

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CENON SERRANO ALIAS PIPING, ET AL., DEFENDANTS. DOMINGO CADIANG, SANTIAGO YUMUL AND FILEMON CENZON, DEFENDANTS AND APP...

G.R. No. L-7973. April 27, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Domingo Cadiang, Santiago Yumul and Filemon Cenzon appeal from a judgment of the Court of First Instance of Pampanga finding them and their co-defendants, who did not appeal, guilty of murder for the death of Pablo Navarro and sentencing them to suffer reclusion perpetua and to pay indemnity and the proportionate share in the costs (Criminal Case No. 1262).

In the evening of 16 October 1950, between 8:00 and 9:00 o'clock, Eulogio Serrano told Cenon Serrano alias Piping, Domingo Cadiang, Santiago Yumul, Filemon Cenzon and Anastacio Reyes then gathered at the sola of the house of the first in the barrio of Potrero, Bacolor, Pampanga, that Pablo Navarro had been inducing and prompting people to call on Senator Pablo Angeles David and testify on the Maliwalu massacre, and for that reason he manifested to them his desire and plan to do away with Navarro. Eulogio Serrano instructed them to wait for Navarro in the town of Bacolor, lure him to go with them to barrio Dolores and there kill him. After disclosing to them his plan, Eulogio Serrano told them to go to sleep at the post of the civilian guards near his house. In pursuance of the plan, the next day (17 October), Cenon Serrano alias Piping, Domingo Cadiang, Santiago Yumul, Filemon Cenzon and Anastacio Reyes waited for Pablo Navarro at the gambling casino and Chinese stores in the town of Bacolor where he used to hang around. Navarro did not show up that day. The following day (18 October), the group waited for him at the same places. This time Navarro showed up at the gambling casino and Cenon Serrano alias Piping promptly invited him to a drink but Navarro declined saying that he was going somewhere. On 19 October, the group again waited for their quarry at the same places but failed to make contact with him as he did not show up. At about 10:00 o'clock in the morning of 20 October, the group waited for Navarro in the same places. Navarro arrived at the gambling casino between 1:00 and 2:00 o'clock in the afternoon. Cenon Serrano alias Piping asked him for some drinks. Navarro ordered some drinks and all in the group except Cenon Serrano alias Piping drank. After drinking the contents of six bottles of Black Dog gin, Orange Wine and Sy Hoc Tong wine, Navarro asked Cenon Serrano alias Piping whether what they had drunk was enough, and the latter answered "No, look for some more." Navarro left the gambling casino, went to the market place about 20 meters away and came back accompanied by Simplicio Manguerra bringing four bottles of Orange wine and Sy Hoc Tong wine. Simplicio Manguerra joined the party and all except Cenon Serrano alias Piping drank the four bottles of wine. While the spree was going, on, Cenon Serrano alias Piping suggested to Pablo Navarro that they should go to San Fernando for a "good time," to which suggestion Navarro agreed. Cenon Serrano alias Piping sent out Domingo Oadiang to look for a jeep, and Cadiang returned with an auto calesa jeep driven by Marcelino Sicate. After drinking the four bottles of wine, Cenon Serrano alias Piping, Domingo

