

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PRUDENCIO DAMIAR, CRISPULO DAMIAR, PORFERIO DAMIAR,
BAILON MONROY, CECILIO ROSARIO, RODRIGO BONCALES, AND
LEONCIO LICANDA,...**

G.R. No. L-27178. February 20, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Information for the crime of Murder was filed against Prudencio Damiar, Crispulo Damiar, Porferio Damiar, Bailon Monroy, Cecilio Rosario, Rodrigo Boncales, Leoncio Licanda and two unidentified persons designated as John Doe and Richard Doe before the then Court of First Instance of Samar, docketed as Criminal Case No. C-1106. At the arraignment, all the accused pleaded not guilty, except Prudencio Damiar who claimed the mitigating circumstances of voluntary surrender, provocation on the part of the deceased, passion and obfuscation.

After trial, the lower court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, accused Prudencio Damiar, Porferio Damiar, Bailon Monroy and Leoncio Licanda are hereby found guilty beyond reasonable doubt of the crime of murder and sentences them as follows:

"(a) with respect to Porferio Damiar, Bailon Monroy and Leoncio Licanda there being proven the aggravating circumstances of taking advantage of superior strength and by a band, without any mitigating circumstance to offset the same, to DEATH;

"(b) with respect to accused Prudencio Damiar there being no mitigating or aggravating circumstances to consider after offsetting the same, to RECLUSION PERPETUA; and

"(c) that all said accused Porferio Damiar, Bailon Monroy, Leoncio Licanda and Prudencio Damiar to jointly and severally indemnify 'the heirs of the deceased Alvaro Palacio the sum of P6,000.00 and to pay the costs.

"Accused Crispulo Damiar alias Crispin Damiar, Cecilio Rosario and Rodrigo Boncales are hereby acquitted of the Crime charged for failure of the prosecution to prove their guilt beyond reasonable doubt, with costs de oficio.

"The release is hereby ordered unless they are held for another offense." (pp. 91-92, Rollo)

On October 14, 1980, this Court issued a resolution dismissing the case against Porferio Damiar with respect to his criminal liability on the ground that he died on July 27, 1977 "as confirmed by the death certificate Submitted by the Director of Prisons, through the Solicitor General."

The facts, as established by the evidence for the prosecution, are as follows: On August 9, 1964, Alvaro Palacio with his parents, went to the island of Pangaronon, within the jurisdiction of the municipality of Capul, Samar, to see their coconut plantation and to tell their tenants, among whom were Blas de la Vega and Emilio Balat, to make copra.

On August 14, 1964, about 3:00 in the afternoon, Alvaro Palacio, Blas de la Vega and a Moro fisherman left for the farm of Blas to get vegetables and sweet potatoes. While walking along a trail with the Moro leading the way, followed by Alvaro and Blas, they heard several gun blasts and immediately the Moro ran towards the house of Martin Palacio. Alvaro fell Blas de la Vega, who was about eight meters behind, dashed towards the bushes on the right side of the trail and there lay prone on the ground. Looking up, Blas saw nine (9) persons emerge from the tall grasses but he recognized seven (7) only, namely: accused Bailon Monroy, Porferio Damiar, Rodrigo Boncales, Leoncio Licanda, Prudencio Damiar, Cecilio Rosario and Crispulo Damiar. Thereafter, he saw Bailon Monroy shoot Alvaro Palacio who was already lying on his side, with a .45 caliber pistol. This was followed by Leoncio Licanda who fired at close range, about a yard away from the victim. Porferio Damiar then held Alvaro by the hair and, with a bolo, made a thrust at the body of the latter. The others: Crispulo Damiar, Cecilio Rosario, Rodrigo Boncales and Prudencio Damiar were each carrying a carbine, and they were around, about a meter away, during the shooting and stabbing incident.

After the group had left, Blas went out of his hiding place and ran to the house of Emilio Balat and told the latter everything he had seen. Emilio went to fetch Philippine Constabulary soldiers. In an hour he was back with two (2) PC officers who questioned Blas about the incident. They then went to the scene of the crime, placed the deceased Alvaro Palacio on a cot and carried him to the house of Martin Palacio in Panganoron.

Post-mortem examination of the deceased, Alvaro Palacio, was conducted by Dr. Manuel Buñag, Municipal Health Officer of San Antonio, Samar and his findings were:

"1. gunshot wound at the upper part of the neck the bullet entering on the left lateral side below the left ear, 1 cm. in diameter and exiting at the right side below the right ear. (p. 11, tsn., Sept. 5, 1966 Hearing)

"2. gunshot wound caused by the bullet entering the left lateral side of the thorax, below the left axilla, and behind the midaxillary line. The bullet traversed the thorax and lodged beneath the skin on the opposite side of the body. The bullet was extracted; wounds 1 and 2 were both 1 cm. in diameter (p. 13, tsn., Id).

