

[With Resolution of November 29, 1961]

G.R. No. 15776. March 29, 1961

Ponente: DIZON, J.

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DIZON, J.:

Adolfo Saez, Juanito Purol, Roman Catian, Prudencio Esmalia, and Entrino Alejandro were charged with murder in Criminal Case No. 3266, and with attempted murder in Criminal Case No. 3267 of the Court of First Instance of Davao. Upon arraignment, all of them pleaded not guilty to both offenses, but Juanito Purol was discharged from the information to be used as a state witness.

After a joint trial, the lower court rendered judgment as follows:

"In view of the foregoing, this Court orders for the dismissal of Criminal Case No. 3267 for attempted murder against the accused Entrino Alejandro, Prudencio Esmalia and Roman Catian and the acquittal of Adolfo Saez in this case of attempted murder based on reasonable doubt, with costs de oficio.

"But in Criminal Case No. 3266 for consummated murder, this Court finds the accused Adolfo Saez guilty beyond reasonable doubt, as principal of consummated murder and sentences him to suffer an indeterminate penalty of from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, with the accessory penalties provided for by law, to indemnify the heirs of the deceased Agripino Patrimonio in the sum of six thousand pesos (P6,000.00) without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs of the proceeding; the accused Prudencio Esmalia and Roman Catian guilty, beyond reasonable doubt, as accessories after the fact in the consummated crime of murder and sentences each of them to suffer an indeterminate penalty of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional to EIGHT (8) years of prision mayor, with accessory penalties provided for by law to indemnify the heirs of the deceased Agripino Patrimonio in the sum of ONE THOUSAND PESOS (P1,000.00) without subsidiary imprisonment in case of insolvency and to pay the proportional costs of the proceeding.

"For lack of evidence, the case against the accused Entrino Alejandro for consummated murder is hereby dismissed with proportionate costs de oficio, and this Court orders for his immediate release from custody."

From the above judgment, in so far as it convicted him of murder in Criminal Case No. 3266, Adolfo Saez appealed to the Court of Appeals. After reviewing the evidence, said court came to the conclusion that the appealed decision should be affirmed, but, finding that the penalty should have been imposed in its medium period, that is, reclusion perpetua, it certified the case to Us.

The evidence for the prosecution shows: that at about 8:00 p.m. on March 9, 1955, appellant, armed with a rifle, was out patrolling their coconut plantation at Darung, Sta. Cruz, province of Davao, with Prudencio Esmalia, Entrino Alejandro and Juanito Purol; that when they saw two men inside the plantation, appellant asked them who they were, and upon receiving no answer, he fired several shots at them—one of them was killed, while the other was able to escape unharmed; that before midnight of the same day, Prudencio Esmalia and Roman Catian, following the instructions of appellant to dispose of the dead body, placed the same in the rear compartment of

appellant's family car and drove to sitio Hagonoy where they dumped the corpse in a dry well inside the Chritiansen plantation; that while returning to Darung at about 6:00 o'clock the following morning, the car ran out of gas and Catian bought some gasoline at the station of Francisco Tan in Sta. Cruz with the money given by appellant's brother, Maximo Saez; that upon their arrival at Darung at about 7:00 o'clock the same morning, they deposited the car in the garage of the Saez residence; that a few days after the incident, Catian and Esmalia were investigated by the Philippine Constabulary and the local police to whom they revealed where they concealed the body, which turned out to be that of Agripino Patrimonio.

A post-mortem examination performed by Dr. Federico Lacsamana disclosed that Patrimonio's death was due to external and internal hemorrhage caused by several gunshot wounds in his body (Exh. D).

Appellant's main contentions are (a) that the prosecution evidence is insufficient to establish his guilt beyond reasonable doubt, and (b) that the trial court erred in not sustaining his defense of alibi.

