

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RAFAEL DAYAGANON, DEFENDANT AND APPELLANT.***G. R. No. L-689. June 09, 1948*

Ponente: HILADO, J.

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Convicted by the court a quo to reclusion perpetua (to be pardoned after undergoing 30 years imprisonment, unless considered unworthy of executive clemency), with all the accessories of the law, to indemnify the heirs of Aniceto Albiso, whom appellant was charged with having murdered, and to pay the costs, said appellant has brought this case on appeal, wherein, in a nutshell, the gravamen of the errors assigned is that the trial court erred in giving credence to the testimony of the state witnesses. In the opinion of this Court counsel for the defense has failed to demonstrate that the trial court, which saw and heard the witnesses for the prosecution and the defense testify, and observed their demeanor while testifying, committed an error in appreciating their relative credibility, or in giving weight to the evidence given by the former sufficient to convict. The record reveals beyond reasonable doubt the facts presently to be stated.

About nine o'clock at night, August 13, 1944, Aniceto Albiso, who was then in his house in Canmano, Municipality of Clarin, Province of Bohol, was called by an individual who allegedly had lost his way and requested to be guided by the deceased to the barrio road of Cambito-on. The deceased, acceding to the request, went down his house and led the unknown man. Behind them came appellant and one Pedro Alvarez. This last fact having been noticed by a daughter of the deceased, she informed her mother thereof. The mother, knowing that appellant was an enemy of the deceased (who from all appearances was ignorant of the fact that his said enemy was following him), followed her husband presumably to warn him accordingly. Before the wife could overtake her husband, who had gone already far ahead leading the unknown man, the report of a firearm was heard. Fausta Odtohan, the deceased's wife, thereupon returned to her house and moved her family to that of Maximo Albialde who, upon learning of the incident, went after Aniceto Albiso whom, however, he found already dead with a bullet wound on his back.

At around eight o'clock of that same night appellant had been seen at the junction of the provincial road and the trail leading to Cambito-on, at which spot he had been seen loading his revolver. Sometime thereafter the explosion above referred to was heard, and appellant was heard by the state witness Crispin Bahinting, of the prosecution, calling in a loud voice to Pedro Alvarez and telling the latter that he (appellant) had had his revenge upon Cito (Miceto Albiso), having hit him on the back. Previous to the fatal event under consideration appellant had been the recipient of serious physical injuries inflicted by the deceased at a previous quarrel between the two appellant himself in his testimony called the deceased a "scoundrel". One of those injuries was the cutting off of a portion of appellant's left ear—a permanent deformity. Another was a large wound on the left shoulder, and a third a wound on the left pelvis.

Alibi was set up as a defense, but was rejected by the trial court. On the other hand, the evidence fully establishes that appellant was at the scene of the shooting; that moments before he had been seen loading his pistol; that

likewise moments before he and his companion Pedro Alvarez admitted that they were waiting for somebody when the witness Crispin Bahinting proposed that they go together because the trail leading to Cambito-on passes by the witness house; and appellant shouted triumphantly after the shot had been fired that he had had his revenge upon the deceased, hitting the latter on the back. The evidence also proves conclusively that the deceased died from the bullet wound on his back.

The killing was qualified by treachery, in which nocturnity should be deemed imbibed, but there is not sufficient evidence of any aggravating nor mitigating circumstance. Hence, the penalty must be in the medium period.

Wherefore, we find appellant guilty beyond reasonable doubt of the crime of murder, affirming the penalty imposed by the judgment appealed from with Costs. So ordered.

Paras, Actg. C.J., Feria, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

Paras, Actg. C.J., I hereby certify that Mr. Chief Justice Moran voted for affirmance.

DISSENTING

PERPECTO, J.:

The accused appealed against a decision finding him guilty of murder of the person of Aniceto Albiso and sentencing him to reclusion perpetua and to indemnify the heirs of the deceased in the amount of P2,000.00 and to pay the costs.