"3. a pair of gunshot wounds on the anterior surface of the right arm below the right shoulder, the upper wound measuring 3 1/2 cms. and the lower one measuring 2 1/2 cms. (marked as 'e' and 'f', respectively in Exh.s. A-1). The guns could have been fired at close range because the wounds were black showing signs of gunpowder burns (pp. 16, 27, tsn., Id.)

"4. a gunshot wound on the same arm, 4-1/2 cms. below the two wounds, measuring 2-1/2 cms. and penetrating to the opposite side of the arm. The exit wound measured 3 cms. with powder burns on the anterior parts of the arm near the bullet's point of entrance (p. 18, tsn., Id.).

"5. gunshot wound at the back below the right shoulder, measuring 2-1/2 cms. in diameter, penetrating the thoracic cavity, with no visible point of exit for the bullet (p. 19, tsn., Id.)

"6. an incised, wound located at the left side of the chest, near the base of the neck, below the left clavicle, measuring 2-1/2 cms. penetrating the thorax, possibly damaging the left lobe of the lung. This wound was caused by a sharp pointed instrument, possibly by a small bolo (pp. 20-21, tsn., Id.).

According to Dr. Buñag, wounds 1, 2, 5 and 6 were fatal and possibly three kinds of weapons were used, namely: a small caliber weapon, a big caliber weapon and a sharp bladed instrument. Death was due to internal hemorrhage.

Alvaro Palacio, at the time of his death, was 28 years old, a bachelor and a second year commerce student.

Appellant Leoncio Licanda testified that about 3:00 in the afternoon of August 14, 1964 he was on his way to his farm in Panganoron when he met Alvaro Palacio, Blas de la Vega and a Moro coming from an anchorage, called

Looc, and he heard Blas said: "Go to your house at Sitio Katorse." Alvaro Palacio and the Moro left for Sitio Katorse, while he and Blas went up the hill to his (Licanda) coconut plantation. Few minutes after he had arrived in his farm, the Moro came and was asking for Blas. He told him that Blas proceeded to the upper hill. Upon observing that the Moro was pale, he inquired what had happened and he was told that Alvaro was shot by someone he did not know because he did not see. He certainly did not have anything to do with the slaying of Alvaro Palacio and suspected that he was implicated because Blas could be interested in the land he was working on.

Accused-appellant Bailon Monroy declared that he is the son-in-law of Bartolome Solarta who has a land case with Martin Palacio, father of Alvaro. He was in Tarnate and Sila, with Cpl. Arsolon on August 14, 1964. He denied having anything to do with the death of Alvaro Palacio.

Appellant Prudencio Damiar admitted having shot to death and stabbed the deceased with a bolo because the latter has been pestering him. When Alvaro and the Moro arrived in his house at Sitio Katorse on August 14, 1964, Alvaro took the eggs from the nest and the rooster which was in the yard and, thereafter, handed them to the Moro. He tried to retrieve them but the deceased held his left hand and pushed him. Alvaro then pulled his .45 caliber and shot at a rooster, after which the two left. He got his carbine, followed and hid behind the banana plants. When the deceased and the Moro were approaching, he fired at Alvaro, two or three times. The deceased turned around and, at that juncture, he unsheathed his bolo, approached his victim and held the head. Upon seeing that his eyes were still moving, he made a thrust on the right side of the clavicle. He then took the .45 caliber pistol from the deceased and then shot him with it. Thereafter, he went to the beach, rode in a banca for Tarnate to surrender, as he did to the Chief of Police. He was alone when he killed Alvaro Palacio.

