testimony of the eyewitness who saw and identified him during the killing. The settled-rule is that negative evidence cannot overcome the state's positive proof, especially in view of the absence of adequate motive for the state witnesses to testify falsely against the accused (U.S. vs. Bueno, 41 Phil., 452; People vs. Lacson, 111 Phil., 1).

Of course, appellant claims that the principal witnesses of the State entertained some grudge against him. Even if we grant, for purposes of discussion, the truth of this claim, we still believe, that the alleged grudge mentioned by the appellant, is not sufficient to prompt the said witnesses to concoct evidence and falsely implicate the appellant in so grave a crime as murder.

It was fully established that appellant and his co-accused Natad, had snatched the carbine Exhibit A, from

Luciano Paulo on August 5, 1960; that the loss of the firearm was reported to the police authorities by its owner, Judge Zamuco, who requested said authorities to recover the same from them; the same carbine was used in the killing by the appellant; the cartridges and lead slugs found in the body of the deceased and in the vicinity, were fired from the same gun which the appellant and Natad wanted Macario to hide for them, immediately after shooting the deceased and which was hidden by the accused in the place where the peace officers had retrieved it.

Appellant's pretension that he was not within the vicinity at the time of the killing as, according to him, he was in Manila, was belied by his first cousin Artemio Daño, who asserted that Repato was in Aguilar in the evening of the killing (August 31, 1960), as said Repato passed his (Daño's) house in Bacacleo, at dawn of the following day (Sept. 1), on his way to Manila. The trial court was correct in discrediting defense witness Nora Ayeras. From her very admission, it was revealed that while the accused Repato was looking for a job, she too was busy doing the same thing. She was not therefore, in position to state categorically, that appellant was actually present in Manila, so as to preclude his having gone to Aguilar. With all these facts, the defense of alibi vanishes in oblivion. (People vs. Linde, et al. 110 Phil., 637).

Reliance is placed by the appellant on some alleged inconsistencies in the testimony of the state witnesses and their failure to report the matter of the killing immediately to the authorities. We have gone over the records of the case and while some inconsistencies may be noted, they are, however, not so material and substantial as to effect the credibility of the said witnesses, who had also explained to the satisfaction of the trial court, their inaction.

"The initial reluctance of witnesses in this country to volunteer information about a criminal case, and their unwillingness to be involved in or dragged into criminal investigation is common, and has been judicially declared not to affect credibility (People vs. Villamin, 64 Phil., 884; People vs. Delfin, et al., 112 Phil., 807)."

The above doctrine finds a fitting application in the case at bar.

The decision appealed from, being in conformity with the evidence and the law on the matter, is hereby affirmed in all respects, with costs against defendant-appellant Jose Repato.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Dizon, and Makalintal, JJ., concur.

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