

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SERGIO DAGATAN, ET AL., ACCUSED AND APPELLANTS.

*G.R. No. 10851. August 28, 1959*

Ponente: ENDENCIA, J.

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### ENDENCIA, J.:

This case was certified to us by the Court of Appeals upon the finding set in its Resolution of April 16, 1956, reciting the background of the case as follows:

"Julio Dagatan, Sergio Dagatan and Saturnino Dagatan were charged for murder before the Court of First Instance of Cebu in an information filed on October 6, 1937. That case after hearing was submitted for decision, but the trial judge failed to dispose of the same, and when the last war broke out, all the records thereof, except the docket entry, were destroyed.

"On February 22, 1949, the Provincial Fiscal filed a motion before the Court of First Instance of Cebu, praying that the original records of the case be reconstituted; that defense counsel Filemon Sotto be ordered to produce all copies of pertinent papers, if any, in his possession regarding the case; that if defense counsel had no more copies of said papers, to allow the Provincial Fiscal to file a new information against Sergio Dagatan and Saturnino Dagatan, because Julio Dagatan had died during the last war; and that the evidence be taken anew.

"As the defense counsel failed to appear and produce the copies of the pertinent papers of the case, a new information was filed on August 8, 1949, in the Court of First Instance of Cebu, charging said Sergio and Saturnino, surnamed Dagatan, with the crime of murder. The defense then filed a motion for dismissal of the case on the alleged ground of jeopardy, which was granted by the court, but the matter was taken to the Supreme Court by appeal of the Fiscal and the Highest Tribunal of the land reversed the order appealed from and remanded the case to the lower court for further proceedings. Then a hearing was held and after submission of the evidence by both the prosecution and the defense, the Court Tendered judgment on April 12, 1954, finding both defendants guilty as charged in the information and sentencing each and every one of them to from 6 years and 1 day of prision mayor to 17 years, 4 months and 1 day of reclusUn temporal, to indemnify the family of the deceased, Victorio Ceniza, jointly and severally in the sum of P3,000.00, and to pay the costs. From this verdict defendants appealed to this Court.

"It is to be noted in this connection that the circumstances attending the commission of the offense of murder that may be taken into consideration for appreciation in the case at bar, are the following: the qualifying circumstance of evident premeditation, which was used to raise the crime from homicide to murder; the aggravating circumstance of taking advantage of superior strength (Art. 14, No. 5, RFC) and nighttime (Art. 4, No. 6, RPC), and the mitigating circumstances, appreciated by the lower court, to wit: that the act was committed in the proximate vindication of a grave offense to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees (Art. 13, No. 5, RPC); and that of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation (Art. 13, No. 6, RPC).

"It appears from the record that the motive of the crime was to vindicate an offense against the honor of the

offenders and their sister Lucia Dagatan, because the latter eloped with one Eleuterio Yara who later on abandoned her, and it is claimed that the deceased, a very good friend of said Yara, assisted him in the elopement. It must be stated at this juncture that the deceased was not the one who dishonored their sister and, anyway, the crime at bar was committed quite a long time after the elopement and abandonment of appellants' sister by his [her] seducer, and even assuming that this circumstance could be appreciated in this case, yet, as stated by the Solicitor General, it cannot be counted separately from the other circumstance of passion or obfuscation (*People vs. Yaon*, 43 Off. Gaz., 4142). Moreover, it may be argued against the appreciation of passion and obfuscation, that the motive of the crime herein prosecuted took place quite a long time before its commission, aside from the fact that we entertain serious doubts as to its compatibility with the qualifying circumstances of evident premeditation.

"Because of the foregoing considerations, we are of the opinion and so hold that the penalty that shall be imposed upon each of the defendants in case of conviction, is one not less than reclusion perpetua, a penalty which, according to the Judiciary Act of 1948, falls beyond the jurisdiction of this Court to impose."