Commenting on the evidence presented by both parties, His Honor, the trial judge said:

"A careful analysis of the evidence presented for the prosecution and the defense, shows that there is no question to the fact that the deceased Alvaro Palacio died for having been shot and stabbed by a bladed instrument in Sitio Katorse wherein the nearest house is only around 75 meters away. The only thing to be resolved is whether the deceased was killed by nine persons, seven of whom are the accused herein as contended by the prosecution or only by accused Prudencio Damiar as maintained by the defense. This Court believes and so holds that the deceased, while walking in Sitio Katorse at the very place where the nearest house is only around 75 meters away, was ambushed when he suddenly and without any warning received a barrage of gunfire and when lying prostrate on the ground was fired upon by Bailon Monroy and Leoncio Licanda with a .45 caliber pistol one after the other and that there-after Porferio Damiar stabbed him. The testimony of Blas de la Vega on the ambush and the subsequent firing by Monroy and Licanda and the stabbing by Porferio Damiar is worthy of belief especially when we consider his demeanor on the witness stand and the nature of his testimony. Said testimony even became clearer and convincing during the cross-examination especially when he was required to demonstrate his position while hiding behind the bushes and how each of the accused, Monroy, Licanda and Porferio Damiar shot and stabbed the deceased. It would be impossible to conceive how Blas de la Vega, an illiterate, could testify in the manner he did despite the rigid cross-examination had he not been really at the scene of the crime. If his testimony is fabricated it would be easier for him to impute on all the seven accused certain criminal acts and not only limit it to three. The fact, however, that the other three accused, namely: Rodrigo Boncales, Cecilio Rosario and Crispulo Damiar alias Crispin Damiar were at the scene of the crime will not be enough to make them liable. It is a well known rule that without proof of conspiracy, mere passive presence at the scene of the crime does not constitute complicity (People vs. Silvestre, 56 Phil. 53; People vs. Samano, et al., 77 Phil. 136). There was no showing in the instant case that the said four accused, one way or another, conspired for the killing.

"On the other hand, the defense of Porferio Damiar, Bailon Monroy and Leoncio Licanda like all the other accused is mere alibi and their presence is not so far away from the scene of the crime as Porferio Damiar was

in the same island of Panganoron where the deceased was ambushed or in a farm around 400 meters away where the deceased was killed; that Bailon Monroy was in the island of Tarnate which is only around 1 1/2 miles away from the island of Panganoron; and Leoncio Licanda was also in the same island of Panganoron when the incident happened.

"The Court has ruled every now and then that the defense of alibi, one of the weakest defenses oftenly resorted to by the accused, cannot prosper where the accused had been positively identified by the offended party and witnesses (People vs. Gecole, et al., CA - 43, O.G. 3772). This doctrine has been repeatedly reiterated by the Supreme Court in People vs. Arpon, G.R. No. L-9044, prom. January 29, 1957; People vs. Umali et al., 54 O.G. 347, wherein it was said that the defense of alibi is considered too weak to overcome the positive, clear and satisfactory evidence of the prosecution pointing to the accused as the planners and authors through participation of the death of the deceased. Moreover, to establish an alibi, the accused not only show that he was present at some other place about the time the crime was committed but also that he was at another place for so long a time that it was physically impossible for him to have been at the place where the crime was committed either before or after the time he was at such other place. (People vs. Pili, 51 Phil. 965; People vs. Resabal, 50 Phil. 780). It will be noted that right after the identification of the seven (7) accused and the criminal acts of the three of them namely: Bailon Monroy, Leoncio Licanda and Porferio Damiar, Blas de la Vega immediately told the incident to Emilio Balat right on that same day and this spontaneity of identification and narration of the criminal act immediately after the commission of the crime and the lack of strong motive on the part of said De la Vega to implicate the seven (7) accused especially accused Porferio Damiar, Bailon Monroy and Leoncio Licanda are guarantees of veracity. (People vs. Pabilar, G.R. L-7012, prom. November 12, 1956). His sincerity is further proven when he did not impute any criminal act on the part of the other four accused, namely: Cispulo Damiar, Cecilio Rosario, Rodrigo Boncales and Prudencio Damiar, but only their presence. It is true that witness Blas de la Vega gave a statement (Exh. '1-PD', '1-ML', '1-BD', '1-R') during the preliminary investigation before Judge Victor Cabili, Municipal Judge of Capul, Samar, wherein there appear statements which the defense claimed to be contradictory to what he stated in open court. But said contradictions are not on material points and do not affect whatsoever the substance of the testimony. At any rate, De la Vega, who is unschooled and do not even know how to read and write explained that he cannot understand why the discrepancies appeared therein. In accordance with judicial experience, affidavits are, as a general rule, unreliable evidence and therefore any discrepancy that it may have if satisfactorily explained does not discredit the witness. (People vs. Timbang, 74 Phil. 295; U.S. vs. Lazaro, 34 Phil. 871). An eminent author also said that ex-parte affidavits are generally incomplete, often for want of suggestion and inquiries (2 Moore on Facts, Sec. 938).

"The Court has also found that the killing is accompanied by treachery, taking advantage of superior strength and by a band.

