

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCILA VALERO Y VARILLA, DEFENDANT-APPELLANT.

G.R. Nos. L-45283-84. March 19, 1982

Ponente: ERICTA, J.

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ERICTA, J.:

Lucila Valero alias Rosing and Alfonsito Valero alias "Pipe" were accused in the Municipal Court of San Rafael, Bulacan in two separate complaints, one of double murder and the other of frustrated murder.

After the preliminary investigations, the complaints against Alfonsito Valero were dismissed "on the ground that he is a deaf-mute and, therefore, all the proceedings against him were beyond his comprehension". Lucila Valero remained as the sole defendant. After the trial in the Court of First Instance of Bulacan where the records were later forwarded for appropriate proceedings, the trial Court convicted Lucila Valero of the complex crime of double murder and frustrated murder and imposed upon her the extreme penalty of death.

Hence, this automatic review.

The following facts are not disputed. In the morning of February 22, 1969 between 7:00 and 9:00 o'clock of Saturday, Michael, aged 9 months, and Annabel, aged 1 year and 9 months, both of whom are the children of Ceferino Velasco, died of poisoning after eating bread containing endrin, a commercial insecticide. Likewise, Imelda, another minor child of Ceferino, tasted the poisoned bread and would have died as a consequence were it not for the timely medical assistance given her. All these three minor children were in the balcony of their house at San Rafael, Bulacan, when they partook of the poisoned bread.

On the same morning at about the same time that the three minor children partook of the poisoned bread, three (3) puppies of Ceferino Velasco under the balcony also died of poisoning.

Earlier that same morning at about 6:00 o'clock, Ceferino Velasco, father of the victims, was seen throw-ing poisoned rats into a river near his house. Investi-gations were conducted by Cpl. Bucot and Pat. Arturo Ventuso, both of the Police Department of San Rafael, Bulacan. Upon their arrival, they saw the dead bodies of Michael and Annabel in the house of Ceferino Velasco and the dead puppies under the balcony. They also saw several pieces of sliced pan scattered in the sala of the house, near the balcony, and under the balcony. They picked up some pieces of sliced bread under the balcony, wrapped them in a piece of paper and submitted them to a chemist for examination. It was found that the bread contained endrin, a poisonous insecticide. The two minor children, Michael and Annabel, were also autopsied and the necropsy reports showed that both children died of poisoning by endrin. Samples of the blood and internal organs of both Michael and Annabel were also examined by a chemist and it was found that they contained endrin.

The evidence of the prosecution and the defense conflict as to the source of the poisoned bread. The evidence of the prosecution shows that the poisoned bread was given to the children by Alfonso Valero alias Pipe, a deaf-mute brother of the defendant Lucila Valero, and that it was Lucila Valero who gave the bread to Pipe for delivery to

the minor children. On the other hand, the defendant Lucila Valero denies that she ever gave bread to her deaf-mute brother, Pipe, for delivery to the minor children. The evidence for the defense tends to show that the Velasco children might have eaten one of the sliced poisoned bread used by their father in poisoning rats in his garden.

It is not denied that Ceferino Velasco has a vegetable garden in his yard. He uses an insecticide called Polidol to spray the vegetable and uses the same insecticide to kill rats. According to the testimony of the defendant, which was never rebutted by Ceferino Velasco, Ceferino also planted vegetables in the yard of the defendant whose house is just across the street from the house of Ceferino Velasco. She further testified that Ceferino dipped sliced bread into an insecticide called endrin, dried them up and later used the poisoned bread as a bait to kill rats in the yard located by the side of his house.[1]

More of the controversial facts will be presented in the following discussion.

We first discuss and assess the evidence for the prosecution. Out of the nine witnesses for the prosecution three witnesses, namely Rodolfo Quilang, Federico Jaime, and Ceferino Velasco were presented to prove that the defendant Lucila Valero gave the poisoned bread to her deaf-mute brother Pipe with the alleged instruction to deliver the bread to the Velasco children.

We now analyze the testimonies of these three witnesses:

1. Rodolfo Quilang

Only Rodolfo Quilang, among the nine prosecution witnesses, testified that he saw the defendant Lucila Valero deliver "something wrapped in a piece of paper"[2] to her deaf-mute brother Pipe with the alleged instruction by sign language to deliver the same to the Velasco children. Quilang never saw what was inside the piece of paper. At the time Quilang saw the delivery to Pipe of the wrapped object, the defendant and her brother were in the balcony of their house, which was just near the gate of Ceferino Velasco's house where he (Quilang) was standing. Upon receipt of the wrapped object, Pipe allegedly proceeded towards Velasco's house.

