

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ESPIRIDION ALIDO, ET AL., DEFENDANTS. INOCENCIO HERVAS AND
MARCELO HERVAS, DEFENDANTS AND APPELLANTS.**

G.R. No. 12449, May 30, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Iloilo, Hon. F. Imperial Reyes, presiding, finding accused-appellants Inocencio Hervas and Marcelo Hervas guilty of the murder of their cousin, Francisco Hervas, and sentencing each of them to *reclusión perpetua* and to pay 1/3 of the indemnity of P6,000. Esperidion Alido was also sentenced to suffer the indeterminate penalty of from 10 years and 1 day of *prisión mayor* to 17 years, 4 months and 1 day of *reclusión temporal*, to indemnify the heirs of the deceased Francisco Hervas a 1/3 of the sum of P6,000, and to pay a proportionate share of the costs, but he did not appeal.

On or before May 29, 1955, Francisco Hervas, his wife and their children were living in their house on a land situated in the barrio of Dagami, Municipality of Maasin, Province of Iloilo. At about 6:00 in the evening of that day, Francisco Hervas seemed to have heard some noise coming from his cornfield near their house, so he went to the batalan adjacent to their house to find out what was the noise about, but suddenly a shotgun exploded from the neighboring field, and the shot from it hit Francisco on the chest and he fell down dead. The following morning, the widow, Concepcion Laserna sent her eldest child, Ofelia Hervas, to the house of Inocencio Hervas, one of the accused, which was nearest their house, and to the house of the brother of the deceased, Proceso Hervas, farther away, to inform them of the incident. The brother of the deceased happened to be away from home and as Ofelia returned, she passed by the house of Inocencio Hervas, informing him that the brother of the deceased could not come, so Inocencio went to the house of the victim, accompanied by three individuals who helped him dig the grave some distance away from the house and there interred him.

No steps were taken by the family or by relatives of the deceased to investigate who the author of the crime was. But news of the killing came to the ears of the Philippine Constabulary. So one day the Philippine Constabulary had the remains of the deceased exhumed. Those present at the exhumation were the investigator of the Constabulary, Sgt. Pelagio Agraviador, the Chief of Police, the sanitary inspector and the municipal mayor. They proceeded to the barrio of Dagami, passing first by the house of Inocencio Hervas, and with the latter they went to the place where the body of the deceased had been interred. The grave was dug and the dead body was brought out. They found out that there were nine pellet holes.

Thereafter, the Constabulary began questioning the widow, Concepcion Laserna. Her statement was taken at the municipal building and she declared that she was able to recognize Esperidion Alido as the one who shot her husband, accompanied at the time of the shooting by two persons whom she could not recognize. This statement (Exhibit "1" Alido, 2 Hervas), of Concepcion Laserna was made on June 13, 1955. A similar statement was made by her daughter, Ofelia Hervas, and to the same effect.

The municipal police of Maasin could not effect the arrest of Alido, but before July 13, 1955, he surrendered to the Philippine Constabulary at Sta. Barbara, Iloilo. He surrendered to Sgt. Silverio Balmaceda at the barracks. Balmaceda referred him to Cpl. Delfin de la Torre, who was then investigator of the company. Alido's statement was taken down in writing and was presented in court during the trial as Exhibit "C". According to this statement, Inocencio Hervas invited him on May 29, 1955 to the house of one Carlos Camral, on the occasion of the killing of a pig; that in the afternoon of that day, Inocencio, he and Marcelo proceeded to the house of Francisco Hervas, armed as follows: Inocencio, with a shotgun (paltik), Marcelo with a rifle, and he with a bolo; that once near the house of Francisco Hervas, he heard one shot and upon hearing it he ran away, returning to the house of Carlos Camral; that about 9:00 that evening, Inocencio Hervas came back to the house of Camral with a shotgun, boasting that they could now live in peace because the arrogant man is already dead (referring to the deceased Francisco Hervas.)

