

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AGUSTIN HERNANDEZ, RUPERTO DINGLASAN, AND EUFRACIO
DINGLASAN, DEFENDANTS; AGUSTIN HERNANDEZ, DEFENDANT AND
APPELLANT.**

G.R. No. 3391. May 23, 1952

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Quezon finding the defendant-appellant Agustin Hernandez guilty of murder for the death of one Paulino Lozada, with the qualifying circumstance of treachery and the mitigating circumstance of drunkenness, which is not habitual, and sentencing him to life imprisonment and to indemnify the heirs of the deceased in the sum of P2,000.

Paulino Lozada, the victim, was on March 30, 1947, an electrical engineer in the Peter Paul factory at Candelaria, Quezon. He boarded in the house of Eufrazio Dinglasan in said municipality, and the appellant herein was his intimate friend. At about 4:30 in the afternoon of March 30, 1947, while appellant and one Teofilo Cedeño were on the national road in the city of San Pablo, Laguna, waiting for a truck bound for Candelaria, Quezon, Lozada passed by in his jeep. Hernandez greeted him, and Lozada invited them to ride with him in his jeep to Candelaria. There were two other companions of Lozada in the jeep, so they were five in all that left San Pablo city that afternoon. When they reached the town of Candelaria, the jeep parked in front of the boarding house of Lozada and his companions alighted, while Lozada filled the jeep with gasoline. After that the three of them, Lozada, Hernandez, and Cedeño, rode in the jeep again bound for Lucena. The prosecution contends that Lozada, Hernandez, and Cedeño continued in the jeep to Lucena, while defendant-appellant claims that he and Cedeño alighted from the jeep after it had passed Cine Mena and before it reached Quiapo bridge in the eastern part of the town.

That was the last time Lozada was heard of, and his relatives began to look for him. The chief of police of Sariaya, Andres Remo, met Lozada's brother on March 31st and the latter asked him to help locate his brother Paulino, who had disappeared. On April 2d the chief of police of Sariaya received a report that a dead body had been found in the barrio of Sto. Cristo, Sariaya. Thereupon, the chief of police, the sanitary inspector, and the president of the sanitary division proceeded to the place where the corpse was. The chief of police, who had known Lozada since the year 1943, because Lozada and his brother had lived with him, immediately recognised Lozada. So he notified the Peter Paul company of the finding of the corpse. In the meanwhile, he made a sketch of the place where the corpse was found, while the sanitary inspector, under the direction of the president of the sanitary division, examined the dead body. They found that many worms were crawling around four wounds in the abdomen of the deceased and on the head, at the right parietal region. In order to see the size of the wounds, the sanitary inspector had to remove the worms with a stick. The size of the wounds is about one centimeter each and 1 1/2 centimeters from each other. (See Exhibit 3-Hernandez.) In the right parietal region the scalp was eaten away by worms and the skull was exposed. The inspector also noticed that the wrists bore marks of having been

tied by rope, and also found a rope of the size of a pencil and about one meter long, with a loop at one end. This rope was not taken by the authorities. The place where the corpse was found was in the midst of high cogon grass, about 40 meters from a cemented portion of the provincial road. (See Exhibit E.)

When the father and brother of Lozada learned of the finding of Lozada's body, they went to the place and immediately recognized the corpse as that of Paulino. They took the corpse and buried it. The authorities of Candelaria began to make investigations to determine the persons responsible for the crime. Appellant Hernandez, Cedeño, Espetelos, and others were examined, and all of them testified to having seen Lozada when he made his trip from San Pablo to Candelaria, but all of them disclaimed any knowledge of what happened to him thereafter. Appellant and Cedeño declared in their affidavits (Exhibit 1-Dinglasan, by Cedeño) that they alighted from the jeep in Candelaria, and that as Lozada proceeded in his jeep towards Lucena, they lost sight of him.

The filing of the complaint in this case against the appellant and his co-accused started on May 24, 1947, when Teofilo Cedeño made an affidavit imputing the death of Lozada to Hernandez, Malaborbor, and Ruperto Dinglasan. On the same day, May 24th, the appellant herein Agustin Hernandez made a confession, Exhibit I, giving details similar to those given in Cedeño's affidavit. In both affidavits it is stated that Hernandez had agreed to kill Lozada upon the request of Ruperto Dinglasan, brother of Remedios Dinglasan, a girl friend of Lozada studying in Lucena. The information was filed on May 27, 1947, not only against Agustin Hernandez but also against Fernando Malaborbor, Ruperto Dinglasan, and Eufracio Dinglasan. At the preliminary investigation appellant herein pleaded guilty to the charge. The other accused, Fernando Malaborbor, was still at large at that time. After the preliminary investigation the case was forwarded to the Court of First Instance of Quezon, where, after trial, the accused Ruperto Dinglasan and Eufracio Dinglasan were acquitted and only Agustin Hernandez was found guilty of the charge.