According to Quilang, he was "in the act of leaving" Velasco's gate when Pipe "was entering the gate of Ceferino Velasco".[3]

Whether or not Quilang saw the delivery to the Velasco children of the "something wrapped in a piece of paper" is a question that involved this star prosecution witness into a series of self-contradictions, aptly called by the appellant's counsel as a "series of basic somersaults" which earned for Quilang a reprimand from the trial Judge, who, surprisingly later, based the conviction mainly on the testimony of this flipflopping witness.

In his affidavit, dated March 8, 1972 (Exhibit "4", p. 437, Record of murder case) or three (3) years after the poisoning of the Velasco children, Quilang stated that he actually saw Pipe deliver the wrapped object to the children. The statement reads as follows:

"3. Na nakita kong si Pipi ay nagpunta sa bahay nina Ceferino Velasco at dala-dala ang inabot ni Lucilang nakabalot sa papel, at noong dumating sa may hagdanan ni Ceferino, ay nakita kong iniabot ang nakabalot sa mga bata na anak ni Ceferino Velasco."

Three years later during the trial on September 15, 1975, he declared on cross-examination, as follows:

"Q. When you left the residence of Demetria and Severino (sic) Velasco, Pipe was just entering the gate of that house, is it not?

A. Yes.

Q. In other words, you did not see Pipe give that something wrapped in a piece of paper to anybody in the premises because you have al-ready left?

A. Really not.

Q. Are you sure of that?

A. I did not really see."[4]

When confronted with the contradiction, Quilang re-iterated that he did not see Pipe deliver the bread, in the following testimony:

"Q. You did not answer the question, you stated in open court that you did not see Pipe give the bread to the children of Ceferino and Demetria Velasco, is that correct?

A. I really said that."[5]

On being pressed further to explain the contradiction, Quilang made the absurd explanation that the self-contradictory statements were both correct. Thus:

"Q. And you, of course, realized that you said that under oath?

A. Yes.

Q. Now, in your statement, dated March 8, 1969 (should be March 8, 1972) which was also under oath, you stated that you saw Pipe gave that thing wrapped in a piece of paper to the children of Severino (sic) and Demetria Velasco, are you telling that that is also true?

A. Yes."[6]

The judge must have been so flabbergasted with the inconsistencies that he, himself, propounded the follow-ing question:

"Court:

Q. The Court will ask you, did you see Pipe hand over to the deceased children that something which was wrapped in a piece of paper.

A. Yes, sir."[7]

The confusing inconsistencies prompted the Court to proceed further as follows:

"Q. A while ago, you were asked by Atty. Rodrigo. You clearly state that you did not see Pipe hand over this wrapped thing in the paper, do you remember that?

A. Yes, sir.

Q. The Court is now confused, which of these statements it will believe, do you realize that these two statements are contradictory to each other?"[8]

After some evasive answers in his attempt to extricate himself from this web of self-contradictions, the Court insisted as follows:

"Q. You are not answering the question, in fact, I remember having asked you whether or not you saw Pipe hand over this something wrapped to the children and you said that you did not see, and now you say you saw, can you explain these inconsistent statements?

A. The truth of the matter was that he handed over."[9]

Convinced that Quilang was a lying witness, the trial Judge could not help but explode an expletive in Tagalog during the cross-examination, as follows:

"Atty. Rodrigo:

Q. Did you see that wrapped thing being given or you were just guessing?

A. I saw that he handed over.

Q. But I thought, Mr. Quilang, that when Pipe was just entering the gate of Ceferino Velasco, and Demetria Velasco, you were already departing from the place and that you have already left, and this is the reason why you did not see Pipe handed over that something wrapped on a piece of paper,

A. I was not able to say that.

Court:

Ano ka ba? Narinig kong sinabi mo iyon ah!"[10]

The tendency of Quilang to prevaricate is shown not only in his self-contradictory statements on the witness stand but also in the other portions of the record. The first statement of Quilang (Exhibit "4", p. 437, Record of the Murder case) is dated March 8, 1972. This date appears twice in the affidavit, first at the end of the affidavit and second, in the jurat. In both places of the affidavit, the words "March" and "1972" are type-written by the same typewriter used in typing the entire affidavit. The date, however, was left blank so that originally what appeared at the end of the affidavit and in the jurat was practically "March ____ 1972". Apparently, the affidavit must have been prepared in March of 1972. The date "8", presumably the date of the swearing before the Fiscal, was typewritten with a different typewriter on the blank space.

On the witness stand, Quilang stated that he made an affidavit on February 23, 1969.[11] He must have made this statement to make it appear that he was not an "eleventh-hour witness" as alleged by the defense. When confronted with the discrepancies in the date appearing in his affidavit, to wit, March 8, 1972, and his testimony on the witness stand, he insisted that the correct date was February 23, 1969 and that either the Fiscal or the one acting in his behalf committed the error in indicating the date in his affidavit.[12] It is incredible that a Fiscal administering the oath-taking on February 23, 1969 and signs, the jurat postdates the oath-taking to March 8, 1972, three years later.