The testimony of the witnesses for the prosecution established the following facts: On June 11, 1937, at about eleven o'clock in the evening, after Victorio Ceniza and Leodegario Into had made their purchases in the market of Moacboac, municipality of Carmen, Cebu, these two young men walked side by side along the national highway towards their home at Carmen. When they were approaching the Dawis bridge in Carmen, Into noticed two men sitting on the railing of the bridge which he recognized as Sergio Dagatan and Saturnino Dagatan, brothers. Suddenly Sergio attacked Victorio with a wooden cane about 4 ¼ feet long and 1¼ inches in diameter, hitting him on the shoulder, and Saturnino helped his brother in beating up Victorio, using a handy leather-covered rod containing a hard metal at its end, locally known as "caborrata." The victim fell right then and there, unconscious. The Dagatan brothers placed the limp body of Victorio in the middle of the road to make it appear that it was hit by an automobile, but Sergio, on second thought, said "Let us throw him out to the sea in order that they would believe he died by drowning" so Sergio threw the body into the water. When Leodegario Into saw that his companion was being beaten up by the two brothers, he started to run, but he was held by Julio Dagatan, now deceased, father of Sergio and Saturnino, who appeared at the scene. Sergio wanted to kill Into, but the father dissuaded his son saying, "Don't kill him because he is my relative and he has no fault at all." Having seen what had happened, Into was taken to the house of the Dagatans and were seen walking together by Enrique Puno, now deceased. On the way, Julio told Into that they had to kill Victorio Ceniza because the latter had besmirched the reputation of the Dagatan family for having been instrumental in the elopement of his daughter Lucila Dagatan with Eleuterio Yara, Ceniza's first cousin, who later abandoned her and returned to Leyte. Once in the house of the Dagatans, Sergio again wanted to kill Into, but again Julio said, "Let us not kill him; we will just caution him on pain of life that if this happening would come to the knowledge of the Government authorities, we are going to kill him." Into passed the night in the house of the Dagatans, and on the following morning he was allowed to go home after giving him some fresh fish to take to his father so that he would not be scolded. Before Into boarded the truck towards Carmen, he was again given a parting warning not to tell the authorities about the incident. The truck had to stop by the Dawis bridge as there were many people curiously looking at the floating body in the creek near the bridge, but Into did not say a word but merely looked on, remembering the warning of the Dagatans. Neither did he say anything to his parents about the incident when he reached home.

On that same morning, June 12th, Domingo F. Buot, then chief of police of Carmen, was notified by one Florentina Laping, now deceased, that there was a body floating in the creek. He hurried to the place and saw the body of Victorio Ceniza whom he knew personally. There was already a crowd of people viewing the floating corpse, among whom was Isabelo Neis who took pictures thereof (Exhs. D and E). The chief of police then notified the justice of the peace and the president of the sanitary division, Dr. Mercado, and the body was removed to the house of the mother of the deceased. Autopsy was made by Dr. Mercado, between 9:00 and 10:00

that morning, who found that—

- (a) The immediate cause of death was drowning—the lungs and stomach had plenty of water;
- (b) Contusions on different parts of the body caused before the body was thrown into the water;
- (c) The numerous bone of the left arm was broken, caused by a hard and blunt instrument like a cane or "caborrata;"
- (d) The victim was still alive, although unconscious, when thrown into the water.

Police investigation revealed that the last person with whom the deceased was seen before his death was Leodegario Into. When taken in for questioning, Into told everything he knew about the crime, which led to the prosecution of herein appellants. In the course of his investigation, the chief of police found the "caborrata," the middle portion of which was broken, hanging on a post in the house of the Dagatans.

Appellants' defense is alibi. They contend that on the night in question they were not in Dawis bridge In Carmen, but in the city of Cebu, which is about 40 kilometers from the scene of the crime.