To substantiate his first contention, appellant points out certain inconsistencies between the testimonies of prosecution witnesses Juanito Purol and Benito Guisansana. Purol, one of appellant's companions when the crime was committed, and Guisansana, the companion of the deceased Agripino Patrimonio during the incident, testified that they saw appellant fire at and kill the deceased. Appellant, however, assails the testimony of the above-named witnesses claiming that there are material and important inconsistencies existing between them. While it is true that some of the inconsistencies relied upon by appellant exist, they are not of a substantial nature and do not justify disregarding the testimony of said witnesses. As a matter of fact, it is not unnatural or unusual to find similar inconsistencies in the testimony of witnesses of the type of Purol and Guisansana who do not appear to be well acquainted with court proceedings and legal techniques. Far from destroying or weakening their credibility, said inconsistencies lead one to believe that Purol and Guisansana testified to the truth and that they were not coached or rehearsed before they took the witness stand. While—as already stated—the inconsistencies pointed out by appellant refer to details, the testimonies of both witnesses coincide with respect to the important fact that they saw appellant fire the shots that killed Agripino Patrimonio. The fact that, according to Purol, when appellant asked the intruders whom he found within the family plantation who they were, nobody answered him, but Guisansana testified that he answered the query by giving his name and that of his companion, does not necessarily mean that both or either one lied, for it might be true that Guisansana answered appellant's query although, for one reason or another, Purol did not hear him at all.

Appellant also assails the appealed decision in so far as it took into account the extrajudicial confessions made by defendants Catian, Alejandro and Esmalia corroborating the testimony of Purol and Guisansana. The record discloses that when said defendants made their respective confessions they were separated from one another and could not have entered into any collusion with respect to their respective statements. Their confessions appear to be almost identical in all material respects and may rightfully be considered as confirmatory of the testimony of the prosecution witnesses mentioned heretofore. But even if such extrajudicial confessions were to be disregarded entirely, we believe that the remaining prosecution evidence is sufficiently strong to prove appellant's guilt beyond reasonable doubt.

To bolster up his defense appellant makes an effort to show that it was Roman Catian who killed the deceased Patrimonio. All that we need to do in this connection is to reproduce herein what the lower court said regarding this attempt to shift the whole blame on Catian:

" It should be borne in mind here that the Saez family is very influential in the locality where the crime was committed and their influence is mostly felt among their laborers or tenants who testified in this case. It should not be amiss to recall here that Roman Catian in his affidavit declared that he was instructed by the accused Adolfo Saez to assume the responsibility that he was the one who killed Patrimonio and that he (Adolfo Saez)

would take care of everything. In line with this device of the accused Adolfo Saez, the witness Prudencio Esmalia, notwithstanding the fact that he had already prepared a written declaration in his own handwriting pointing definitely to the accused. Adolfo Saez as the one responsible for the killing, on the witness stand, related a story which is entirely different from his written statement that it was Roman Catian who invited him around the plantation and killed the deceased Patrimonio. But this Court has noted that the testimony of Esmalia on the witness stand seems to be unnatural and unreasonable. He declared that Roman Catian borrowed the gun from him in order to look for coconut thieves. This court could not believe that Esmalia could allow Roman Catian to borrow the gun owned by the Saez because it is contrary to the provisions of law. Again, Esmalia stated that Roman Catian invited him to go around the coconut plantation. For what purpose? Roman Catian was simply a laborer working for the Saez family. And why should he take the initiative of rounding up thief when that is outside his employment? Why should he risk his life in protecting the properties of the Saez family inasmuch as he is not paid for that? Again, in his testimony Esmalia declared that he was forced to accompany Roman Catian at the point of the gun but the said witness himself admitted that while Catian was chasing the deceased Esmalia was trailing behind. If really he was unwilling to accompany Roman Catian and that he was compelled to accompany him by means of threat and intimidation, yet there were occasions by which he could have escaped from the presence of Roman Catian not only while they were yet in the plantation but while they were already going to the house of Adolfo Saez to borrow the key of the car and then proceeded to Hagonoy where the body of Patrimonio was buried. Again, this witness testified that upon their arrival in the house of the supposed parents of Roman Catian in Hagonoy, when the alleged father was informed by Catian that he had an accident and that he killed somebody, the father immediately responded in this way: 'Alright, you better bury him in a secluded place,' and that while the alleged mother learned the unhappy news from Roman Catian, she just entered the room and did not come out any more. From the aforementioned testimonies of Esmalia, this Court is of the opinion that his testimony is so unnatural and unreasonable that it does not inspire any confidence from this Court.