There are other equally strong considerations indicating the lack of credibility of Quilang. He is what the appellant's counsel calls an "eleventh-hour witness". When the complaint for frustrated murder and the complaint for murder, both dated March 11, 1969, were filed with the Municipal Court of San Rafael, Bulacan, Rodolfo Quilang was not listed as one of the several witnesses. Quilang never made any statement to the police who initially investigated the case nor to the Philippine Constabulary which made its own investigation. When the Municipal Court asked searching questions from several witnesses during the first stage of the preliminary investigation on March 12, 1969, only Ceferino Velasco, Concepcion Velasco, Delfin Señorosa, Federico Jaime and Demetria Manalastas were investigated. Rodolfo Quilang was not one of them.[13]

Again, when the information for frustrated murder (pp. 87 to 88, Record of Frustrated Murder case) and the information for murder (p. 76, Records of Murder case) were filed in February 1971, the star witness, Rodolfo Quilang, was not listed among the nine (9) prosecution witnesses. Then on September 15, 1975 or six (6) years after the tragedy, Quilang was suddenly sprung as the star witness, the only witness who allegedly saw the delivery by the defendant to Pipe of "something wrapped in a piece of paper" with the alleged instruction by sign language to deliver the same to the Velasco children. Without the testimony of Quilang, there would be no

evidence to show that the poisoned bread which was alleged-ly delivered by Pipe to the Velasco children came from the defendant. Realizing that there was a missing link, the prosecution thought of presenting Quilang to provide the missing link six years after the occurrence of the tragedy.

"This witness, Aniceto Decalos, a neighbor and old friend of Ciriaco Jimenez, like the alleged eyewitness Candido Autor, did not figure in the list of witnesses for the prosecution, either in the criminal complaint filed by PC Capt. Golez or in the Fiscal's indictment. His name was not amongst those who gave affidavits to back up the criminal charge. This gives the impression that Aniceto Decalos, the neighbor of the deceased, was but an eleventh-hour witness. To take his testimony on its face value, we fear, is to rate truth so lightly." [14]

2. Federico Jaime and Ceferino Velasco

On the other hand, both Ceferino Velasco and Federico Jaime did not see the delivery by the defendant to her deaf-mute brother "something wrapped in a piece of paper". They never saw or heard her giving any instruction to Pipe to deliver the wrapped object to the children. Both claimed that they learned or obtained the information from Pipe after interviewing him by means of sign language. Which the trial Court accepted as competent, trustworthy and credible!

The following testimony of Federico Jaime speaks for itself:

"Q. Will you please stand up and demonstrate to this Honorable Court how you talked to him (Pipe) through signs?

A. When I went down, I made this sign to him. (Witness was waiving his two hands with his palms down and both hands horizontal along the waist.)

Q. When you made that sign, what was the meaning or idea that you wanted to convey?

A. I was asking him as to what happened to the children and the sign made by him was like this. (Witness demonstrated by one of his hands demonstrating some kind of height and at the same time the left hand point-ing upwards where the children were.)

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Q. What do you mean by the sign when your right hand indicating some height and your left hand pointing towards upward?

A. What I wanted to imply is, I was asking Pipe as to who gave food to them, your Honor.

Q. Why did it occur to you to go down and try to communicate with Pipe?

A. I saw him down below and he was making signs and I asked the children as to what happened and he told me that the children were given bread.

Q. What came into your mind when you saw Pipe demonstrating in the manner that you described?

A. I just wanted to know as to who gave food to the children, your Honor.

Q. Did you catch any significance in those signs that you saw to Pipe?

A. Yes, your Honor.

Q. What significance that you had in mind?

A. Because the children said that it was Pipe who gave bread, your Honor.

Court:

Proceed.

Fiscal Calderon, Jr.

Q. When you made that sign pointing one hand upward, what was the answer of Panchito?

A. I inquired from him through signs as to who gave bread to the children by demonstrating like this (witness demonstrated by seemingly eating something inside the house with his right hand and his left hand index finger towards the front and then pointed towards his left index finger).

Q. Towards what direction was Panchito pointing his index finger?

A. To the sister, sir.

Q. And who is that sister?

A. Precila (sic), sir. Precila (sic) Valero."[15]

There is nothing in the foregoing testimony pointing to the defendant Lucila Valero as the source of the poisoned bread. What is evident is nothing but confusion. What Jaime asked from Pipe was "Who gave the bread to the children?" The evidence of the prosecution already shows that Pipe gave the bread to the children. In reply, it seems that Pipe pointed to the defendant who was standing nearby.