Cadiang, Santiago Yumul, Filemon Cenzon, Pablo Navarro, Simplicio Manguerra and Anastacio Reyes boarded the jeep, the first and the last sitting at the front with the driver and the rest inside. From the gambling casino the party repaired to Don Q gasoline station to refuel and proceeded to San Fernando. But before reaching San Fernando, Cenon Serrano alias Piping remarked that "there is no use having a good time" in San Fernando and suggested that they should proceed to Angeles for the "good time" which suggestion Navarro approved. On the way to Angeles Cenon Serrano alias Piping ordered the driver to stop at Tony's Place in San Fernando to buy some more wine. After buying another jar of San Miguel gin, part of which Navarro who was already drunk was made to drink, the party resumed their trip; but upon reaching a small road near the schoolhouse of barrio San Isidro, Cenon Serrano alias Piping told the driver to proceed to barrio Dolores, Bacolor, where they arrived at about 4:00 o'clock in the afternoon. There Cenon Serrano alias Piping dismissed the driver of the jeep. At barrio Dolores, the group passed by the house of Simeon Dizon, the barrio lieutenant, told him to come down and ordered him to call for some temporary policemen. Upon seeing Benjamin Tolentino at the house of Dizon, Cenon Serrano alias Piping beckoned and ordered Tolentino to tie Navarro's hands with rope. Upon Cenon Serrano's order Felipe Garcia, a civilian guard who came with Simeon Dizon, pointed a gun at Navarro. The latter asked Cenon Serrano alias Piping why he was being tied and Cenon Serrano alias Piping answered "You deserve to be tied up because you are against us." Navarro was brought to the stockade of the civilian guards where he was questioned and accused Cenon Serrano alias Piping of bringing witnesses to the house of Senator Pablo Angeles David to testify on the Maliwalu massacre. As Navarro denied the charge, Cenon Serrano alias Piping hit Navarro with his fist, struck him with the butt of his .45 caliber pistol and ordered Domingo Cadiang to beat up Navarro. Cadiang did as he was ordered by beating up Navarro with a piece of bamboo about 4 inches in diameter and less than a meter long. As a result of the beating Navarro fell down. Cenon Serrano alias Piping kicked him and ordered him to rise, and as Navarro was rising Cadiang hit him on the back, so Navarro again fell down. Cenon Serrano alias Piping then told Filemon Cenzon to beat up Navarro and Cenzon with the same piece of bamboo struck Navarro on his back about the waistline as he made an effort to stand up. Cenon Serrano alias Piping returned to where the jeep was parked and ordered Felipe Garcia to tie the hands of Simplicio Manguerra. Upon hearing the order of Cenon Serrano alias Piping, Simplicio Manguerra asked whether he was to be killed. Cenon Serrano answered "I will also have you killed, you son of a whore." Manguerra clung to Anastacio Reyes begging for mercy but the latter disengaged himself from him. Cenon Serrano alias Piping pushed Manguerra and ordered Santiago Yumul to beat him up. Santiago Yumul hit Manguerra with a pestle on the back. Manguerra fell to the ground. Then Cenon Serrano alias Piping ordered Domingo Cadiang and Felipe Garcia to bring Manguerra to the post behind the stockade. At this juncture Basilio de Guzman arrived and was ordered by Cenon Serrano alias Piping to kill Manguerra. De Guzman and Garcia brought Manguerra to a field in Dolores where De Guzman dug a pit while Garcia stood guard; and after digging the pit De Guzman shot Manguerra twice and shoved Manguerra's body in the pit and covered it with earth. Afterwards, Cenon Serrano alias Piping, Domingo Cadiang, Santiago Yumul, Filemon Cenzon and Anastacio Reyes repaired to the house of Eulogio Serrano in barrio Potrero to report to him that the two victims were already in barrio Dolores, arriving at barrio Potrero at past 5:00 o'clock in the afternoon. As Eulogio Serrano was not in his house when Cenon Serrano alias Piping arrived, the latter boarded the jeep of the late Maximino Serrano and drove on it to the town of Bacolor together with Domingo Cadiang, Santiago Yumul, Filemon Cenzon and Anastacio Reyes. Upon reaching the second bridge at barrio San Antonio on the way to Bacolor, Santiago Yumul alighted. The rest resumed driving to town and met Eulogio Serrano in front of the schoolhouse at barrio San Agustin driving a jeep. Cenon Serrano alias Piping reported to Eulogio Serrano that the two men were already in barrio Dolores. Eulogio told Cenon that he would go to Dolores. Domingo Cadiang was left in the barrio of San Antonio while Filemon Cenzon, Cenon Serrano alias Piping and Anastacio Reyes proceeded to the town of Bacolor.

In the afternoon of 20 October 1950, while Emiliano Manalo known also as Isaias, a civilian guard, was in his

house at barrio Dolores Bacolor, Pampanga, Benjamin Tolentino came and asked him to help him dig a pit at sitio Oastilang Malati, barrio Dolores, to bury a dead horse of Atilano Gopez. He acceded to his request and helped Tolentino dig it. After digging the pit he went home and then proceeded to his post in sitio Pigulut Mauli, barrio Dolores. Upon reaching his post he was called by Eulogio Serrano who was outside the stockade together with Atilano Gopez, Melchor Esguerra and Benjamin Tolentino talking with another person inside the stockade who he later on learned was Pablo Navarro. He heard Eulogio Serrano ask "Ambo, are you the one bringing those people from Maliwalu to Don Pablo? Navarro answered that he was not the one, Eulogio Serrano then told Atilano Gopez to take Pablo Navarro out of the stockade and to bring him along with them (Eulogio Serrano, Atilano Gopez, Benjamin Tolentino, Melchor Esguerra and Emiliano Manalo) to barrio Potrero. When they reached sitio Castilang Malati Eulogio Serrano ordered Melchor Esguerra and Benjamin Tolentino to shoot Pablo Navarro from behind. Melchor Esguerra and Benjamin Tolentino fired one shot each simultaneously. Navarro fell down dead. Eulogio Serrano ordered them to bring the dead body of Pablo Navarro to the pit that Benjamin Tolentino and Emiliano Manalo had dug and to cover it with earth. Afterwards, they walked back to barrio Dolores. Sometime after the elections in November 1951, Atilano Gopez ordered Emiliano Manalo and Benjamin Tolentino to exhume the bones of the late Pablo Navarro, put them in a sack and threw them into a creek. On 6 December 1951 the chief of police of Bacolor, Benjamin Tolentino, Melchor Esguerra, Eulogio Serrano and Emiliano Manalo, accompanied by Constabulary soldiers, exhumed the bones of the late Pablo Navarro.