The grounds upon which the court a quo based its judgment of conviction are the confessions of the appellant, Exhibits I and J, and the testimony of the eyewitness for the prosecution, Teofilo Cedeño. On this appeal counsel for the appellant contends that the lower court erred in not giving credit to the testimonies of the witnesses for the defense.

Teofilo Cedeño, who is admitted to have been the companion of Agustin Hernandez in the trip of Lozada from San Pablo city to Candelaria, testified that Lozada, Hernandez, and he left Candelaria at 6:30 in the afternoon; that on reaching a barrio known as Mañgilag, Hernandez asked Lozada to stop the jeep in order to allow him (Hernandez) to pass by a friend, and that Lozada did so; that Hernandez came back with Fernando Halaborbor, and all of them proceeded together in the jeep to Lucena; that they arrived in Lucena at 7:30 in the evening, and once there they drove around the town and later proceeded to a house where Remedios Dinglasan was boarding; that here Hernandez saw Ruperto Dinglasan, with whom he had a talk ten meters away from the jeep; that after this they passed in front of the Lucena theater and thereafter went to Abellanos street, where the jeep stopped because of engine trouble; that Lozada thereupon alighted and went in front of the jeep to fix the engine, and while Lozada was fixing the engine Hernandez took Cedeño behind the jeep and confided to him that they were to kill Lozada; that Cedeño was surprised, but Hernandez threatened that if he would not join them, he (Cedeño) would be the next one to be killed; that at the same time Hernandez assured him that he had nothing to fear because Ruperto Dinglasan would not forsake them; that after the jeep was fixed, all of them boarded the jeep, and as the jeep was moving Cedeño jumped out, but Lozada stopped the jeep and asked him why he did so, to which Cedeño replied that he wanted to visit his son; that Lozada promised that they would come on another occasion; that at that time he wanted to tell Lozada about the plan to kill him, but Malaborbor had a very threatening look at him, and so he could not do so; that thereupon they proceeded towards Candelaria, this time with Hernandez at the wheel; that when they reached the barrio of Sto. Cristo, Sariaya, at a place where there is a

cement road, Hernandez abruptly stopped the jeep and Malaborbor alighted and immediately took hold of Lozada; that Hernandez ordered Cedeño to get off the jeep, then ordered him to tie Lozada, which he did, after which Malaborbor took Lozada along with him; that Hernandez pushed him (Cedeño), so he pretended to follow, but he stopped about seven meters from the road; that after a while he went back to the jeep, and as he reached it, he heard Lozada make the supplication: "Pareng Osting, hinihiñgi ko na ang buhay ko," after which a moan was heard; that thereafter Malaborbor returned carrying a knife which was still open, which he closed, Malaborbor assuring Hernandez that he (Lozada) was already dead and could not have survived the blow that he had given him; that after this they proceeded on their way, and when they reached the barrio of Mañgilag, the jeep stopped and Malaborbor got off; that they again proceeded on their way, and when they reached the barrio of San Juan they took the road to Lipa, and there the jeep was delivered to a man whom Cedeño could not recognise because it was dark; that this man allowed them to ride in his jeep back to Candelaria, where they arrived between 4:30 and 5:00 o'clock the next morning.

The story of the murder as above described is substantially the same as the confession of Agustin Hernandez made on May 24, 1947, before the deputy clerk of court, Exhibit I.

The motive given by the prosecution and sustained by the testimony of Cedeño is the desire on the part of Ruperto Dinglasan, brother of Remedios Dinglasan, who was the girl friend of Lozada, to get even with the latter. Lozada and Remedios Dinglasan were sweethearts and were in continuous correspondence, as evidenced by letters of Remedios Dinglasan to Lozada, Exhibits A, B, and C, and their common pictures, Exhibits D, D-1, D-2, and D-3. According to Cedeño, Ruperto Dinglasan had wanted to eliminate Lozada because his sister had a grievance against him, and that three days before March 30, 1947, Ruperto Dinglasan invited Hernandez and Cedeño to an eating place belonging to one Ambo, and that there Dinglasan asked Hernandez to help him eliminate Lozada, which Hernandez promised to do. Cedeño further testified that three days after the murder Hernandez went to his house offering P60 in cash and two cans of sugar, and that at first he refused to accept them, but that he was finally prevailed upon to accept the money but not the sugar.

The father of Lozada also testified and declared that upon being informed by another son on Holy Monday at 1:00 p. m. that Lozada was missing, he went to Candelaria to look for Agustin Hernandez, whom he had seen the previous Sunday, but that Hernandez could not be found at his house. The deputy clerk of court, before whom Hernandez swore Exhibit I, was called to the witness stand, and he testified that the said exhibit was signed before him without any pressure having been exerted upon Hernandez at the time of the signing, with Hernandez expressing willingness to sign the same after it was read to him paragraph by paragraph. The provincial fiscal testified and declared that Exhibit J was the transcript of the stenographic notes taken at the questioning to which Agustin Hernandez was subjected, and contains the answers he gave to the questions asked.