Here, the confusion is clear. Pipe could not have said that his sister handed over the poisoned bread to the children because the evidence of the prosecution shows that Pipe himself, gave the bread to the children. It is clear that Pipe did not understand the sign language of Jaime and vice-versa.

The testimony of Ceferino Velasco, father of the victims, did not help the prosecution much either. The following is Ceferino's testimony:

Witness:

Upon seeing Ponsito, I asked him what was that and he answered me that it was a piece of bread and he told me that she was the one who caused the giving of the bread, sir. (witness pointing to the accused Lucila Valero)

Atty. Rodrigo, Jr.:

I would like to make of record that during the narration as to how he asked Alfonsito, the witness was only demonstrating by using his index finger moving up and down, your Honor.

Fiscal Calderon, Jr.:

Q. When you first asked that question who gave the bread to you, how did Alfonsito answer?

A. After having given the bread, I asked him who gave the bread, and he said that the bread came from her (witness demonstrated by swaying his right arm and pointing his forefinger sidewise.)

Q. Where was Lucila Valero at the time that Alfonsito was demonstrating to you his answer?

A. She was there on the side of the street, sir.[16]

There is nothing in the aforequoted testimony indicating that the deaf-mute, Pipe, pointed to her sister Lucila Valero as the source of the poisoned bread. We have examined the entire transcript of the stenographic notes, and, except the aforequoted portions of the testimony of Federico Jaime and Ceferino Velasco, there is nothing in the record showing that Pipe communicated to the prosecution witnesses by comprehensible sign language that his sister was the source of the poisoned bread.

Aside from the foregoing observation, there are several compelling reasons that should have made the trial Court reject the testimony of both Jaime and Velasco.

Pipe who was the alleged source of the vital information for the prosecution was never presented as a witness either for the prosecution or for the defense. Jaime and Velasco were presented as prosecution witnesses to convey to the Court what they learned from Pipe by sign language.

The evidence is purely hearsay.[17] The presentation of such evidence likewise violates the principle of *res inter alios acta*. The rights of a party cannot be prejudiced by an act, declaration, or omission of another.[18]

With particular reference to the testimony of Ceferino Velasco, its admission cannot be justified by claiming that it is a part of the *res gestae*. When Pipe allegedly revealed to Ceferino Velasco that the source of the poisoned bread was the defendant, the children had not eaten or tasted it. Nobody was yet poisoned. Stated otherwise, there was no startling occurrence yet.[19]

With reference to the testimony of Jaime, there is no showing that Pipe made the extrajudicial revelation spontaneously when he was still under the influence of a startling occurrence. Pipe made his extrajudicial revelation not spontaneously but after an interview through the complicated process of sign language.

The failure of the defense counsel to object to the presentation of incompetent evidence, like hearsay evidence or evidence that violates the rule of *res inter alios acta*, or his failure to ask for the striking out of the same does not give such evidence any probative value. The lack of objection may make any incompetent evidence admissible.[20] But admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not has no probative value.[21]

To give weight to the testimonies of Federico Jaime and Ceferino Velasco, whether considered as hearsay evidence or as part of *res gestae* and make the same the basis for the imposition of the death penalty gravely violates the constitutional right of the defendant to meet the witnesses face to face and to subject Pipe to the rigid test of cross-examination, the only effective means to test the truthfulness, memory, intelligence, and in this particular case, the ability of the deaf-mute, Alfonso Valero alias Pipe, to communicate with the outside world. In a conflict between a provision of the constitution giving the defendant a substantive right and mere technical rules of evidence, we have no choice but to give effect to the constitution.

The cross-examination of Pipe, the source of the vital information for the prosecution, would have shown clearly his incompetence as a witness. During the preliminary investigation in the Municipal Court, experts on deaf-mutes like Belen Herreros who is the official interpreter of the only school for the deaf and the blind in the Philippines, assisted by Mrs. Felicidad Vinluan who is the principal of the school of the deaf and the blind, Mesdames Gilda Tatum and Salud Natividad, examined Alfonsito Valero alias Pipe and reported to the Municipal Court that "questions addressed to him (Alfonso Valero) and answers given by him cannot be accurately interpreted".[22]

As a result of the testimonies and the report made by the aforementioned experts, the Municipal Court dismissed the murder and frustrated murder cases against Alfonsito Valero, alias Pipe, who was then the co-accused of Lucila Valero, "on the ground that he (Pipe) is a deaf-mute and, therefore, all the proceedings against him were beyond his comprehension."[23]

Even prosecution witnesses Ceferino Velasco and Federico Jaime admitted on cross-examination that their interpretations of the sign language of Pipe were only guess work.

Thus, Ceferino admitted on cross-examination:

"Q. As a matter of fact, most of your interpretation would be only guess work on your part, is it not?