As a result of this affidavit of Alido further investigations were made. Concepcion Laserna was again examined, this time before the Justice of the Peace of Maasin and she then declared in her affidavit (Exhibit I, Alido, 3 Hervas) dated July 20, 1955 that it was Inocencio Hervas who fired the shot that killed her husband, and that Marcelo Hervas and Espiridion Alido were with Inocencio at the time of the shooting. On July 20, 1955, the information was filed in the Justice of the Peace court of Maasin, charging the three accused with the murder of the deceased. The information charges the accused with having committed the crime with treachery and evident premeditation.

Concepcion Laserna testified at the trial that three persons had approached their house on the afternoon of May 29, 1955, namely, Inocencio Hervas, Marcelo Hervas and Espiridion Alido; that Inocencio was provided with a paltik, Espiridion had a rifle and Marcelo had a bolo; that she actually saw that it was Inocencio who fired the shot that killed her husband; and that as soon as her husband had fallen down after the shot, the three persons ran away. She further declared that she saw the assailant because she was at the time of the shooting at the window of their house. Demetrio Hervas, a son of the deceased, also testified and declared that when his father went to the batalan, attracted by a noise in the cornfield, he (witness) was at the door of the house; that when he heard the shot which felled his father, he immediately directed his eyes towards the place where the explosion had come and saw the aggressor, Inocencio Hervas, and his companions, Marcelo Hervas and Espiridion Alido.

Upon being asked why in her statement made before the Municipal Mayor on June 13, 1955 (Exhibit "2"—Hervas; Exhibit "1"—Alido), she declared that she saw Espiridion Alido fire the shot that killed her husband and that she did not recognize Alido's companions, she explained that at that time she was under the influence of fear of Inocencio Hervas. Explaining this, she declared that the morning after the shooting she sent her daughter Ofelia to the house of Inocencio Hervas to tell him that she should bury her husband; that Inocencio Hervas threatened to kill her if she should disclose or point to him as the author of the death; that he just suggested to her that she should explain; that the cause of her husband's death was his having bolo wounds, instead of gunshot wounds. Upon being asked the probable reason why her husband was killed by the accused, she declared that it was because the accused had taken away bamboos from the land which the deceased was taking care of, and her husband had denounced them to the owner of the land, namely, Eugenio Maquiling.

The Constabulary investigator, Sgt. Pelagio Agraviador, who had seen the exhumation, corroborates this alleged fear of Inocencio Hervas of Concepcion Laserna. He testified that at the time he was investigating Concepcion Laserna, Inocencio Hervas was present, and that every time Concepcion was asked a question she would first look at Inocencio before answering the question. Further elaborating on the matter, this witness declared that when the investigation was being made in the building of the puericulture center, the persons who were present were Concepcion Laserna, her daughter, Ofelia Hervas, Inocencio Hervas, a policeman and himself, and that he

observed that every time a question was directed to Concepcion Laserna, she would look at Inocencio, who, in turn would look at her with sharp eyes; that he noticed such interest on the part of Inocencio that in the middle part of the questioning of Concepcion, he had to ask Inocencio to go out. He also declared that when Ofelia Hervas was investigated, Inocencio Hervas again went inside the room where the investigation was being conducted and again he had to ask him to go out of the room, because he wanted to have secrecy in the investigation.