On 17 December 1951, Cenon Serrano alias Piping, Benjamin, Tolentino, Melchor Esguerra, Domingo Cadiang, Santiago Yumul, Filemon Cenon and Anastacio Reyes were charged with illegal detention with murder for the death of Pablo Navarro in an information filed by the provincial fiscal of Pampanga. On 12 February 1952, upon motion of the assistant provincial fiscal, the Court ordered the discharge of Anastacio Reyes from the information to testify as witness for the prosecution. Eulogio Serrano was charged with the same crime in criminal case No. 1819 but has not yet been apprehended. Cenon Serrano alias Piping charged with the same crime was also at large but later on arrested and brought to trial with his co-defendants in both criminal cases for the death of Pablo Navarro (case No. 1262) and for the death of Simplicio Manguerra (case No. 1263). The evidence for the prosecution heard against his co-defendants before his arrest and arraignment was again presented to afford him the opportunity to confront and cross-examine the witnesses.

After a joint trial with criminal case No. 1263 for the death of Simplicio Manguerra, the Court found.—

* * * Cenon Serrano alias Piping, Benjamin Tolentino, Melchor Esguerra, Domingo Cadiang, Santiago Yumul and Filemon Cenon guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 1262 (for the death of Pablo Navarro) and, appreciating No aggravating -or mitigating circumstance, hereby sentences each to suffer the penalty of reclusion perpetua. They are also sentenced to indemnify, jointly and severally, the heirs of Pablo Navarro in the sum of P6,000.00 and to pay their proportionate shares of the costs. * * *.

Only Domingo Cadiang, Santiago Yumul and Filemon Cenon have appealed.

The appellants deny having been in the house of Eulogio Serrano at barrio Potrero, Bacolor, Pampanga, in the evening of 16 October 1950, when Eulogio Serrano told them to lure Pablo Navarro to barrio Dolores and to kill him there. Domingo Cadiang claims that on 16 October 1950 he was at the farm of Paquito Liongson in the barrio of San Antonio helping his in-laws thresh palay that they had promised and agreed to do; and that on 17, 18 and 19 October he was in the yard of his house cutting kapok trees for fuel. Filemon Cenon claims that on 16 October 1950, between 8:00 and 9:00 o'clock in the evening, he was in the market place of Bacolor; that on 17 October up to the early morning of 18 October, he was at Bagac Bay hauling lumber; that at about 11:00 o'clock in the morning of 18 October he was already in Bacolor where he refilled the tank of his truck with petrol and thereafter he together with Juanito Bognot proceeded to Dagupan to deliver lumber for his employer, Manuel

Joseph, to the Liberty Lumber; and that he returned to Bacolor at about 11:00 o'clock in the morning of the next day, 19 October, and brought his truck to the garage of the company and went home. Santiago Yumul, corroborated by Martin Tuason and Martin Yumul, claims that from 16 to 19 October 1950 he was working as laborer for Martin Tuason to remove a railroad track of the Pampanga Sugar Development Company leading to Magalang, Pampanga; and for that reason he could not have been with Eulogio Serrano, Cenon Serrano alias Piping, Domingo Cadiang and Filemon Cenon in the evening of 16 October at the house of Eulogio Serrano, and from 17 to 19 October in the town of Bacolor waiting for Pablo Navarro to carry out the plan of luring him to barrio Dolores and there kill him. And although they admit to have been in the company of Cenon Serrano alias Piping and Anastacio Reyes, who they claim brought Pablo Navarro and Simplicio Manguerra to barrio Dolores in the jeep driven by Marcelino Sicat on 20 October 1950, yet they disclaim any knowledge of the plot to kill them, and that if they ever took a hand in maltreating the victims it was out of fear to Anastacio Reyes and Cenon Serrano alias Piping, the latter ordering them to inflict injury upon the victims at the point of a gun.