Exhibit I is a confession in detailed form of the incidents of the murder from the time Hernandez rode in Lozada's jeep to the sale of the jeep in Lipa, including the visit to Lucena, the joining of the party by Malaborbor, and the bringing of Lozada to a wayside, there to be killed by Malaborbor. Exhibit J is a continuation of the confession, Exhibit I, giving the cause or motive for the killing and the agreement with Ruperto Dinglasan for the murder for a price of P2,000.

The theory of the defense is that after the jeep driven by Lozada, in which Lozada, Cedeño, and Hernandez were riding, had parked in front of Cine Mena along the provincial road and before the jeep reached Quiapo bridge in the municipality of Candelaria, both he (Hernandez) and Cedeño alighted from the jeep; that upon alighting from the jeep, he immediately saw his friend, one by the name of Danoy (Adriano Gutierrez), whom he wanted to see about a cock which Gutierrez promised to give him; that it was around 6:30 p. m., and that they separated on the street, and he (Hernandez) went home; that after taking his supper he went back to the house of Danoy, bringing

along with him half a bottle of lambanog (native wine) and two bottles of beer; that he and Danoy set to drinking a mixture of the beer and lambanog; that afterwards, because he was not accustomed to drinking, he got drunk, reclined on a sofa, and thereafter went to sleep until 12:00, when he was awakened; that thereafter he went back to his house. This defense is supported by the testimony of said Danoy (Adriano Gutierrez), who testified that that evening they did not talk about anything except the fighting cock; that Hernandez did not get the cock but promised to get it later from Danoy; that at 12:00 he woke up and went to work until 3:00 the following morning.

Hernandez denied the testimony given by Cedefio with respect to the supposed trip of the three from Candelaria to Lucena and back. As to his confession, Exhibit I, he said that he was obliged to sign the same because he was tortured and given the water cure, which he could not stand. As to his declarations to Fiscal Mayo, Exhibit J, he explained that he gave those statements because his uncle, Urbano Hernandez, told him that Attorney Dimayuga and Maximo Lozada had promised that he would be a state witness if he would testify to those facts, and that as he had already made a confession, it was the only way he could save himself.

A study of the testimony of Cedeño readily convinces us of its truthfulness. The story given by him, with all its details, is clear, positive, and logical. While Cedeño's credibility may be impugned for the reason that he may be considered as a co-conspirator, although an unwilling one at that, there is no portion or detail thereof, nor any circumstance or fact therein, which would indicate any distortion of the facts or a coloring thereof. On the contrary, sufficient corroborating evidence has been submitted, not counting the confessions of Hernandez, Exhibits I and J. Thus, as to the cause or motive for the murder, the fact that Remedios Dinglasan and Lozada were sweethearts is conclusively shown by the letters and pictures, and the fact that Ruperto Dinglasan plotted the death of Lozada finds justification in the conduct of Lozada, who had many girl friends and who, it is said, wanted to marry one by the name of Mia. His testimony about the cord with which Hernandez ordered him to tie Lozada is corroborated by the existence of the cord, one meter long, found near the corpse of Lozada, and the marks thereof left on the wrists of Lozada, the existence of all of which was testified to by the sanitary inspector. The disappearance of the jeep which Lozada used that afternoon also fits in with the explanation given by Cedeño that it was left with a man in Lipa, Batangas. If it was not brought to another province, it would certainly have been found in Lucena, Sariaya, or Candelaria. The supposed statement of Malaborbor, upon Hernandez's expressing the fear that Lozada may still be alive, that "with that blow he would not survive," fits in with the wound found in the head of Lozada, which must have certainly insured Lozada's death. The four wounds found in the abdomen of the deceased must also have been produced by the knife which, according to Cedeño, Malaborbor brought back with him and which he closed after he boarded the jeep. Not much importance can be given to the statement in the certificate of death that the wounds were gunshot wounds, because no careful examination was made by Dr. E. R. Cadiz, the president of the sanitary division, and this represents but his opinion. This can not prevail over that of the sanitary inspector who examined the wounds. There is, therefore, no room for reasonable doubt that the murder must have been effected in the form and manner and under the circumstances testified to by Cedeño.

We find that the explanation given by Cedeño why he made his previous affidavit, Exhibit 1-Dinglasan, that he was afraid of Hernandez, satisfactory. Cedeño's fear of Hernandez is shown by the fact that he wanted to get away from the jeep, yet he could not do so for fear of Hernandez. Furthermore, when this affidavit was made on April 13, 1947, Hernandez was not yet arrested. Lastly, the similarity of their affidavits in the details shows that Hernandez must have influenced Cedeño in making it.