The three witnesses for the prosecution testified substantially as follows:

1. Venancia Albiso, 15, single resident of Canmano, Clarin, testified that on the night of August 13, 1944, her father was called by an unknown man. Her father "went down the house and went with the man who called him" who said "he was looking for the way to the barrio of Cambito-on and asked my father to guide him. I lighted the place below the window." Then she saw Rafael Dayaganon and Pedro Albares pass by the window. "They were going to the road to where my father guided the man that I did not know." Her father was ahead and followed by those two men. He told my mother, that was Pael (Rafael) that passed by. My mother went down the house to follow them, while I myself, returned to my bed to sleep again. There was an explosion; no longer after the explosion my mother returned home. She told us, the children, 'Let us go down and move away, because they who had gone out might have been met by Japanese patrol, so, we went down together to the house of Maximo Albiarde. Maximo himself went down the house and went out to investigate the road to which my father guided the man. Not long after he went out, he returned to the house and he said, 'Manding Ostay, by God, Cito is now dead.' We went to the house of my grandfather, Abriel Albiso, to inform him of the happening. We made light or torch and then we went to the place where my father was found dead. We started to cry because my father was already dead. He was shot by Rafael Dayaganon because there was a wound left by a bullet on his back. After that we left, the corpse and went to the house of the army lieutenant, Jilig, to report to him the case. Lt. Jilig told us to get the corpse and we took it to the nearest house. The body was found more than 100 meters from the house of the witness. The witness stated that the bullet wound was caused by Rafael Dayaganon, because "Rafael Dayaganon and my father were enemies. Because they quarrelled in the cockpit in Canmano." The witness does not remember when the quarrel took place. "My uncle (Crispin Razonado) asked Rafael Dayaganon who was then the umpire for a reconsideration of his decision in a cockfight and not granted. But he boxed my uncle, Crispin, Crispin fell down and my father right away took bolo and attacked him." Dayaganon was hit on the ear, on the shoulder, and on the pelvis. The father of the witness was arrested by the soldiers and carried to "Behind the Clouds Camp," a camp of guerrilleros, where he remained one month. It was one month after when her father

returned from the camp where the incident of August 13, 1944, happened. On the night of the incident, her father walked ahead, followed One meter behind by the unknown person. Then came Rafael Dayaganon and after him Pedro Albares. "Because my father was already far so they walked fast to overtake him." The witness was in the cockpit of Canmano when her father had a quarrel with Rafael, because was there selling something." But this was settled amicably between them and "they were friends again." The witness heard "only the explosion and the groaning of my father." Her mother told her that she could not overtake my father because of the distance but that she was trying to follow him. Regarding affidavit Exhibit 1, it was prepared in Clarin but "I was not there when this was prepared. Only my mother was there. I had signed it, but it was previously prepared. It was not read to me. It was before one month from his arrival from the "Behind the Clouds" then he (her father) was killed."

2. Crispin Bahinting, 28, married, farmer, resident of Canmano, testified that on August 13, 1944, he arrived home at Canmano at 8 o'clock from Sagbayan, Clarin. "At the junction of the provincial road and the trail I saw three men, among them Rafael Dayaganon. I asked them where they were going, and Rafael answered: 'We are going to Cambito-on.' Then he said to them, 'Let us go together;' We made chats because we were old acquaintances; Rafael Dayaganon said, 'Pedro, do you have matches?' Pedro answered, 'I have.' Please strike one match, Rafael said. Then Pedro struck a match; when the match was lit, Rafael loaded his revolver which was of a model that is twisted in loading, then set up straight again when loaded. I said to them, 'Let us go together, because that trail towards Cambito-on passes my house. They said, 'just go ahead, because we are waiting for somebody.' And the witness left them at the junction of the provincial road and the trail towards Cambito-on. The witness was not able to arrive at his house. "I passed the house of Aniceto Albiso; they were already asleep. Not long afterward, after passing the house of Aniceto Albiso, I heard a commotion among the people. After that, there was an explosion. When I heard the explosion, I started to hide myself at the side of the road where I found myself at that time or moment. Not long after the explosion, I heard some people talking. I heard the voice of Pael (Rafael). He was calling for Pedro; he called Pedro's name twice. Pedro answered, 'Ho.' Pael said, 'I have made revenge upon you Cito (Aniceto).' Then Pedro asked Pael, 'Where was he hit?' He answered, 'At the back.' I was still hiding on the roadside, because I was afraid I might be hit also; not long afterward, the people making noises, bringing lights with them and started to cry. I followed them, When I arrived in the spot the children of the deceased and the deceased's wife Fausta were around the dead body of Aniceto Albiso. He was shot by Pael. Rafael Dayaganon acted as umpire of a cockfight, at Canmano, Clarin. My uncle, Aniceto, requested for a reconsideration of said decision of Rafael which he did not grant. Then Rafael refused the request and hit him at once. The reconsideration was asked by Crispin Razonado. When Crispin asked for reconsideration, Rafael did not grant the request and hit Crispin at once; when Aniceto, the nephew of Crispin, saw that his uncle had been hit, he unsheathed his bolo immediately. He struck Rafael with the bolo. Rafael was hit on the right ear. Another bolo struck was also received by him on his right shoulder. I was also wounded on the right pelvis, Aniceto Albiso was arrested by the army and sent to the Behind the Clouds Camp. I only knew that he was sent there, but I did not know how many days he stayed there. The witness was a soldier in active service of the guerrilla forces in Bohol. He was attached to the Behind the Clouds Camp. On August 13, 1944, he was on furlough, and went to Sagbayan on market day. He was on furlough for 15 days beginning August 8. On the 15th he went back to his station for service. At the junction of the provincial road and the trail, he saw Rafael Dayaganon, Pedro Albares and a third person. In going home he passed by the house of Aniceto, because it was on the way. "Aniceto was already asleep. I did not go up the house anymore. There was light. I proceeded home. When I had gone about 100 meters from the house of Aniceto Albiso, I heard a commotion of the people. I was far from their house. In my opinion the commotion was following me." Not long after he heard an explosion at the roadside of the cornfield. He was at about 50 meters from the place where the explosion was heard. The place was between his hiding place in the house of Aniceto Albiso. It was about 100 meters from the house of Aniceto Albiso. He was about 40 meters from Rafael, when the latter said, "I have already made revenge on you, Cito." Rafael was