A. Yes, sir."[24]

Jaime practically made a similar admission, as follows:

"Q. When you were requested to demonstrate how you conveyed the idea to Pipe about the giving of the bread to the children, you pointed to a height, is it not?

A. Yes, sir.

Q. How do you demonstrate to Pipe if you wanted to convey that what is to be taken is star-apple?

Fiscal Calderon:

I object, your Honor.

Court:

May answer.

A. Like that also, sir. (witness demonstrated to be putting something in his mouth.)

Q. In other words, anything which will be taken by mouth, you just use the same sign language?

A. Yes, the same sign, sir.

Q. So that it would be safe to conclude that Pipe might have misunderstood your signs. He could have misunderstood it for rice, bibingka, star-apple or for anything else?

A. witness gave no answer."[25]

Obviously, the trial Court committed the grave error of accepting, and, worse still, of giving weight to the testimonies of Federico Jaime and Ceferino Velasco interpreting the alleged extrajudicial information to them by sign language of Pipe, when the source of the information himself, Alfonsito Valero alias Pipe, would have been an incompetent witness had he taken the witness stand.

When Jaime allegedly learned from Pipe that the latter's sister was the source of the poisoned bread, the defendant was only at the gate of the Velascos near Jaime but he did not confront her.

"Q. When Pipe pointed to Lucila and when you gave the meaning to that sign that it was Lucila who offered Pipe to give the bread to the children, did you (Federico Jaime) confront Lucila immediately?

A. No, sir.

Q. Did it not occur to you (Federico Jaime) to confront Lucila considering that you already suspected that it was her (sic) who caused the poisoning of the children?

A. No, sir. I did not."[26]

The natural reaction of Jaime who is the uncle of the mother of the victims,[27] upon learning the killer of his relatives would have been a violent action or at least an angry confrontation. Neither did Ceferino Valero confront Lucila Valero upon allegedly learning that the latter poisoned his children.

"Q. After allegedly knowing from Alfonsito that the bread was allegedly given to him by Lucila, did you (Ceferino Velasco) confront her?

A. No, sir.

Q. As a matter of fact, you never confronted her until you filed this case about the poisoning of your children?

A. No, sir. I have been very patient with her since the beginning."[28]

Moreover, when Ceferino Velasco made a sworn statement on February 25, 1969 or three (3) days after the poisoning of his children, he declared that he did not know who gave the poisoned bread to his children, thus:

"T - Nalalaman ba ninyo kung mayroong nagbigay kay Pipe ng tinapay na ibinigay sa inyong anak?

S - Ang nalalaman ko lamang po ay sa kanila siya galing hindi ko po alam kung sino ang nagbigay sa kanya."[29]

But when he took the witness stand on July 23, 1975 or six years later, he declared that on that very morning of February 22, 1969, he learned from Pipe, when the latter was in the act of delivering the bread to the children, that the source of the bread was the defendant Lucila Valero.[30]

When confronted during the cross-examination with the previous affidavit (Exhibit "1-d"), Ceferino Velasco admitted that he made the answers in the affidavit.

"Q. You also stated that Alfonsito, by means of sign, told you that the bread came from his sister, Lucila, the accused in this case?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Let me now read to you portion of Exh. "1":

"T - Nalalaman ba ninyo kung mayroong nagbigay kay Pipe ng tinapay na ibinigay sa inyong anak? S-Ang nalalaman ko lamang po ay sa kanila siya galing. Hindi ko po alam kung sino ang nagbigay sa kanya". Do you remember having given that answer?

A. Yes, sir.

Q. You affirm that answer under your present oath?

A. Yes, sir."[31]

This answer prompted the Court to remark: "There seems to be inconsistency".[32] We may add that the in-consistency is on the very fact in issue, namely, the guilty participation of Lucila Valero.

When further repeatedly asked by the defense counsel why Ceferino did not state in his affidavit (Exh. 1-d) that he learned that Lucila was the source of the poisoned bread, he gave irresponsive and evasive answers.[33]

When a witness makes two sworn statements and these two statements incur in the gravest contradictions, the Court cannot accept either statements as proof.[34]

A witness who changes his name and state-ments, like a Chameleon changes color, does not inspire confidence.[35]

Obviously, Ceferino Velasco is a lying witness. If Ceferino Velasco really learned from Pipe that Lucila Valero poisoned his three children, he might have become violent. Surprisingly, he kept quiet. He did not confront Lucila Valero.[36]

The reason is that the first suspicion of Ceferino Velasco when his three children were still suffering from the

effects of the poison was that his children were "nausog" (victim of witchcraft). Thus, testified Onofre Adriano, a 73-year old relative of Ceferino Velasco:

"Q. On February 22, 1969 at around 9:00 o'clock in the morning, do you remember having seen Mr. Ceferino Velasco?