"On the other hand, in the written statement of Esmalia which was prepared by him in his own handwriting, he pointed positively to Adolfo Saez as the one who killed Patrimonio. His written statement is corroborated by the testimonies of the witnesses for the prosecution, Hence, on the face of this written statement, this Court is more than justified in not giving credence to the testimony of Esmalia on the witness stand where he imputed upon Roman Catian as the author of the crime.

"Again, the accused Adolfo Saez, thru his attorney, has secured an alleged affidavit of Roman Catian who is closely related by affinity to the accused Saez subscribed and sworn to before Deputy clerk of Court Crispiniano Siega. This affidavit was merely marked as Exhibit 5-Saez. The Court rejected the admission of the contents of the affidavit, although it was admitted only to prove that it was an affidavit subscribed by Catian before Siega. If the purpose of presenting this affidavit was to impeach the testimony of Roman Catian wherein he categorically stated that it was Adolfo Saez who killed Patrimonio, Roman Catian should have been given an opportunity to testify about the preparation and the signing of said affidavit. It is an elementary rule of evidence that case of this kind, the affidavit should first be shown to the witness by laying the necessary predicate and let him explain why he signed the affidavit contrary to his previous testimony. The contents of the affidavit are very serious because in the same Roman Catian has allegedly admitted as the one who killed the deceased Patrimonio. So serious is this admission of Roman Catian that he should be given a chance to say something about this affidavit, but the defense has failed to present Catian as a witness to save Adolfo from criminal responsibility. The failure of the defense to place Roman Catian on the witness stand would impliedly mean that if Catian were presented on the witness stand he would retract all what he had stated in his affidavit admitting the killing of Patrimonio.

"This Court after weighing all the evidence presented by the defense is of the opinion that the imputation upon Roman Catian as the author of the killing of Agripino Patrimonio is a device frame by the defense in order to save Adolfo Saez from criminal responsibility, but the evidence presented to support this device is unbelievable."

Appellant's alibi can not be sustained because, as the lower court held, the testimony of appellant's witnesses in support of this defense is unworthy of credit. Said witnesses were Gloria Saez, appellant's own wife, Cresencia Quijano, appellant's housemaid, Florencio Migallon and Pedro Asilum who were not only appellant's neighbors but were, according to the trial court, "depending upon the Saez family for their livelihood". Well known is the rule that the defense of alibi must be established by strong, positive and unbiased testimony, the same being easily fabricated. The evidence under consideration is not of this nature and can not overcome the positive testimony identifying appellant as the party who fired at and killed the deceased Patrimonio, especially because such positive testimony of identification is amply corroborated by circumstantial evidence. Thus, the evidence shows that the rifle used in the commission of the crime belongs to appellant; the place where Patrimonio was killed was around the premises of the Saez plantation; said plantation had been, prior to this incident, the victim of theft of coconuts, for which reason appellant and his companion were patrolling the area; the car used to transport the dead body of Patrimonio was the Saez family car in the hind compartment of which human bloodstains were found. There can, therefore, be no doubt as to appellant's guilt.

As to whether the crime committed by appellant is murder or simple homicide, we are of the opinion that it was only the latter. The fact that he asked the deceased Patrimonio and Guisansana to identify themselves before firing at them shows that there was no treachery in the commission of the offense. In *People vs. Tumaob*, 83 Phil., 738, 46 Off. Gaz., [Supp. II] 190, it was held that the qualifying circumstance of treachery cannot logically be appreciated against the accused because the latter did not make any preparation to kill the deceased so as to insure the commission of the crime making it at the same time impossible or hard for the person attacked to defend himself or retaliate. Moreover, that, as in this case, the attack was sudden did not constitute *alevosia* because of lack of evidence showing that the aggressor consciously adopted a mode of attack intended to facilitate the commission of the crime without risk unto himself. To the contrary, that he gave Patrimonio and Guisansana the opportunity to identify themselves before firing the fatal shots not only negatives this requirement but also shows that he gave them an opportunity to defend themselves or to return any attack coming from him.