arrested immediately "by the soldiers of Lt. Jilig." The killing took place on Sunday. Dayaganon was arrested at his house at 10 o'clock in the evening of Monday, the following day. "I knew it because they came from there, I was gathering firewood in the bushes because his husband was at the trail to the bushes." Three Soldiers arrested Dayaganon. The witness or his wife is not related either to Aniceto or to Aniceto's wife. The witness was at around 50 meters from Dayaganon when the latter said "at last I have revenge against you, Cito." He did not recognize him by his face but "I recognized him by his voice." On that precise moment "I did not see him. It took place at 9 o'clock in the evening." It was at the junction that night where the witness heard the voice of Rafael Dayaganon and Pedro Albares. "The first time I was familiar with their voices because we were old acquaintances." The witness did not testify when Rafael Dayaganon and Pedro Albares were arrested by the guerrilla soldiers, "I was not called to testify because I was not then on service," It did not occur to him to report the matter to the detachment commander of the Behind the Clouds camp.

3. Ruperto Yagonia, 46, married, laborer, resident of Canmano, Clarin, testified that on the night of August 13, 1944, he was watching his cornfield. Then I met Rafael Dayaganon, Pedro Albares and a third whom I did not know. I asked them where they were going; they answered they were going to Cambito-on. My house is less than 20 brazas from the spot where I met them. After that, the witness went across the other road leading to his cornfield also. "I heard an explosion. I made observation as to where was that." After that I heard Pael (Rafael) shouting, 'Pedro, Pedro.' And Pedro answered, 'I have now made revenge Upon you.' Pedro asked, 'Where was he hit Pael?' Pael answered: He was hit on the back; he is now lying face 'downward.' I did not move in my position. I recalled to my mind that Rafael and Aniceto were enemies. I approached the place where the explosion took place people were beginning to gather to the place with light; I went to the crowd. They came from the house of Gabriel Albiso. I knew Aniceto was dead. I knew he was shot because there was a wound. The wound was at the back. After that I went home. The other people also went to their respective homes. The witness does not know if Rafael Dayaganon and Pedro Albares were arrested by the soldiers from Behind the Clouds. Rafael was also arrested and brought to the house of the army lieutenant already and he was brought to the Behind the Clouds camp. I was caught immediately. Rafael was hiding. I was not taken to the Behind the Clouds in connection with the case.

The witnesses for the defense substantially testified as follows:

1. Juan Relampagos, 27, single, resident of Loon, Bohol, testified that in August, 1944, he was an officer in the active service with station somewhere in the mountains of Calape. Crispin Bahinting was listed as a soldier in the roster of the group. It is not true that Crispin Bahinting had, on or about August 13, 1944, asked permission from the witness as his commanding officer to go on furlough, because "that soldier was not under me" and "during this period from about the 24th of June, 1944, I was relieved from being commander because that was during the mopping up operation of the Japanese in Bohol and soldiers were given privilege to join to any unit they like. He was not under me during that period. Nobody asked permission, because I was not anymore a commanding officer that time."

