

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ELENA MATONDO ET AL., DEFENDANTS AND APPELLANTS.

*G.R. No. 36833. October 11, 1933*

Ponente: STREET, J.

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### STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of Leyte, finding Elena Matondo guilty of the offense of parricide and her coaccused, Rufino Pelen (alias Peling) and Adriano Elicito, guilty of the offense of murder, and sentencing each of the three to life imprisonment, and requiring them jointly and severally to indemnify the heirs of Gavina Gelsano in the amount of P1,000, and requiring them to pay the costs.

Gavina Gelsano, the victim of the crime with which we are here concerned, was a person of means, resident in the barrio of Cahagnaan, municipality of Matalom, in the Province of Leyte. Her first husband died many years ago; and to them had been born one daughter, Elena Matondo, one of the appellants in this case. Elena is the wife of Arsenio Noel, a nephew of Tomas Veloso, who, at the time with which we are here concerned, was justice of the peace of the municipality of Matalom. While Gavina Gelsano remained a widow, her daughter Elena enjoyed the income derived from the conjugal property of her parents. When her mother took a second husband in the person of Crisostomo Roa, Elena was displeased, and one-half of the conjugal property was assigned to her in her own right. This apparently did not satisfy Elena, who was disgusted that Roa should have the enjoyment of her mother's share. Unpleasant relations therefore developed between Elena on the one side and her mother and stepfather on the other.

On May 24, 1931, Elena Matondo placed in the hands of her chauffeur, Tomas Baring, a fan-knife about eight inches long wrapped in a piece of paper, with instructions to deliver it to Rufino Pelen (alias Peling). This person was an ex-convict, having been lately liberated from Bilibid Prison.

Both Elena and her mother lived in Cahagnaan but in different houses, and the time for a fiesta in Matalom was now approaching. Elena, therefore, on the same May 24, 1931, which was Sunday, went to the house of her mother and requested her to come over and stay in Elena's house while the latter attended the fiesta mentioned. Gavina agreed and with her servant, Apolinaria Incierto, came over to stay in the Noel home. After they had arrived, Elena took Apolinaria Incierto apart and told her not to sleep in the same room where Gavina Gelsano would sleep. Apolinaria, however, did not obey this injunction, and when night came she slept in the room with Gavina. With them was another young girl, who had come along with Gavina, named Paterna Javines. Also there was in the house a small child of Elena and Noel, a boy, who insisted in remaining with his grandmother. Elena meanwhile went on her visit to Matalom, where she became the guest of Tomas Veloso, an uncle of her husband, Arsenio Noel. The house of Elena in Cahagnaan was therefore left without inmates other than the old woman, her two servants, and her grandchild.

A dance was held Tuesday night in the municipal building of Matalom, as an incident of the celebration of the

fiesta. Elena attended this dance, and at about midnight she took Asuncion Ajero (alias Villanueva) aside to a place under the stairway and asked her to go out and get in Elena's automobile, of which Tomas Baring was the chauffeur, and go with him to take two men to Cahagnaan. Now, Asuncion, as was well known to Elena, was querida to Tomas Baring, notwithstanding the fact that the latter was married to another woman. Elena therefore doubtless assumed that this little excursion would be gratefully received by Asuncion. But the latter was apparently interested in the dance, and she says that she yielded to the request reluctantly, though she finally consented to go. Going out, therefore, to the place where Elena's car was standing near the public market, Asuncion took her seat beside Baring, the chauffeur. As she did so, she noted the presence of two men on the rear seat of the car. These men were dressed in dark clothes, and as their hats were drawn down, their faces were not readily discernible. The two, however, turned out to be Rufino Pelen and Adriano Elicito. To Asuncion, Baring explained that they were compatriots of his from his native province, who wanted to go down to Cahagnaan. Proceeding to that place, Baring stopped his car under some palm trees about 130 or 140 meters from the house of Elena Matondo. Pelen and Elicito then alighted from the car and, taking off their exterior clothing, strapped it to their belts. They then took Baring aside, so the latter says, and revealed to him that they had come, with instructions from Elena Matondo to kill Gavina Gelsano. In this connection it was explained that the killing was to be done by Rufino, and that Elicito's mission was to handle the house dog. We note in passing that Elicito was a distant relative and a not infrequent visitor at Elena's house. He was accordingly well acquainted with the canines that were kept there. After Pelen and Elicito had departed on their mission to the house and were seen climbing up to enter a window, Baring came back to the car and drove back in company with Asuncion to Matalom.