A. I was fetched at home, sir.

Q. Who fetched you in your house?

A. Ceferino Velasco, sir.

Q. Why did he fetch you in your house?

A. Because according to him, one of his children is sick and might have been "nausog".

Q. Why did he fetch you for that purpose?

A. I have a knowledge in the curing of "nausog", sir.[37]

Demetria Manalastas, mother of the victims, also testified:

"Q. While you were at the market place of Baliuag, what happened?

A. A son of mine came to call me, sir.

Q. What is the name of your son?

A. Francisco Velasco, sir.

Q. Why did Francisco fetch you?

A. He said that the children were "naosog", sir."[38]

Aside from the weakness of the evidence for the prosecution, there are other considerations which negate the guilt of the defendant.

There was no motive for Pipe and Lucila Valero to poison the three children. Both Pipe and Lucila Valero loved the children. Ceferino Velasco admitted that even when Pipe was only a small boy, the latter frequented his house to visit his children.[39] When the children were dying because of the poison, Pipe alternately fanned Michael and Annabel.

The prosecution, however, claims that the motive of the poisoning was the quarrel in the morning of February 21, 1969 between Demetria Manalastas, mother of the victims, and the defendant Lucila Valero. The cause of the quarrel was the interference of the defendant to protect the children from the scolding and maltreatment of their own mother. The interference was resented by Manalastas prompting her to say to the defendant "Don't interfere in the matter because I am scolding these children of mine." [40] The defendant is not a relative of the Velasco children. Her intervention in their behalf only shows her affectionate concern for them. The defendant quarrelled with Demetria Manalastas, not with the Velasco children. There is no motive whatsoever for the defendant to poison the children. Even Ceferino Velasco, father of the victims, stated that the cause of the quarrel was "Wala pong kabagay-bagay" meaning, "very trivial". [41] The quarrel was not a sufficient cause to commit a heinous crime.

This leaves Us speculating as to the source of the poisoned bread. Rodolfo Quilang stated that he saw the defendant give Pipe "something wrapped in a piece of paper." According to Ceferino Velasco in his Affidavit of February 25, 1969, Pipe gave to his children "isa pong pandesal". [42] He practically reiterated this statement

during his testi-mony on July 23, 1975 when he described what Pipe allegedly brought as "just one piece of wrapped bread".[43]

But when the police investigated the premises of the house of Ceferino Velasco in the morning of February 22, 1969, they found not only one pandesal but "several sliced pan" scattered in the sala, near the balcony, and under the balcony.[44] According to the defendant, in her testi-mony not rebutted by the prosecution, Ceferino Velasco, who as her tenant, dipped sliced pieces of bread in endrin, dried them up and used them as bait in his barn. As a matter of fact, at 6:00 o'clock in the morning of February 22, 1969, Ceferino Velasco threw into a nearby river a long string of poisoned rats. Three puppies died of poison-ing under the balcony. The rats, the dogs, or maybe even his minor children must have found the poisoned slices of bread somewhere in the barn or in the house, scattered them, and the children, not knowing the danger of the poison, ate them.

The thought that he might have poisoned his own children must have caused Ceferino Velasco some kind of trauma. So galling to a father is the thought that he, himself, might have caused the death of his two children and the near death of a third child, albeit unintentionally, that his natural reaction is to escape from it by throwing the blame to someone else not only to appease his own conscience but also to avoid embarrassment before his relatives, friends and neighbors.

The tragic poisoning of the three children is un-fortunate. The tragedy was compounded when the trial Court imposed the death penalty on the accused although the evi-dence against her does not justify a conviction. In spite of the self-contradictions of Rodolfo Quilang on very material points noticed by the trial Judge, himself, Quilang's obvious tendency to prevaricate, and the fact that he is what the appellant's counsel calls an "eleventh-hour witness", which is true, and in spite of the incompetence of the testimonies of Federico Jaime and Ceferino Velasco whose testimonies are hearsay evidence, and the practical impossibility of interpreting correctly the sign language of Pipe, the trial Judge readily accepted their testimonies as basis for im-posing the death penalty in gross violation of the hearsay rule and the constitutional right of the accused to meet the witness face to face (in the instant case, the deaf-mute, Pipe), and to cross-examine Pipe in order to determine his ability to communicate with the outside world.