2. Feliciano Micabalo, 38, married, farmer, resident of Canmano, Clarin, testified that on Sunday night, August 13, 1944, "I was in barrio San Isidro." He went home at 6 o'clock in the afternoon. He met (Rafael Dayaganon at the house of Melacia Agbon. "While I was returning home at 7 o'clock of that evening from barrio San Isidro, I heard the voice of Rafael Dayaganon; I called him; then he invited me to come up the house; upstairs I saw Rafael Dayaganon, his wife, Jose Arcales, his wife, and Melecia Agbon and her family. A while after I had been in the house, we went to the prayer in the house of Severo Bunglay. Melecia Agbon, Jose Arcales, this wife, Rafael Dayaganon, his wife, Melecia Agbon, went with me." Those who went up the house of Bunglay were Melecia Agbon, Rafael Dayaganon "and myself." Melecia Agbon lead the prayers. "We reached the house 8 o'clock in the

evening; when I went home it was at midnight or at 12 o'clock. All the time he (Rafael) was in the house of Severo Bunglay. One-half of the time was spent in praying and the rest of the time, after praying, they offered supper; then drinks were served to the participants of the prayer; there was chatting also after." On the following day, Monday, at 5 O'clock in the afternoon, the witness happened to learn that Aniceto Albiso was killed. The latter's house is located at about 2 1/2 kilometers from the house of Severo Bunglay. Rafael Dayaganon was arrested on the 15th of August, Crispin Bahinting "was one of the soldiers who did capture Pael. On that Monday evening I met six soldiers, one of whom was Crispin Bahinting who asked me where I was going, and I answered, 'I am out on personal patrol.' Aniceto Albiso and Crispin Bahinting were either first or second degree cousins. Crispin Bahinting said to me, 'We have to arrest someone.' 'Who is it,' I asked; he said to me, 'Just keep quiet and hear an explosion afterwards because the man we will capture will have to be captured dead or alive—I will take his head with us.' " But Rafael Dayaganon was not actually arrested, but presented himself voluntarily because he was wanted by the army. On August 13, 1944, there was no market day in Sagbayan. The people in those days used to exchange products in barrio San Isidro, Clarin.

3. Melecia Agbon, 70, married, resident of Canmano, testified that on the afternoon of August 13, 1944, she was at the market place of Canmano. "I met Rafael Dayaganon, Feliciano Micabalo, Jose Arcales, Dionisia Bonajos, the wife of Jose Arcales. At 5 o'clock, we returned home." They arrived at her house about 7 o'clock in the evening. "As compadre Jose (Arcales) had with him tuba, I told him to bring his tuba upstairs because we wanted to drink." Among those who drank tuba was Rafael Dayaganon. "I prepared a light and we went down the house; we used a light to light our way to the prayer." Among the persons who went with her to the place of prayer was Rafael Dayaganon. There was Rafael Dayaganon and his wife Dionisia Bonajos and Feliciano Micabalo. They reached the house of Severo Bunglay at 8 o'clock. After a rest, "we started to pray. I led the prayer." After the prayer supper was served. After that some smoked, others drank tuba. They went home at past midnight. During that whole time Rafael Dayaganon was "with us." The witness happened to learn of the death of Aniceto Albiso on August 15, 1944. On August 13, there was no market day at Sagbayan because that time nobody goes to market at Sagbayan as there were Japanese. Besides, there were no people in the market of Sagbayan. Pedro Mondano, 46, married, resident of Canmano testified that on the evening of August 13, 1944, he was in the house of Severo Bunglay. There was a prayer for a dead child. "I saw in the house, the members of the family of Severo Bunglay, the prayer leader called Melecia Agbon, Rafael Dayaganon, Feliciano Micabalo and other." He saw Dayaganon at about 8 o'clock in the evening. He left the house of Bunglay past midnight.