Testifying in his behalf, Sergio Dagatan told the court that he has been a driver of the A & B Taxicab of the city of Cebu since 1924; that at any time on June 11, 1937, he did not go to Carmen because from about 8:00 o'clock in the morning of June 10th up to about the same hour of the following morning, or a 24-hour stretch, he was on duty driving the A & B taxi within the city of Cebu; that the practice of the company was to assign two drivers to a given car, who take turns in driving it for 24 straight hours; that his partner assigned to drive the same car was Roberto Remolisan; that at about past 8:00 o'clock in the morning of June 11th, after turning over his receipts of the previous day to Genaro Cabahug of the A & B Taxi, he took his breakfast in a nearby restaurant and then went to sleep in the upper part of the garage where drivers sleep or rest; that he did not return to his home at the barrio of Pag-utlan, municipality of Danao, which is about 33 or 34 kilometers from Cebu city, because he had to wait for his wife and his brother Epifanio Dagatan who was taking a boat that evening from Cebu to go to Manila; that as a matter of fact he and his wife conducted his brother Epifanio to the wharf to see him off; that he did not go out of the city of Cebu during the whole day of June 11th, but slept in the company garage with his wife and small child. He also stated that he did not know the deceased Victorio Ceniza nor witness Leodegario Into, but that he knew their names only when this case was first heard before Judge De la Rama.

On cross-examination he admitted that he has a house in the barrio of Pag-utlan, municipality of Danao, and that he lives with his family there; that Danao is about 34 kilometers from Cebu and about 7 kilometers from Carmen; that he was off-duty on the 11th, and although he was free to go home to Danao, he preferred to stay and sleep in the company garage in Cebu because, at any rate, he would again be on duty for 24 hours in the following morning, June 12th; that he used to go home to Danao when off-duty unless he had an important engagement in Cebu, like the occasion when his brother had to leave for Manila.

Saturnino Dagatan, testifying in his behalf, stated that he was also a driver of the A & B Taxi in Cebu; that on June 11, 1937, he was driving a taxi within Cebu and did not go outside the city; that he has not gone to Carmen the evening of June 11th; that every time he drove his taxi, he was given a ration of 10 liters of gasoline which, if he went out of the city, had to be replaced and permission had to be sought from the company; that from Cebu to Carmen the car would consume about 10 liters of gasoline; and that he could not have been to the place of the crime because he was in Cebu from six to twelve o'clock that evening.

On cross-examination, however, he admitted that there were many buses, trucks and jeepneys plying between Cebu and Carmen; that if he were to drive himself, it would take him only forty minutes to get to Carmen from Cebu; that Exhibits 2 and 2-A are samples of the company form wherein the trips and taxi fares are recorded; that

Exhibit 2 is kept by the company, while Exhibit 2-A is retained by the driver; that the records of the company were presented in court at the first hearing and were seen by Judge De la Rama.

To corroborate them, appellants presented Genaro Cabahug, the person in charge of the company at the time, who testified that as a general practice of the taxicab company, drivers were only allowed to drive within the city of Cebu; that if they had to go beyond the city limits they had to notify the office, and that if they needed more gasoline for the trip, they had to ask for additional ration; that the company had a place in the upper part of the garage wherein drivers who do not live in the City of Cebu rest and wait for their turns; that on June 11th, 1937, he remembers that Sergio Dagatan was in the resting place in the garage, and that Saturnino was on duty until the latter was relieved the following morning; that Sergio was not driving that evening because it was Saturnino who was on duty, and that these two were driving the same car, so that if one was driving, the other was off-duty. On cross-examination, he told the court that the company had 36 drivers for the 18 cars; that he cannot recall the exact whereabouts of each and every one of the 36 drivers on that particular day, but that he remembers particularly those of Sergio and Saturnino Dagatan because of the incident that happened which is of importance to his (witness) family, the deceased being a distant relative of his; that he cannot remember even the names of the 16 other drivers on duty on the day in question except herein appellants; neither could he remember the companions of Sergio while the latter was resting in the garage, but that he only presumed he had companions because the practice was that drivers living outside the city take their rest in that place and wait for their turns; that Sergio is from the municipality of Danao and had his family there; that he does not know where Saturnino was at 6:00 o'clock that evening and does not remember where he was at 10:00 o'clock on the same night, although he maintains that Saturnino was within the city of Cebu because every time a driver goes beyond the city limits, he has to notify the office for advice, and that if their gasoline is not enough for the trip, he has to ask for additional gasoline; neither does he remember where Saturnino was at 12:00 o'clock that midnight, but that he presumed he was within the city in accordance with company record which had been presented at the former trial, although it was possible that even if it is recorded in the company books that Saturnino was driving within the city, he could have left the taxi in some corner under the pretext that he is within the city, and could have taken a bus out of the city.