Realizing that there is completely no motive for the defendant to commit the heinous crime, the trial Judge conjured up something as the probable cause that might have impelled the defendant to commit the crime. The conjecture of the Judge is stated, thus:

"There is something disquieting about those seemingly unfading smiles on the face of the accused; with her sharp, penetrating look, her unsolicited smiles are clues to her real personality; they forebode some out-of--the ordinary dispositions in the inner recesses of her mind; perhaps, only a trained psychiatrist or an experienced psychologist could fathom or decipher the meaning of this characteristic of the accused; it is un-fortunate that the prosecution and the defense have chosen not to delve into the personality of the accused; however, because of these queer manifestations on the facial expressions of the accused, could she have intended to produce the gravity of her felonious act; had she a fore-knowledge that the poisons used to kill rats or insects would also cause death to the children. Was her intention merely to cause some malady or discomfort to the children to shout and vent her hatred on the mother of the children. These are some questions that find no definite answer from the records of these cases; these questions notwithstanding, the court strongly feels that it is not entirely improbable for the accused to possess a violent or cruel disposition x x x".[45]

In effect, motive was not necessary to compel the defendant to commit the crime because according to the observation of the Judge, she was suffering from some kind of psychiatric abnormality or mental disorder that can make her violent.

It is most unfair for the trial Judge to unexpected-ly spring the aforementioned observation in his decision without

having mentioned it in the course of the trial. Such a procedure is unfair to the accused, for she is thereby deprived of her chance to either deny or affirm the truth of such a very material finding which has important bearing in the judgment. This procedure of the trial Judge practically denies the accused the right to due process.

The surprising finding of the trial Judge goes far beyond mere observation on the manner a witness testified, which admittedly may be considered subjectively by the Judge in evaluating the credibility of the witness. The surprising finding of the Judge relates not only to the credibility of a witness but to the sanity of the defendant. Its aim is not only to weigh the testimony of the witness but to establish a motive for the crime charged.

WHEREFORE, finding that the prosecution has not established the guilt of the defendant, We hereby reverse the decision of the trial Court and instead render judgment of acquittal without cost.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, and Escolin, JJ., concur.
Aquino, J., see dissent.

[1] tsn, pp. 13-14, October 27, 1976.

[2] tsn, p. 5, September 15, 1975.

[3] tsn, p. 6, id.

[4] tsn, p. 17, Sept. 15, 1975.

[5] tsn, pp. 18-19, Id.

[6] tsn, p. 19 Id.

[7] tsn, p. 22, id.

[8] tsn, p. 23, id.

[9] tsn, p. 24, Id.

[10] tsn, pp. 24-25, Id.

[11] tsn, pp. 12-13, id.

[12] tsn, p. 13, id.

[13] Exhibit "2", pp. 22-25, Record of the Murder case

[14] People vs. Bulawin, 29 SCRA 710, 719.

[15] tsn, pp. 6-8, September 2, 1975.

[16] tsn, pp. 9-10, July 23, 1975.

[17] Rule 130, Section 30, Rules of Court.

[18] Rule 130, Section 25, Rules of Court.

[19] tsn, p. 23, July 23, 1975.

- [20] Savory Luncheonette vs. Lakas ng Mangagawang Pilipino, et al. 62 SCRA 258.
- [21] People vs. Cabral 58 Phil. 946 (unpublished) cited in Francisco's Evidence, 1973 ed., p. 451; also in Moran's Evidence, 1980 ed., p. 285; 3 Jones on Evidence, 2nd ed., p. 743.
- [22] See Memorandum of defendants, p. 74, Records of frustrated murder case.
- [23] Order of the Municipal Court, p. 75 Record of Murder case.
- [24] tsn, p. 39, July 23, 1975.
- [25] tsn, pp. 15-16 Sept. 2, 1975.
- [26] tsn, p. 18, id.
- [27] tsn, p. 3, id.
- [28] tsn, pp. 36-37, July 23, 1975.
- [29] Exh. "1-d", p. 21, Record of Murder case.
- [30] tsn, pp. 3,6, 9 to 10, Id.
- [31] tsn, pp. 23-24, id.
- [32] tsn, p. 24, id.
- [33] tsn, pp. 24-25, id.
- [34] Mondragon vs. Court of Appeals, 61 SCRA 511.
- [35] People vs. Go Lee, 85 Phil. 718.
- [36] tsn, pp. 36-37, July 23, 1975.
- [37] tsn, p. 2, June 10, 1976.
- [38] tsn, p. 13, Oct. 10, 1975.
- [39] tsn, p. 7, July 23, 1975.
- [40] tsn, p. 11, October 10, 1975.
- [41] See Exh. "1", Sworn Statement of Ceferino Velasco, p. 8, Record of Murder case.
- [42] Exh. "1-f", p. 7, id.
- [43] tsn, p. 22, July 23, 1975.
- [44] tsn, pp. 3-4, November 17, 1975.
- [45] p. 29A, Appellant's Brief.