"There is treachery when the deceased while walking in the trail, was suddenly and without any warning fired upon and stabbed by the accused who were then hidden (People vs. Dosal, G.R. Nos. L-4214 and L-4316, prom. April 17, 1953) thus employing method which insured the commission of the crime and at the same time eliminate (or diminish) the risk to their own persons from the defense that the deceased might offer. Abuse of superior strength is shown by the fact that there are four armed accused who helped one another while deceased was lying prostrate on the ground and the four accused still fired at and stabbed the deceased (U.S. vs. Tandoc, 40 Phil. 954), abusing therefore their superior strength not only as to their number but also to their arms. Likewise, the crime was committed by a band as there were more than three armed malefactors who acted together in the commission of the offense (People vs. Laoto, et al. 52 Phil. 44). The Court cannot admit uninhabited place as an aggravating circumstance because there was no clear evidence that the accused purposely sought the solitude of the place in order to better attain their purpose. Moreover, it is a place where the nearest house is around 75 meters away where help therefore is not impossible to come. The prosecution also failed to prove scoffing at the corpse of the victim and evident premeditation.

"It is clear therefore that the crime of murder was committed qualified by treachery with the aggravating circumstances of taking advantage of superior strength and by a band.

"On the other hand, the Court considers the mitigating circumstances of plea of guilty and voluntary surrender in favor of the accused Prudencio Damiar only but which mitigating circumstances are offset by the aggravating circumstances of taking advantage of superior strength and by a band. The Court can not find in favor of the other accused any mitigating circumstance." (pp. 192-197, Record).

Appellants claimed that the trial court erred (1) in convicting Porferio Damiar, Bailon Monroy and Leoncio Licanda of the crime of murder, and in sentencing them to suffer the horrible penalty of death giving full faith and credit to the testimonies of Blas de la Vega and Emilio Balat, (2) in not finding the testimonies of Blas de la Vega and Emilio Balat fabricated, utterly biased, highly incredible and improbable and replete with inconsistencies on material points, and unworthy of credence, (3) not finding the evidence of the said accused-appellants more worthy of credence, and in not acquitting them, (4) in appreciating the aggravating circumstances of "taking advantage of superior strength" and "by a band" against appellant Prudencio Damiar who voluntarily surrendered and owned full responsibility of the killing of the deceased, (5) in not appreciating the mitigating circumstances of "passion" and "obfuscation" in favor of appellant Prudencio Damiar, and (6) in sentencing appellant Prudencio Damiar to suffer the penalty of reclusion perpetua.

The first three assigned errors raise the question of credibility of witnesses - Blas de la Vega and Emilio Balat. Appellants point out that Blas could not have witnessed the incident because a person in his situation would have run as far away and as fast as he could, instead of lying prone for about 20 minutes and observing the minute details of the incident as they happened.

We are not in agreement with this view. Persons react differently to a given situation. Some would have really run away and be fired at by the assailants to do away with an eyewitness; others would do what Blas de la Vega did, to avoid detection and see what would transpire before him. Thereafter, it was only natural to inform Emilio Balat what he saw because the deceased had been staying at the latter's house.

However, We take note of the fact that while the incident happened on August 14, 1964, it was on September 10, 1964, almost a month after, when Blas de la Vega executed an affidavit in question and answer form before the Municipal Judge of Capul, Samar and wherein he failed to state that Leoncio Licanda fired at the deceased. Hereunder is what he said in his affidavit, Exhibit "1-PD", "1-ML", "1-BD", "1-H."

"Q Do you know Alvaro Palacio?

A Yes sir, I know.

Q On August 14, 1964, where was Alvaro Palacio in the afternoon?

A In Panganoron Island Maragat, Capul, Samar.

Q Who was his companion?

A I, myself.

Q Why were you there, Alvaro and you?

A To inspect their coconut plantation (I mean that of Alvaro).

Q After your inspection where did you go?

A We went home.

Q By what means that you went home?

A By walking.

Q Were you able to go home that afternoon?

A No, sir.

Q Why?

A Because Alvaro Palacio was shot.

Q At the time that he was shot who was ahead of you?

A A moro man, next was Alvaro Palacio and then me.

Q How many shots you heard first?

A Successive gun fires.

Q What happened to Alvaro Palacio after you heard the successive gunfires?

A He fell feet down to the ground.

Q How about you what did you do?

A I ran away.

Q Why did you run?

A Because I was afraid.

Q To what direction did you go?

A I ran back to the direction of the place where we came from.

Q What did you do after that?