4. Rafael Dayaganon, 38, farmer, resident of Canmano testified that he did not kill Aniceto Albiso, that it is not true, as testified by Crispin Bahinting, that he beat the latter at the junction of the provincial road and the trail towards Cambito-on. He had no firearm. That night "he was at the prayer" in the house of Severo Bunglay, "I arrived at about 8 o'clock in the evening more or less, and we returned home about midnight, more or less also." Among the persons present were Melecia Agbon, Feliciano Micabalo, and Pedro Montano. He is the accused in this case "just because on the second day of October, 1943, I was wounded by that same Aniceto Albiso." Patricio Rapar was also wounded. He placed the palm of his left hand "on my shoulder; his fingers were cut off." Aniceto Albiso was arrested, because when I had been wounded I reported over the case; I went direct to the detachment commander, I was confined for two months; on the second month I received a letter from the detachment commander, Pedro Ayao, asking me to appear before him. I went to the house of Pedro Ayao; he told me to file complaint in Clarin, to because Aniceto Albiso will be released. When I went to Clarin to file my complaint the justice of the peace was absent so I just referred the case to the municipal police there; then the chief of police went to Canmano to arrange an amicable settlement between us, because the wife of Aniceto Albiso and the wife of Crispin Razonado had requested the chief of police to make such settlement promising that they will pay the amount of P100.00 to the doctor for the treatment I received; because of the promise of the two wives I pardoned

the accused Aniceto Albiso. After Albiso returned from the camp we met and we shook hands, We had no more grudge against each other. I knew that he Aniceto Albiso used to place himself in tremble with another because he was a scoundrel. In the cockpit incident where the witness was wounded, Albiso had no direct part. The witness was the referee in the fight between the cocks of Crispin Razonado and Patricio Responsa. "When I lifted the cock of Patricio Responsa he (the owner) took it from my hands and danced with it because it won, as I decided so; as Crispin Razonado saw that the neck of his cock had been broken and paused its death, he asked the reconsideration of the decision; If you want to ask for the deposit of the bets, ask the president of the cockpit. When I had said those words to him he was somewhat provoked and he started to give me blows; we actually delivered blows against one another and each of us was hit. Some people intervened and separated us; then, I realized that I received a blow behind my left ear; that I was wounded on the left shoulder, and at the base, my left ear was cut; after I discovered the wounds, I turned around and went to the fence and I leaped over it; then I also found I was wounded on the left pelvis. The witness learned about the death of Albiso "on the 15th day; it was when I learned of the fact, because I returned home the following morning; my wife told me that a soldier came to my house asking if or me; that I was summoned to appear before Lieutenant Jilig; then I went to their camp at San Isidro; then they did not let me go home anymore, because they suspected me that I killed the deceased; it was by that night referred to when Aniceto Albiso had been killed. The soldiers who came to my house to arrest me were Crispin Bahinting, Mingo, whose surname I do not know, Luis, Pedro de Garcia, Angelo Resolocio; with Crispin as guide. The witness was under guerrilla confinement for nine months. The person who was also wounded in the cockpit was Patricio Responsa. Four fingers of his right hand were cut. Responsa was still living in Canmano. "We two pardoned the aggressors."

5. Pedro Albiso, 61, married, farmer, testified that on the night of August 13, 1944, he was not in Canmano the entire night.

The evidence does not satisfy us in order to convict appellant beyond all reasonable doubts. There is abundant and convincing evidence to this effect that at the time Aniceto Albiso was killed in an uninhabited place, appellant was in this house of Severo Bunglay, participating in a prayer.

In the hypothesis that the evidence for the defense can be disregarded, the evidence of the prosecution cannot be conclusive. The fact that the accused has been seen in a road junction loading a revolver and was later seen following the same way taken by the deceased with an unknown person

Defendant as well as Pedro Albares was arrested by the guerrillas for the killing. The guerrillas, as can be gathered from the evidence of both parties, were maintaining a sort of government with which they were administering justice. Before arresting Dayaganon and Albares, they have also made arrests on account of the bloody affray in the cockpit. Now, according to Bahinting, he was not called by the guerrilla to testify against Dayaganon and Albares. It did not even occur to him to report the alleged killing to the commander of the guerrilla camp. Yagonia testified also that he was not called to the camp in relation with the case I against defendant. No explanation whatsoever was given regarding the failure of the two prosecution witnesses to testify against Dayaganon at the guerrilla camp. They being the only ones who, according to their testimonies in this case, could have given the most damaging evidence against appellant, their failure to report the killing to the guerrilla camp and to appear and testify therein, makes us doubt whether at the time of Dayaganon's arrest by the guerrilla, the two witnesses for the prosecution had then, ready the same testimonies which about two years later they have given in this case in the lower court.

We vote for the acquittal of the appellant.

Briones, J., I concur in this dissenting opinion.

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