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DISSENTING OPINION

AQUINO, J.:

I dissent. The lower court's judgment of conviction was based on the following facts proven by the prosecution:

The spouses Ceferino Velasco and Demetria Manalastas resided in the poblacion of San Rafael, Bulacan. Across the street from their house was the house of their neighbor, Lucila Valero, whom they had known for a long time. On February 21, 1969, Lucila and Demetria had a heated altercation when Demetria scolded and maltreated her children and Lucila interfered. Demetria resented the interference of Lucila. A policeman pacified the two women.

In the morning of the following day, February 22, Demetria went to the public market where she worked as a vendor. Her husband Velasco went to the farm. Left in their house were their five small children named Benilda, Concepcion, Imelda, Annabelle and Michael.

At about seven o'clock that morning, Rodolfo Quilang was at the gate of the house of the Velasco spouses because he wanted to collect five pesos as the price of two chickens which he had sold to Demetria. While waiting for her, Quilang saw Lucila and her deaf-mute brother Alfonsito in the balcony of their house.

Quilang saw Lucila giving Alfonsito something wrapped in a piece of paper. Alfonsito crossed the street, went up the house of the Velasco spouses and proceeded to the balcony where the Velasco children were playing. Quilang noticed that Alfonsito gave to the children pieces of bread which had been wrapped in a piece of paper.

Quilang left the gate and while on his way to the house of Demetria's sister, he met Velasco coming from the farm. Velasco went to the corral and fed his carabao. He saw his children playing in the balcony. He also saw Alfonsito offering a piece of bread, first, to Concepcion, 7, who refused it because she had already eaten her breakfast. Then, Alfonsito offered it to Imelda who accepted it, tasted it and then dropped it on the floor.

Annabelle, about twenty months old, picked it up, divided it and gave a part of the bread to the baby, Michael, nine months old. The two ate the pieces of bread. After eating the bread, Benilda noticed that Annabelle and Michael turned pale. Their mouths frothed or had bubbles. Benilda instinctively felt that something was wrong. She called her father who was at the foot of the stairs.

Velasco went up and directed Benilda to take Annabelle to the hospital. Velasco panicked and cried for help. Several persons came to his house. One of them, Federico Jaime, on learning the cause of the Velasco children's plight, confronted Alfonsito and, by means of sign language, Jaime learned that the bread given by Alfonsito to the children came from Lucila who at that time was in the balcony of her house witnessing the commotion in the house of Velasco.

Annabelle was not admitted to the hospital because medical treatment would have been futile. She was brought home almost dead and placed beside the baby Michael who was already dead.

Imelda was brought to the clinic of Doctor Artemio Marcelo who was able to arrest the toxic effects of the poison. He treated her for about three months. Luckily, she survived. Doctor Marcelo testified that she would have died of toxemia had not timely medical treatment been administered to her.

The investigation revealed that the same piece of bread which Alfonsito had given to the children was eaten by some dogs which also died of poisoning.

Doctor Ernesto Brion, a medico-legal officer, and Andres Santiago, a chemist, both of the National Bureau of Investigation, examined the internal organs of Michael and Annabelle and found that they were poisoned as a

result of their having eaten pieces of bread containing endrine, an insecticide.

Lucila denied any complicity in the poisoning of the Velasco children. She declared that she and her brother had no motive for killing the children who were very dear to them. Lucila said that Demetria was mad at her (Lucila) because Lucila charged interest on the money which Demetria had borrowed from Lucila's sister-in-law.

She testified that Velasco, who was her tenant on a parcel of land used as a vegetable garden, used endrine on bread which was then dried and later placed as a bait in the barn and that several rats were killed by means of the bread dipped in the endrine solution.

The trial judge noted that Lucila had a "sharp, pene-trating look" and on the witness stand was always grinning (she had "unfading smiles"). The trial judge found that there was no doubt that Lucila gave the poisoned bread to her deaf-mute brother who had no criminal intent and who did not know that the bread was poisoned. Alfonsito exhibited some compassion for the children after he noticed that something had happened to them. On the other hand, Lucila did not make any effort to help the victims.

The trial court did not err in concluding that Lucila's guilt was proven beyond reasonable doubt.

The trial court and the Solicitor General regarded the two murders and the frustrated murder as a complex crime resulting from the single act of Lucila in giving the poisoned bread to Alfonsito with the instruction (made in sign language) that the same be fed to the Velasco children. Hence, the death penalty was imposed.

The single criminal impulse of Lucila to poison the Velasco children gave rise to a complex offense (See *People vs. Peñas*, 66 Phil. 682; *People vs. Pincalin*, L-38755, January 22, 1981, 102 SCRA 136).

I vote for the imposition of reclusion perpetua on the accused, Lucila Valero. The trial court did not award any indemnity. Lucila should be adjudged liable to pay an indemnity of P24,000 to the Velasco spouses for the death of Annabelle and Michael and to pay an indemnity of P10,000 to Imelda Velasco.

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