All of the three accused denied having participated in the commission of the crime, including Espiridion Alido, who did not appeal from the decision. Inocencio Hervas declared that he was always in good terms with Francisco Hervas and his wife; that he was living at a distance of one-half kilometer from the house of Francisco Hervas, and that the one carrying the work of the family was the wife, Concepcion Laserna, because one of the hands of Francisco Hervas had been cut in a fight during the Japanese regime; that about 4:00 o'clock in the afternoon of the day of the shooting, he had to go to the house of one Carlos to help in the slaughter of a pig, and did not know of the death of Francisco Hervas until the following morning when the daughter of the deceased, Ofelia, informed him thereof; that when she went to the house of Francisco there was no one there except the wife and the children, and when he asked her if she recognized the persons who killed her husband, she answered she did not because it was very dark; that thereafter she left the house and went home, with the instruction that when the brother of the deceased would arrive he (the accused) would be called. Further testifying, he declared that he returned at about 4:00 in the afternoon, and that since the younger brother of the deceased, Proceso Hervas, did not come, they buried the deceased with the help of his children, namely, Carlos, Martin and Juan. Testifying on the exhumation, he declared that the mayor, the Chief of Police and some policemen came on the Sunday following the burial on Monday; that the Chief of Police and the mayor called for him at his house; that the son of Francisco Hervas, named Demetrio Hervas, Juan and Martin were also called; that some Philippine Constabulary soldiers were also with the party, and that it was he and the son of Francisco that indicated to them where the body was buried; that they did not make any investigation that afternoon because it was already very late when the exhumation was finished; that they passed the night at his house and the following morning the party returned back to the poblacion together with the wife of the deceased. He also testified that he, the widow and her children were brought to town, as the Mayor had asked him to accompany the widow. He denied that at the time the widow was being investigated, he used to look at her with sharp eyes. On being asked the possible reason why he was being accused, he declared that he had an altercation with one Estong Amorte and Fabian Resano, because when a certain parcel of land was surveyed, he stopped them because his brother Marcelo was not present. (It is important to note that the land which was supposed to be surveyed appears to be the cause of the trouble, as it is the very land occupied by Francisco Hervas. Francisco Hervas was the one named by the original owner, Eugenio Maquiling, to cultivate and stay on the land. Later Maquiling transferred it to Estong Amorte and Fabian Resano.)

The accused Marcelo Hervas also denied the imputation, declaring that on the day of the shooting, he was away from his house, and that he learned of the death of Francisco Hervas only when he arrived home on Tuesday (killing occurred on Monday). He stated that he had come from the poblacion because he was engaged in the business of making gold teeth for his patients, so he had to go to the poblacion very often; that on the day following his arrival on Tuesday, he asked for the wife of the deceased, and he inquired from her what was the cause of her husband's death, and she had answered that the deceased had stepped on a bolo; that she told him that at the time of the wounding of her husband she had heard a sound similar to a falling can. Asked if there was any ill-feeling between Francisco Hervas and his family, he declared that there was none and the deceased even frequented his house to drink tuba, the deceased being his first cousin. Asked what the probable reason was why the widow had pointed to him as one of the authors of the death of her husband, he declared that she acted under the advice by their enemies Estong Amorte and Fabian Resano. Explaining this matter, he said that Fabian Resano

had purchased a piece of land from Arcadio Maquiling, the son of Eugenio Maquiling, and as Resano surveyed the land, he (Resano) tried to include the land belonging to him (Marcelo), and that he (Marcelo) did not agree to this. As to the charge that he had been stealing bamboos, he answered that the bamboos were not Maquiling's but his own.

A consideration of the circumstances brought out at trial both by the prosecution as well as by the defense, indicate that the probable cause of the killing is as indicated by the widow, Concepcion Laserna, that is, Inocencio Hervas and Marcelo Hervas resented the act of Francisco Hervas in denouncing them for cutting bamboos on the land of Maquiling. The land on which the house of Francisco Hervas is erected belonged to Eugenio Maquiling. Marcelo Hervas claimed that the bamboos that he cut were his own; that when the land of Maquiling was sold to Fabian Resano and the latter was trying to survey it, Marcelo objected to the survey on the ground that Resano was including a portion of his own land. Both accused-appellants Inocencio and Marcelo, both surnamed Hervas, admitted that the relationship between them and the deceased and his family was cordial. There is, therefore, no reason why the widow should point out to Marcelo and to Inocencio as the authors of the death of her husband, unless she and her children had actually seen them do the criminal act.

