

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE. VS. SALVADOR FRANCISCO, DEFENDANT-APPELANT.*G.R. No. L-4196. November 29, 1952*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ea7d3adefea9/>**PADILLA, J.:**

On 14 June 1950, between 6 and 6:30 p.m., Juanito Pelayo brought Maria Tabor, his wife, and daughter, one year and eight months old, to the house of Salvador Francisco, situated in barrio Camanci Norte, municipality of Numancia, province of Capi, to have the daughter who was sick massaged by Maria Tuburan the wife of Salvador Francisco. While in the house, at about 9:30 pm., three persons—Graciano Tejada armed with carbine, Juan Tesora and Julito Molo armed with a revolver—arrived at the house and Graciano told Salvador Francisco to come down. The latter came down and also told Juanito Pelayo and Graciano Tejada, nephew of Salvador Francisco, were laborers in the fishpond, of Arcadio Constantino. Graciano: Tejada, Juan Tesora and Julito Molo asked Juanito Pelayo to go along with them to rob the house of Arcadio Constantino located 50 meters away from that of Salvador Francisco. As Juanito Pelayo refused to join them Juan Tesora struck him with the butt of his revolver on the back so Salvador Francisco told him to go with them in order not to be hurt. The five repaired to the house of Arcadio Constantino, the three carrying the firearms already mentioned and Salvador Francisco carrying a bolo (Exhibit C) and a small spear known in the locality as bidio, used for catching fish (Exhibit B). Upon arriving at the place of Arcadio Constantino, Juan Tesora called and risked the owner of the house for food to buy, Januaria Magnabijon, the wife of Arcadio Constantino, answered that they had no more food. He asked for water and Juanraia told him that they had no more water. Then he asked for match to light his cigarette. Januaria opened the window and lighted a match. Thereupon, Juan Tesora pointed his revolver at Januaria and told her to open the door. She did as she was told. Juan Tesora said to his companions to follow him. He went up the house followed by Julito Molo. Graciano Tejada stood with his carbine half way between, the foot and the head of the stairway to watch, while Juanito Pelayo and Salvador Francisco stationed themselves under the kitchen and were told by Graciano Tejada to watch for might jump out of the house. In the meantime Julito Molo went into a room and took from the trunk the sum of P1, 550, P50 kept in a chest and P1, 500 in an envelope. While this was going on Arcadio Constantino jumped out of the kitchen door in an attempt to escape but Salvador Francisco ran after him, overtook, held and brought him to the beach, 270 meters from the house, followed by Juanito Pelayo and Graciano Tejada. Not long after Juan Tesora and Julito Molo arrived at the spot which was in a fishpond on the beach and Juan Tesora told Salvador Francisco to release Arcadio Constantino. After his release the latter faced Juan Tesora who fired at him twice. Arcadio Constantino fell and after his' fall two more shots were fired in the air, Salvador Francisco thrust his bidio (Exhibit B) into the fallen1 body of Arcadio Constantino twice saying that he was avenged and placed the bolo and bidio in the hands of the fallen man. He was resentful because Arcadio Constantino had suspected and imputed, to him the loss of a canoe (banca) and a number of lumber boards belonging to Constantino. Juanito Pelayo returned to the house of Salvador Francisco and stayed there for the night and one hour later Salvador Francisco returned. The following morning Juanito Pelayo, his wife and daughter left the house. The day after the incident Januaria Magnabijon told her son Josue Constantino and

Rodrigo Masagnay, a house boy, to look for her husband. They found him dead on the beach. Januaria went to the place and found her husband dead. She told her children to report the incident to the authorities who investigated it and found on the seashore the dead body of Arcadio Constantino and brought it to the provincial hospital for autopsy. The autopsy report of Dr. Crispulo Cruz, reiterated by him on the stand, recites that he found two gunshot wounds through and through one with entrance on the right shoulder and exit on the right scapular region with fracture at the neck of the humerus and another entering between the second and third lumbar vertebrae perforating the small intestines and causing internal hemorrhage which, according to him, caused the death of Arcadio Constantino. He also found a lacerated wound on the right ear, contusions on the right eye and right forehead, lacerated wound semi-circular in shape at the lower left lower lip and the first and second left lower molar removed (Exhibit A).

Charged with robbery in band with homicide Salvador Francisco was tried, found guilty and sentenced to suffer reclusion perpetua, to the accessories of the law, to indemnify the heirs of the deceased in the sum of P2,000, to return or pay to the offended parties the sum of P1,550 and to pay the costs. He appeals.

The fact that Arcadio Constantino was found dead on the beach in barrio Camanci Norte, municipality of Numancia, province of Capiz, in the morning of 15 June 1950 with gunshots and lacerated wounds and contusions as found in the autopsy performed, is not disputed. However, Salvador Francisco claims that he was sick on 12, 13, and 14 and 15 June 1950, was in his house and did not go out during those days. His testimony is corroborated by his wife Maria Tuburan and Restituto Magpusao, a councilor of the place. Counsel argues that Juanito Pelayo was not among the robbers who entered the deceased's house in the night of 14 in the night of 14 June 1950, because if he was, he would not have returned to the house of Salvador Francisco and he would have informed the authorities of the robbery and killing of Arcadio Constantino. He also contends Juanita Magnabijon and Rodrigo Masagnay, the wife and house boy of the deceased, could not have recognized Salvador Francisco because the night was dark.

Granting that he was stricken with fever and headache from 12 June until the night of the commission of the crime, his sickness was not sufficient to prevent him from joining the band, Restituto Magpusao was his partner or associate or helper in catching fish in their fishponds. The fact that Juanito Pelayo returned to the house of Salvador Francisco and failed to report to the authorities does not mean that he was not with the malefactors on the night of 14 June 1950, because his return to the house where he had left his wife and daughter was logical and natural. Besides, he was told by Salvador Francisco to go back. And if he did not leave the house and report the killing, it was because he was afraid of the malefactors; and if he did not report the robbery in the house of Arcadio Constantino, it was because he did not see it. He was under the kitchen of the house.

As to the identification of the persons who came to the house, among whom was the appellant, by Januaria Magnabijon and Rodrigo Masagnay the wife and house boy of the deceased, there is nothing incredible in the fact that they recognized them. A match lighted was sufficient for a known person to be recognized by the wife and house boy of the deceased.

The evidence establishes conspiracy and for that reasons each and everyone is responsible for the acts of the other confederates. For lack of sufficient number of votes the death penalty recommended by the Solicitor General cannot be imposed.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Padilla Tuason, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur. Feria, and Reyes, JJ., took no part.

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