Rufino Pelen and Adriano Elicito appear to have made their way into the room where Gavina Gelsano and her younger companions were sleeping in the home of Elena Matondo, where the deadly assault upon the old woman was made, the victim receiving six wounds from a knife and one contusion. The assassin, however, bungled the job, and none of the injuries were immediately fatal. The cut which in the end resulted in death was inflicted in the middle of the back, below the shoulder blade, and death resulted about seven weeks later from myolitis, affecting the spinal chord. The woman was evidently much shocked by the assault, and she was not able to call for help to the servants. The child, Paterna Javines, was first to become aware that something wrong was going on, and she called to Apolinaria Incierto saying, "Something has happened to Gavina Gelsano." Apolinaria got up at once and hastened to the old woman, but the latter, not recognizing the girl, pushed her back. Incierto thereupon turned her head, and as she did so, she saw Rufino Pelen and Adriano Elicito hurrying out the door. There was a light in the room and this enabled the girl to recognize the two assassins. Neighbors were then aroused, and word was shortly sent up to Matalom for Elena.

Meanwhile Tomas Baring, with his female companion, Asuncion Ajero, had gotten back to Matalom, and the girl returned to the dance, or went to a show; while Tomas Baring drove his car into the premises of Tomas Veloso. Elena Matondo was awaiting his arrival, and she waved her hand to him out of a window, indicating to him to meet her in the kitchen. When the two met there, Elena told him that she had had her mother killed so that her stepfather, Crisostomo Roa, would not continue to enjoy the usufruct of her mother's property. She also said that, as soon as she could collect the insurance of her mother which, she said, amounted to P10,000, she would reward Pelen and Elicito for their services to her.

We pause at this point to say that it came out in time that the policy of insurance on the life of Gavina Gelsano was for P1,000, and that there was a loan on said policy of P891, leaving only a balance of P134, payable at its maturity on November 1, 1932. Much had been made of this discrepancy between the actual amount of the insurance on the life of Gavina Gelsano and the amount which Elena stated to Tomas Baring would be collected. But that such disparity should have existed does not prove that Tomas Baring testified falsely as to what Elena

told him; for she may have been ignorant of the true amount of the insurance, or it may have suited her purposes to give the impression to Baring that she was going to be well prepared to take care of all who had aided her in this fearful enterprise.

When the household of Tomas Veloso had been aroused by the news brought early that morning to the effect that Gavina Gelsano had been assaulted, Elena and Veloso, with others, went down to the Matondo home in Cahagnaan, and neighbors who had collected were rather shocked at the lack of interest in her mother's condition displayed by Elena upon arrival. About the first words that Elena gave utterance to, as she peeped into the room where her mother was lying, were "Is she not yet dead?" And her subsequent general demeanor exhibited a lack of sympathy in the condition of the sufferer. For instance, on one occasion, Elena raised her voice and stamped her feet on the floor of the room where her injured mother was sleeping. Awakened by this noise, Gavina was frightened, and trembling, she begged that she might be removed to another house. Later she was transferred to the house of one of her sisters in Cahagnaan, and subsequently she was transferred to Maasin, where she died on July 10.