Appellants' alibi does not merit serious consideration by the Court. Time and again we have held that in order that this kind of defense, which is easily and conveniently manufactured, could prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this particular case, appellants loosely told the court that at around eleven o'clock on the night of June 11, 1937, they were not in Carmen when the crime was being committed because they were in Cebu. They, however, failed to present credible and tangible evidence that it was physically impossible for them to be at Carmen at that time. On the contrary, they themselves furnished evidence that Carmen is only about 40 kilometers from Cebu city, with abundant means of transportation such as buses, jeepneys and trucks plying between the two places, which would at most take an hour to go from one place to the other, and according to Saturnino himself, it would only take him 40 minutes if he were to drive the car himself. With respect to Sergio's assertion that he slept at the company garage with his wife and child on the night in question, his word alone, devoid of corroboration, is not enough to justify its veracity and credibility, for he admitted that when he was not on duty, he used to go home to his family at the barrio of Pag-utlan, Danao, which is about 33 kilometers from Cebu and some 7 kilometers from the scene of the crime, unless he had an important engagement to attend to in Cebu. Assuming that he really slept in the garage in Cebu, it was not impossible for him to go to Carmen with his brother Saturnino at around ten o'clock. Anent Saturnino's testimony that he was on duty from 8:00 o'clock in the morning-of June 11th up to the following morning, driving his taxi within the city of Cebu, his defense bolsters the contention of the prosecution that he participated in the killing of the deceased

rather than helps his defense, for he could have driven his taxi, with his brother Sergio, to Carmen in just 40 minutes to commit the crime, and then return to Cebu soon thereafter, without Genaro Cabahug knowing liis whereabouts, for, according to Cabahug himself, there was no way of tracing the movement of each and every driver on duty despite the standing practice that they must notify the office whenever they made trips outside the city, but that it was possible for such driver, particularly for Saturnino, to leave his taxi in a certain corner in Cebu and take another transportation to Carmen without the company knowing about it.

On the other hand, Leodegario Into's positive testimony that he saw the Dagatan brothers beat up the deceased with a cane and "caborrata" at the Dawis bridge and throw him into the water is corroborated by the pictures Exhibits D and E and by the unrefuted testimony of the chief of police who stated that he found the "caborrata" broken at the middle, hanging in a post of the house of the Dagatans. There is no room for doubting, therefore, that appellants committed the crime as charged.

With respect to the defense of double jeopardy invoked by appellants, suffice it to say that the same has already been passed upon by us when this case was first brought before this Court on this point (G. R. L-4396, October 30, 1951),\* wherein we held that jeopardy had not set by reason of the fact that the failure of Judge De la Rama to decide the case after its submission for decision, did not terminate the case either by dismissal or by conviction.

The lower court in sentencing appellants to an indeterminate sentence of from 6 years and 1 day of prision mayor to 17 years, 4 months and 1 day of reclusion temporal, considered in their favor two mitigating circumstances, namely, that of having committed the crime in the immediate vindication of a grave offense to their sister Lucila Dagatan (par. 5, Art. 13, RPC), and that they acted upon an impulse so powerful as naturally to have produced passion or obfuscation (par. 6, Art. 413, RPC). But these two circumstances cannot be considered not only because the elopement of Lucila Dagatan with Eleuterio Yara and her abandonment by the latter took place long before the commission of the crime, but also because the deceased was not the one who eloped with and abandoned her. Furthermore, and as correctly pointed out by the Solicitor-General, these two mitigating circumstances cannot be counted separately and independently (People vs. Yaon, 43 Off. Gaz., 4142). On the other hand, we find duly proven the aggravating circumstances of nighttime, superior strength and treachery which qualify the crime as murder, and following Art. 248, in relation to Art. 64 of the Revised Penal Code, the penalty that should be imposed upon appellants is reclusion perpetua.

Wherefore, with the modification of the penalty imposed, the judgment appealed from is affirmed in all other respects.

Paras, C, J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Barrera, JJ., concur.

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\* 90 Phil., 294

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