

**THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND  
APPELLEE, VS. REMEDIOS AVELINO DE LINAO ET AL., DEFENDANTS.  
REMEDIOS AVELINO DE LINAO, APPELLANT.**

*G. R. No. 33909. December 16, 1931*

Ponente: MALCOLM, J.

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**MALCOLM, J.:**

In this case there have been pending action for sometime a number of motions filed on behalf of the accused which have not heretofore been decided because of the absence on leave of the author of the decision, but which the court has determined to dispose of because of there being no probability of the ponente returning to duty before the adjournment of the court at the end of the present calendar year. Further, by way of introduction, it should be said that in the Court of First Instance of Manila, Judge Albert presiding, the accused Remedios Avelino de Linao was found guilty beyond reasonable doubt of the crime of attempted parricide, and was sentenced therefor to twelve years' imprisonment, prison mayor. On appeal, following the presentation of lengthy briefs and memoranda, and to follow the language of the decision after having "given this case the serious consideration which its importance deserves," the judgment of the lower court was affirmed.[1] All the seven members participating agreed that the accused was guilty, but disagreed as to the proper penalty, five voting to affirm and two voting to convict the accused as an accomplice. Thereafter, as above indicated, motions were filed which it is now proposed to take up and decide.

- Motion for Reconsideration.—A motion for reconsideration, presented by the original attorneys of record, relies on four grounds. The first three grounds enumerated all go to propositions which were thoroughly analyzed when the case was considered on its merits, and so it would serve no good purpose to stir up the same matters again. The fourth ground stated in the motion for reconsideration relates to a point more specifically set out in a motion for rehearing which will next be discussed. As to the motion for reconsideration in its principal phases, we are of the opinion that the same should be denied, reserving, of course, the individual opinions of the members of the court as to the proper penalty.

- Motion for Rehearing.—Related to the fourth ground stated in the motion for reconsideration is a motion for rehearing presented by the attorneys of record, which alleges that the decision was rendered without a quorum being present in this tribunal, as required by section 133 of the Administrative Code, as amended by Act No. 3816. It is argued that, as the case was considered in banc, nine members are required to constitute a quorum, and that as the decision shows that only seven justices took part in the consideration of the case, a rehearing should be granted. It is, of course, evident that of the nine members of the court seven only participated in the decision, the other two not taking part in the consideration of the case. It further appears that the decision is entitled "in bane." However, that nine members constituting a quorum were present cannot be denied, for otherwise the court would have been forced to adjourn on account of the absence of a quorum, and the fact that two members did not participate in this particular case does not affect the result. It should also be explained that following the enactment of Act No. 3816, a number of decisions of this court were promulgated under the old nomenclature of "First Division," "Second Division," and "In Banc" whereas, in reality, such decisions fell either into a "Division of Five," a "Division of Seven," or "In Banc" according to the nature of the case. The

case at bar is plainly one for a division of seven. To quote from Act No. 3816, "Seven of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum \* \* \* for the final disposition of \* \* \* a criminal case in which the judgment of the lower court imposed imprisonment for more than ten years, or a fine of more than ten thousand pesos, and the concurrence of five judges shall be necessary for the pronouncement of a judgment." That is exactly the case at bar, and as none of the requirements for the consideration and decision by the court sitting in banc were present, the court rightfully disposed of the case in a division of seven. Accordingly, we are of the opinion that the motion for rehearing should be denied.