The weak defense of alibi put up by the appellants to disprove complicity in the murder of Pablo Navarro cannot overcome the clear and positive testimony of Anastacio Reyes that they were at the house of Eulogio Serrano in the evening of 16 October 1950 when the latter told them to lure Pablo Navarro to barrio Dolores and there kill him; and that they were together on 17, 18 and 19 October waiting for Pablo Navarro in the town of Bacolor to lure him to barrio Dolores, and on 20 October when they finally succeeded in luring him to barrio Dolores where they killed him. It is difficult to believe that a man who had made up his mind to kill another would bring along with him other persons who know nothing about the plan just to witness the commission of the crime. If they were not in the know, as they contend, they also would have been done away with right then and there, in the same way Simplicio Manguerra, who was not to be killed, had been done away with, to prevent him from reporting to the authorities or from testifying against them in Court; or they also would have been sent away upon arriving at barrio Dolores, in the same way that Marcelino Sicat, the driver of the jeep on which they rode in going to the said barrio, was sent away. The way the appellants were seated in the jeep in going to barrio Dolores—Anastacio Reyes and Cenon Serrano alias Piping at the front seat with the driver and the three appellants on the two parallel seats inside the jeep—belies the assertion that they were prevented by Cenon Serrano alias Piping and Anastacio Reyes from running away upon learning that a criminal act was to be committed. The assertion that Cenon Serrano alias Piping pointed his gun at them at the gasoline station, where they stopped to refuel, to prevent them from deserting, is unbelievable, because the gasoline station is located in the heart of the town of Bacolor, in a busy street where the slightest commotion or any sign of distress would easily draw the attention of the nearby traffic officer directing the traffic.

The fact that in the evening of 16 October 1950, the three appellants and their co-defendants were gathered at the house of Eulogio Serrano, over-all commander of the civilian guard and temporary police organizations, who ordered them to lure Pablo Navarro to barrio Dolores and to kill him there, because he had been inducing and prompting people to call on Senator Pablo Angeles David to inform him about and to testify on the Maliwalu massacre; that pursuant to the plan laid out by Eulogio Serrano, from 17 to 20 October 1950 the appellants joined Cenon Serrano alias Piping and Anastacio Reyes in waiting for Pablo Navarro at the gambling casino and Chinese stores in the town of Bacolor where he used to frequent; that they were actually with Cenon Serrano alias Piping and Anastacio Reyes when Pablo Navarro was lured to go to Dolores on the pretext of going to San Fernando and then to Angeles for a "good time" after a drinking spree in Bacolor; that they took turns in manhandling the victim as he was hogtied and rendered helpless; and the fact that the appellants went into hiding after the incident together with Cenon Serrano alias Piping in the barrio of Escribania, show that they were in league with Eulogio Serrano and Cenon Serrano alias Piping to kill Pablo Navarro. Each of them is, therefore, guilty as co-principal.

The appellants contend further that in order that the testimony of a conspirator may be admissible in evidence

against his co-conspirator, it must appear and be shown by evidence other than the admission itself that the conspiracy actually existed and that the person who is to be bound by the admission was a privy to the conspiracy. And as there is nothing but the lone testimony of prosecution witness Anastacio Reyes, a co-conspirator, the trial court erred in finding that conspiracy has been established and in convicting the appellants based upon the lone testimony of their co-conspirator. The contention does not merit serious consideration, because the rule that "The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration," [1] applies only to extra-judicial acts or declaration, but not to testimony given on the stand at the trial,[2] where the defendant has the opportunity to cross-examine the declarant. And while the testimony of accomplices or confederates in crime is always subject to grave suspicion, "coming as it does from a polluted source," and should be received with great caution and doubtfully examined, it is nevertheless admissible and competent.[3]

The trial court did not err in convicting the appellants. For lack of sufficient number of votes to impose the death penalty, the judgment appealed from is affirmed, with the proportionate costs against the appellants.

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

[1] Section 12, Rule 123.

[2] *People vs. Dacanay*, 92 Phil., 873; Off., 919.

[3] *U. S. vs. Ocampo*, 4 Phil., 400; *U.S. vs. Butardo*, 9 PHIL., 246; *U. S. vs. Granados*, 16 Phil., 419; *U.S. vs. Bernales*, 8 Phil., 525; *U.S. vs. Soriano*, 25 Phil., 624; *U.S. vs. Flores*, 28 Phil., 29; *U.S. vs. Remigio* 37 Phil., 599; *People vs. Nakpil*, 52 Phil., 985; *People vs. Zipagan*, 58 Phil., 780; *People vs. Cu Unjieng*, 61 Phil., 236; *People vs. Masin*, 64 Phil., 757.

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