On the other hand, the defense of alibi is improbable. In the first place, no explanation is given why Hernandez and Cedeño should alight near Cine Mena. They should have refused to join the jeep after it was filled with gas. In the second place, for Hernandez and Danoy, his friend, to be talking the whole night about no other subject

than the giving of the fighting cock, as both testified, is difficult to believe. If the two had really been talking for a long time over glasses of beer mixed with wine, there should have been more subjects of conversation than that of the fighting cock, which matter could be finished in a few words. In the third place, upon carefully examining the testimony of Adriano Gutierrez, we note that whereas in the beginning he said he and Hernandez were drinking sarsaparilla and wine, later he said that they were drinking beer and wine; and whereas in the beginning he said that the drink was sweet because the wine was mixed with sarsaparilla, he later stated that it was bitter because it was beer mixed with wine. No individual of ordinary intelligence would make such a mistake if he were telling the truth. Hernandez himself made a mistake, because in the beginning he asserted that the person with whom he was talking was Mariano Virtuocio, which he later rectified to be Eduardo Gutierrez. These very gross mistakes on very important points not easily forgotten are very strong indicia of the falsity of the story given by them.

As to the confession, Exhibit I, we find no reason for disturbing the finding of the trial court that the evidence submitted by the defendant-appellant denying the voluntariness thereof is insufficient to destroy the testimony of the clerk of court as to its voluntariness. We agree with the trial court that no force was used for the reason that the confession was made on the same day that Cedeño gave his affidavit explaining all the details. When Cedeño squealed and confessed all the details, including Hernandez's participation, Hernandez must have been unnerved, and believing that it was useless to continue denying his guilt, he must have decided to make a clean breast of it all. So he made the confession. As a matter of fact, at the preliminary investigation on June 4, 1947, he also pleaded guilty, and on June 21, 1947, he again made further disclosures. The Dinglasans did not make confessions, yet the police needed some better evidence against them. The police did not need evidence against Hernandez because Cedeño had already made his affidavit. There was no need for the police to secure Hernandez's confession. As to Exhibit J, the explanation given by the appellant that he made it on the supposed promise given by Attorney Dimayuga and Maximo Lozada, the appellant should have known that these people were not in a position to make the promise. The investigation was being conducted by the provincial fiscal, and he should have known that only the latter could make the promise at all. The involuntariness of Exhibits I and J has not, therefore, been established.

The trial court, therefore, was fully justified in finding Hernandez guilty on the strength of the testimonial evidence, especially that of Cedeño, supported by Hernandez's confessions, Exhibits I and J, and by his plea of guilty entered at the preliminary investigation, and in rejecting the defense of alibi interposed by him

The trial court found the commission of the crime to be qualified by treachery and attended by the mitigating circumstance that Hernandez was drunk, but not habitually so. There is evidence that Hernandez was really drunk at the time, because Cedenb testified that they took drinks at a place belonging to one by the name of Pasumbal, and that when Hernandez spoke to Cedenb behind the jeep, he smelled liquor. We believe that this can not be considered as a mitigating circumstance, for there is justification for the belief that Hernandez, who hid plotted the death of Lozada, had drunk wine in order to embolden him in the carrying out of his evil plan. The fact that he was drunk, therefore, may not be considered as a mitigating circumstance. Counsel for appellant argues that treachery was not proved. We find no merit in this contention because Lozada was first bound with a cord, stabbed, and hit in the head with a club or stone while so bound.

The trial court fixed the indemnity for the death of Losada in the sum of P2,000. As Lozada was in his youth and was an electrical engineer with a responsible position in a manufacturing concern, the amount is inadequate as indemnity for his heirs. The same should be raised to the maximum, P6,000.

Since this case had been submitted to this Court for decision, a motion for new trial has been submitted on the ground of newly discovered evidence. The newly discovered evidence is the supposed statement of one Isidoro Bola, whose affidavit is attached to the motion for new trial. This affidavit is given by a prisoner in the New

Bilibid Prisons at Muntinglupa, where the appellant is now confined. It states that affiant and others had killed Lozada to rob him of his revolver, jeep, and money. No details, however, are given to give us the reasonable assurance that his statement is true. In the trial the appellant had also presented one Alfonso Abransillo, his cell mate at the provincial jail, also a convict. The presentation of this witness in court by the appellant shows his knack of getting cell mates to testify for him, and we believe that this affidavit supporting the motion for new trial was secured through the same means.

For the foregoing considerations, the judgment appealed from is affirmed, with the modification of the indemnity which appellant should pay to the heirs of the deceased to P6,000. So ordered with costs.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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