- Motion for New Trial.—A motion for a new trial, supported by a number of affidavits, signed by new attorneys for the accused, has been filed. Exhibit A is the affidavit of Felix Tuazon, one of the accused who plead guilty and who is now serving his sentence in Bilibid Prison. In synthesis, Tuazon states that the purpose of the assault on Mr. Linao was robbery; that Mrs. Linao had no previous knowledge of this robbery nor did she instruct Tuazon and his companions to kill her husband, and that he, Tuazon, made the admission that Mrs. Linao was the one who induced him and his companions to kill Mr. Linao in the belief that he could thereby save himself from criminal prosecution. Exhibits B and C relate to a letter of Eustaquio Lagrimas, a prisoner in Bilibid Prison, amplified by his affidavit to the effect that he prepared the motion for reconsideration for Antonio Ubaldo and Felix Tuazon, two of the accused, and that they confessed that they were induced to involve Mrs. Linao in the case due to promises of detectives, and that they told him (Lagrimas) a true story of 'the occurrence. Exhibit D is a lengthy affidavit executed by the accused, Remedios Avelino de Linao, consisting of denials, allegations of innocence, and other matters to support her defense. Exhibit E is the affidavit of the boy Angel Linao, the son of Joaquin Linao and Remedios Avelino de Linao, in which he asserts positively that his father, when sleeping, does not have the custom of snoring. Exhibits F and G consist of a request addressed to the Director of the Weather Bureau and his answer, relative to the rising and setting of the moon on March 24, and March 25, 1930. Exhibit H is the affidavit of Teofilo Alcantara, a policeman, who says that he intervened in the investigation and who purports to reveal a damaging conversation had with Clemente Pescante, a policeman and a witness for the prosecution. The Attorney-General has opposed the granting of the motion for a new trial on the grounds that Exhibits A, B, and C are inherently improbable and utterly unreasonable; that Exhibit D is not newly discovered evidence, and that none of the exhibits would warrant modification or reversal of the judgment rendered in this case.

Passing in review the various exhibits, it is readily apparent that the affidavit of the accused Remedios Avelino de Linao does not constitute newly discovered evidence which the defense with due diligence could not have offered at the trial, nor does the affidavit of the son Angel Linao, or the statement of the Weather Bureau. Also, the affidavit of the prisoner Eustaquio Lagrimas and the affidavit of the policeman Teofilo Alcantara speak of matters which merit but passing consideration. The best basis for the motion lies in the affidavit of the co-accused Felix Tuazon, which indicates a motive other than murder and which attempts to relieve Mrs. Linao from criminal responsibility. The view of the writer was that the affidavits in support of the motion for a new trial were legally insufficient, and that even if the testimony contained in these affidavits should be admitted, it is not such evidence as should change the result. However, a majority of the court are impressed otherwise. They believe that in the interest of justice, the case should be reopened to receive additional testimony. As responsive to this opinion, the motion for a new trial will be granted.

- Additional Motion for New Trial.—In an additional motion for a new trial filed by the same counsel which prepared the main motion for a new trial, it is asked that at this trial there be taken into consideration some notes of a detective, to be found in the records of the police department of the City of Manila, in order to show that Exhibits "J" and "U" were prepared by a person other than the accused Mrs. Linao. The Attorney-General submits that this motion should be denied on the ground of improbability. We suppose that a motion of this character, of a new trial be granted, could properly be presented to the trial court where, after requiring the defense to make a proper showing and after reflecting on the answer of the prosecution, an order, either granting or denying the motion, could be made.

It should be stated before concluding that the author of the decision in this case, after reading the motion for reconsideration before his departure on leave, made the following: "Memo—This case was fully and carefully considered by every member of the court who took part in it. Personally, I am firm in my conviction that, the majority opinion of the court is right, and any and all motions for reconsideration should be denied. Charles A. Johns. June 23, 1931." We fully agree with this recommendation, but the motion for a new trial was filed late in July when Justice Johns was no longer in the Islands, and so has had to be studied by other members of the court.

In accordance with all the foregoing, the motion for reconsideration and the motion for rehearing will be denied as without merit, and the motion for a new trial will be granted, and the record remanded to the court below, with instructions to reopen the case to take the evidence of the affiant Felix Tuazon in support of the motion for a new trial, and such other and additional evidence as the defense and prosecution may care to offer which in the opinion of the court may be relevant. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real, and Imperial, JJ., concur.

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[1] G. R. No. 33909 promulgated March 10, 1931, not reported.

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