A I hid behind the agunoy grasses or bushes and coconut tree trunk.

Q While you hid yourself what did you do after that?

A When I faced toward the place where Alvaro Palacio was shot, I saw persons coming out from the bushes.

Q How many persons whom you saw coming out from the bushes?

A Nine (9).

Q Of the nine (9) how many of them you know?

A Seven (7).

Q Who are those seven (7) whom you know?

A Rodrigo Boncales, Cecilio Rosario, Crispulo Damiar, Prudencio Damiar, Leoncio Licanda, Bailon Monroy, Porferio Damiar.

Q When they came out from the bushes what did they do?

A Bailon Monroy was bringing short firearm and shot Alvaro Palacio three times or more while the latter was already feet down to the ground.

Q Toward what direction did Bailon Monroy fire or shot his firearm?

A Toward Alvaro Palacio who was then very near to him, while Alvaro Palacio was already on the ground feet down to the ground.

Q After that what happened?

A Porferio Damiar stabbed Alvaro Palacio only once.

Q When Bailon Monroy shot Alvaro Palacio and when Porferio Damiar stabbed Alvaro Palacio where were the other persons?

A They were there present.

Q Only Porferio Damiar and Bailon Monroy who were armed?

A They were all armed.

Q What are the arms of the other persons?

A Four (4) persons were carrying carbine.

Q Who were those with carbine?

A Crispulo Daviar, Rodrigo Boncales, Cecilio Rosario, Prudencio Damiar.

Q You said all of them are armed what are the arms of the others?

A Leoncio Licanda was armed with short firearm.

Q After that what did those persons do?

A They went toward the seashore.

Q What did they do in the shore?

A They embarked on a motor boat toward the direction of barrio Tarnate, Capul, Samar.

Q On the place or on the road where you passed by with a moro man and Alvaro Palacio, were there houses?

A None.

Q Before you heard the successive shots did you notice any other persons within the premises?

A No, sir.

Q Why did you not know of any other person?

A Because before the shooting of Alvaro Palacio, they did not come out yet from the bushes.

Q The road that you passed on with a moro, Alvaro Palacio and you, the same as the road where automobiles passed?

A No, sir. It is only a trail.

Q What did you do after those perpetrators left toward barrio Tarnate, Capul, Samar?

A I went to the house of Martin Palacio at Panganoron, then I notified his tenant, Emilio Balat and immediately Emilio Balat fetched the PC detachment at Maragat, Capul, Samar, and then Emilio Balat left for Dalupirit to notify Martin Palacio, father of Alvaro Palacio.

Q How long did you know these people whom you now mentioned?

A Long time already."

(pp. 7-8, Record)

It was during the trial of the case when De la Vega testified that Licanda shot the deceased with a .45 caliber pistol (p. 14, Appellee's Brief). His failure to state in said Affidavit the fact that Leoncio Licanda also fired at the deceased, and to declare during the preliminary investigation about Licanda's participation - a very essential detail in the solution of the crime - engenders a suspicion that Blas de la Vega was not candid and truthful in his testimony on this point. The omission on so important a matter has rendered the evidence for the prosecution insufficient to establish Licanda's guilty connection to the requisite of moral certainty. He falls in the same category as Crispulo Damiar, Cecilio Rosario and Rodrigo Boncales who were acquitted by the court a quo.

We agree with the appellants that the lower court should not have considered the aggravating circumstance of abuse of superior strength. This is absorbed in treachery. Likewise, the aggravating circumstance of in band was not established. There were only three who laid hands on the victim, namely: Bailon Monroy and Prudencio Damiar who each fired with their pistol, and Porferio Damiar who stabbed him. Thus, Prudencio Damiar is entitled to two mitigating circumstances of voluntary surrender and plea of guilty.

WHEREFORE, appellants Prudencio Damiar and Bailon Monroy are found guilty beyond reasonable doubt of the crime of murder, and

(a) Prudencio Damiar is hereby sentenced to an indeterminate penalty of from EIGHT (8) YEARS and TWENTY (20) DAYS of prison mayor, as minimum, to FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of reclusion temporal, as maximum; and

(b) Bailon Monroy is hereby sentenced to reclusion perpetua.

Both appellants are also sentenced to indemnify the heirs of the deceased Alvaro Palacio, jointly and severally, in the amount of P30,000.00. (People vs. de la Fuente, G.R. Nos. L-63251-52, Dec. 29, 1983)

On reasonable doubt, Leoncio Licanda is hereby ACQUITTED. SO ORDERED.

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

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