Her statement when she was brought to the municipal building for investigation on June 13, 1955 pointing to Espiridion Alido as the one who killed her husband and that his companions could not be recognized by her must have been due to the fact that she was then, under the influence of fear of Inocencio Hervas. The conduct of Inocencio Hervas, a first cousin of the deceased, in not initiating the move to have the authors of the death of his cousin investigated and his advice of a prompt burial, indicate a guilty conscience—he must have had part therein and he wanted to be saved from being held to account for the murder. His advice that the widow should declare that the deceased had been killed by a bolo wound also attests to his interest in suppressing the truth, certainly to save himself. The testimony of Marcelo to the effect that the widow had told him that the deceased died of a bolo wound is the very explanation that was taught by Inocencio Hervas to the widow. Both of them Inocencio and Marcelo, must have thought of pretending that the death of Francisco Hervas was due to a bolo wound, not from a gunshot wound, to suppress or prevent the investigation of the crime. Marcelo Hervas was the barrio lieutenant. Why did he not take steps to have the matter reported to the authorities for investigation? His only excuse was that the widow supposedly told him that he died of a bolo wound. If he was satisfied with this false explanation, it must have been because he wanted to shelter the culprits from investigation, which fact in turn shows also a guilty mind.

The statement of the widow on June 13, 1955, when examined by the municipal mayor, is explained away by the testimony of the sergeant of the Constabulary who was present at the time of the taking of the statement, to the effect that every time a question was asked the widow, she would look at Inocencio for an answer. This corroborates the story of the widow that she was then under influence of Inocencio and her fear of him.

We are satisfied with the above circumstances and explanation of the widow that her statement on June 12 was induced by her fear of Inocencio. Proceeding now to the consideration of the direct evidence, we find that both Demetrio Hervas, 15 years old, and his mother, Concepcion Laserna, positively asserted that they saw the three accused Espiridion Alido, Marcelo Hervas and Inocencio Hervas near their house on May 29, 1955 and that they recognized the latter as the one who fired the shot from the "paltik", that killed Francisco Hervas. Demetrio Hervas testified that it was in the afternoon when the assault was made. The statement of the widow before the mayor on June 13, 1955 placed the time of the assault at 6:10 in the afternoon. We take judicial notice of the fact that in the month of May and June, the days are long and the sun sets after 6:00 in the afternoon, for which reason even though it was actually 6:00 in the afternoon, when the assault was made, both Demetrio Hervas and his mother could easily see and recognize the assailants of the deceased because it was not yet dark. The assailants

are well known to them, two of them being first cousins of the deceased; so was Alido known to them. It is not necessary that their faces were clearly seen; a person can easily be recognized from his stature, by the way he stands and moves. We are, therefore, satisfied that the two witnesses, the widow and her son, actually recognized the assailants as Espiridion Alido, Inocencio Hervas and Marcelo Hervas. The testimony of the boy, Demetrio, could not be impeached on the cross-examination. His testimony was positive and direct; leaving absolutely no doubt as to the circumstances under which he saw the shooting and the certainty of his identification of the accused-appellants. As to the widow, the explanation given as hereinabove stated, to the fact that she was under the influence of fear of Inocencio Hervas, sufficiently explains why in her statement before the mayor on June 13, 1955, she pretended not to have recognized the companions of Espiridion Alido on the evening of May 29, 1955.

There was one other last incident which proves the consciousness of guilt of Marcelo Hervas. This is the fact that he pretended to be away and was not in his house when Ofelia went to notify him of the death of her father. When the Constabulary also went to his house, when the matter was investigated, after the surrender of Alido, he again was not at home. As a barrio lieutenant, he should have been the first to make steps to report the crime, but he pretended to be away. These are the circumstances which show consciousness of guilt on his part.

With the above circumstances and the testimony of two witnesses identifying the two accused-appellants and the finding of the trial judge who heard the witnesses and the appellants testify, that the appellants are guilty, we are forced to the conclusion that the said accused appellants participated in the commission of the offense charged, jointly with Espiridion Alido and are guilty thereof. The crime committed is that of murder, qualified by the circumstance of *alevosia*, as the attack was unexpected and the victim was given no opportunity to defend himself. As to the aggravating circumstance of evident premeditation, it is true that the confession of Espiridion Alido, Exhibit "C" is to the effect that Inocencio had invited Alido to go with them to kill the deceased, and that he provided his companions with requisite arms. However, this confession of Alido is not admissible in evidence against Inocencio Hervas and Marcelo Hervas. We therefore have no sufficient evidence of the evident premeditation.

Wherefore, we affirm the judgment of the court below finding the appellants guilty of murder and the sentence imposed upon each of them with costs of this appeal against the appellants.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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