The crime, however, was committed with the aggravating circumstance of nighttime, which is sufficiently compensated by the mitigating circumstance of obfuscation, which the lower court considered in favor of appellant. As a result, the penalty of reclusion temporal provided for in Art. 429 of the Revised Penal Code must be imposed in its medium degree. Applying the provisions of the Indeterminate Sentence Law, appellant Saez should have been, as he is hereby, sentenced to suffer an indeterminate penalty of from six (6) years and one (1) day of prision correccional to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal.

Modified, as above indicated, the appealed decision is affirmed in other respects.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

RESOLUTION

November 29, 1961

DIZON, J.:

The matter before us is appellant's motion for reconsideration and/or new trial on the ground of newly discovered evidence.

The newly discovered evidence is a sworn statement of one Roman Catian made right after his apprehension by

the Philippine Constabulary three days after the killing of Agripino Patrimonio in the evening of March 9, 1955. The motion alleges that this statement was "purposely suppressed by the constabulary officers", because in it Catian pointed to Maximo Saez, appellant's brother, as the one who, in the presence of two other persons, Napoleon Escandar and Prudencio Esmalia—had handed to Catian a rifle with orders to shoot on sight any person found in the coconut plantation owned by the family. A photostatic copy of the statement is attached to the motion under consideration, the original being in the possession of appellant's counsel.

Regarding the circumstances surrounding the discovery of the sworn statement relied upon, the motion alleges the following:

"Long after Adolfo Saez was convicted by the trial court and as this case was pending appeal, Atty. Artemio Al. Loyola (counsel for accused-appellant in the lower court) chanced upon a certain Sgt. Honesto Samson of the Davao PC Command, who turned out to be among the original investigating PC officers. Sgt. Samson inquired about the status of the case and when he was informed by Atty. Loyola that Adolfo Saez had been convicted by the trial court, volunteered the information that kept among the miscellaneous files of the Davao PC Command was a confession signed by Roman Catian shortly after his arrest, in which Catian admitted that it was he who had shot Agripino Patrimonio. Sgt. Samson further ventured the opinion that had said written statement been introduced during the trial, it could have affected the decision of the lower court.

"Atty. Loyola's curiosity was of course aroused, especially because his own investigation had indicated that such a written confession had been made by Catian but it was disregarded and never located, and Capt. Lagura had denied at the trial that it existed. He asked for more information from Sgt. Samson regarding the matter. Sgt. Samson informed him that the statement was taken by Cpl. Barril in his presence and in the presence of then Mayor Cesar E. Bendigo and then Chief of Police Luis Maleza of Sta. Cruz, Davao at the Municipal Hall. Atty. Loyola thereupon requested Sgt. Samson to accompany him to the PC Headquarters so that he could read the contents of the confession. While in the PC Headquarters, Sgt. Samson showed the files to Atty. Loyola and even gave him a duplicate original of the confession, duly signed by Catian. With said signed duplicate original of the confession in his hands, Atty. Loyola notified undersigned counsel, Atty. Pelaez & Jalandoni, of his discovery. Thereupon, undersigned counsel immediately sent their assistant attorney, Mr. Abraham F. Briones, to Davao to interview Sgt. Samson." (pp. 19-20, motion)

In view of the allegation made in the motion, we required the Solicitor General on May 12, 1961 to file an answer thereto within ten days from notice. On at least three different occasions we granted his office extensions of time to file his answer, and the same not having been filed until September 26, 1961, notwithstanding the expiration of the last extension granted, we issued a resolution on that date requiring him to state for the record, within five days, from notice, whether or not he intended to file the required answer. On October 13, 1961 the Solicitor General finally filed it, the principal allegation made therein being as follows:

"1. The delay in submitting this pleading is due to a cautious determination of the truth; we had referred the matter of wilful suppression of evidence allegedly committed by the PC authorities in Davao City of the PC Chief, who ordered for an investigation of the matter and thereafter submitted his report to this representation who in turn called for a conference between the PC officer who personally conducted the said investigation in Davao and the representative of the Law Office of Pelaez and Jalandoni, defense counsel, who previously went to Davao for the same purpose;

"2. The newly discovered evidence unearthed after the trial and the promulgation of the judgment of this Honorable Court consists of a statement subscribed by co-accused Roman Catian three days after commission of the crime, specifically on March 12, 1955 in an investigation conducted by the PC in Davao;

"3. In calling the attention of this Honorable Court to said newly-discovered evidence, appellant in effect points to his own brother, Maximo Saez as the killer, which strikes this representation as rather unnatural and

almost desperate for a brother to do, unless compelled by a conviction of his own innocence;

"4. The said newly-discovered evidence which is reproduced on pages 14-16 of appellant's motion implicates Maximo Saez as the man who instructed Catian (the affiant) along with two others to shoot at anyone stealing coconuts, while appellant Adolfo Saez is mentioned therein as one of those who participated in the disposal of the dead body of the deceased Agripino Patrimonio ;

"5. The investigation conducted by the PC top brass and this representation discloses the following significant facts;

(a) That the newly-discovered evidence, consisting of the statement of Catian (implicating Maximo Saez) which was executed by the latter ahead of the affidavit (implicating Adolfo Saez as principal) which was the one presented as evidence before the lower Court;

(b) That the testimony of Capt. Lagura of the Davao PG regarding a statement of Catian, (also implicating Maximo Saez) which was unfinished and unsigned, referred to one which was being prepared previous to that which is now the basis of the newly-discovered evidence (pp. 17, 18, appellant's Motion) ; hence there seems to be nothing on record to show the existence of the statement now in question which consequently could have been discovered at the trial;

(c) That even assuming that Capt. Lagura was not referring to Catian's statement now the subject matter of the new trial incident but to a previous unfinished statement the alleged reason for justifying the preparation and execution of the second statement (the basis of the new trial.)—which is that Catian implicated Maximo Saez which the PC believed was not true—is not logical inasmuch as the said second statement again implicated Maximo Saez; thus, if we follow the theory of the PC, Catian implicated Maximo Saez twice before he implicated Adolfo Saez once on the same date, March 12, 1955;

(d) That the foregoing facts were never made known to the provincial fiscal or to the court or to the defense, for otherwise who can tell what the outcome would be; it is possible the Fiscal might have proceeded against Maximo Saez as the principal, in lieu of Adolfo Saez instead of having the case dismissed against the former for lack of evidence;

"6. Without having to pass on the merits of the theory of 'mistrial' as raised by the defense in the sense that evidence offered during the separate trials of the different accused were allegedly considered by the court as evidence against the said appellant, this representation believes in giving an accused in a criminal case every opportunity to defend himself, and this includes an opportunity known and available to him at the trial with the view of insuring the fullest satisfaction of the requirements of due process; and

"7. There being no harm on the interests of the state, the choice is not difficult to make especially when we bear in mind that cardinal percept known to all free men that it is better to let a number of guilty men go free than send one innocent man to jail.

"Wherefore, in the interest of justice, this representation interposes no objection to a new trial to be granted to the appellant under conditions and limitations that this Honorable Court may deem fit to impose."

Inasmuch as an extrajudicial confession made by Roman Catian subsequent to the one mentioned heretofore was taken into account by the trial court in convicting appellant; considering that the sworn statement relied upon in the motion under consideration might render valueless the sworn statement upon which the trial court partly relied to convict appellant and might even affect the credibility of some of the prosecution witnesses because it points to a person other than appellant as the one who had given the order to shoot any intruder found in the coconut plantation of the Saez family; and considering further that before and during the trial the defense had no reasonable opportunity to discover the existence of the sworn statement aforesaid, we believe that, in the interest

of justice, the motion for new trial should be granted.

Wherefore, the decision heretofore rendered in this case is set aside and the record is remanded to the lower court for new trial in consonance herewith.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Parades, and De Leon, JJ., concur.

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