When Elena arrived in Cahagnaan on the morning of the commission of the crime, she told Apolinaria Incierto that she must not tell anybody that she had been able to recognize the assailants of her mother, promising to reward her for her silence. Also after her return to Matalom on the same day, she found Asuncion Ajero and cautioned her to tell nobody that she had made the trip with Tomas Baring and two others to Cahagnaan in the early hours of that morning. Coupled with this injunction was a warning to the effect that if she should reveal that fact Elena would cause her to be attacked and stabbed in the same manner as she did the old woman who did not die.

On that same morning Tomas Veloso took the declaration of Gavina Gelsano, in which the latter stated that she had not recognized her assailants. The declarations of Apolinaria Incierto and Paterna Javines were to the same effect. Tomas Baring made a statement shortly thereafter in which he said that he had been out that night with Asuncion Ajero and had driven down towards Cahagnaan but went no farther than a bridge.

As a result of these statements, in the procurement of which Elena Matondo had intervened, it looked pretty much as if the crime might be covered up. But it so happened that Asuncion Ajero and the wife of Tomas Baring had a quarrel, and Asuncion let out enough to make known that she and Baring had gone down to Cahagnaan that night with two men. Her formal statement was then taken and she went more into details. The result was that suspicion became fixed on Baring, and he was arrested on a charge of frustrated murder. As soon as Baring had been jailed, Elena Matondo became alert and she wrote Baring a note in jail, saying that he was not to blame and that she (Elena) would go to Matalom to accuse the woman (meaning Asuncion). Her concluding words were "Tear up this paper."

But this note was not sufficient to keep Baring silent and shortly thereafter he made a statement very much of the tenor of his subsequent testimony in court. Elena Matondo was then arrested upon a charge of frustrated parricide, and Rufino Pelen and Adriano Elicito were arrested on a charge of frustrated murder. In this charge Tomas Baring, already under arrest, was of course included. As soon as these last arrests were made, Gavina Gelsano came out with a new declaration in which she stated that she had been assaulted by two persons whom she recognized as Rufino Pelen and Adriano Elicito. It does not appear that this statement had the requisites of a dying declaration, and it is contradicted, of course, by her earlier statement to the effect that she did not recognize her assailants. In forming our opinion on this case we have therefore ignored Gavina's statement of June 24. We may add that on June 22, 1931, Apolinaria Incierto made a similar statement implicating Rufino Pelen and Adriano Elicito as the persons who actually committed the crime. We note that the attorneys for the defense introduced the earlier statements of Gavina and Apolinaria to prove that the assassins had not been recognized. But the trial

judge, rightly in our opinion, attributed little weight to said statements, owing to the part that Elena Matondo and Tomas Veloso had played in their procurance.

After the death of Gavina on July 10, the fiscal dismissed the charges of the frustrated parricide and murder which had been filed against the four accused persons and filed another charge of parricide and murder. Finally, at the trial he procured a dismissal of the charge as against Tomas Baring in order that this individual might be utilized as a witness.

The opinion of the trial court shows that his Honor was fully aware of the grave responsibility which rested upon him, and his analysis of the evidence as well as his comment upon the testimony of the witnesses shows that the trial received conscientious study and that no circumstance of any value was overlooked in the formation of the court's conclusions.

At the end of his analysis of the proof his Honor enumerates the following circumstances as indicating the guilt of Elena Matondo. First, she directed Tomas Baring to take Pelen and Elicito to Cahagnaan on the morning of the crime; secondly, she delivered to Tomas Baring, about three days before the commission of the offense, a big knife, directing him to give it to Pelen; thirdly, she admitted to Baring that she had directed the killing of Gavina to prevent Crisostomo Roa, her second husband, from enjoying Gavina's property; fourthly, she directed Asuncion Ajero to accompany Tomas Baring on the night in question with a view to misleading any one who might see them in the car as to the true motive that was taking them to Cahagnaan; fifthly, she employed flattery and menaces, in addition to an offer of bribery, to Asuncion Ajero in order to induce her to tell no one that she had been with Tomas Baring in Cahagnaan on the fatal night; sixthly, she availed herself of her father-in-law, a justice of the peace of Matalom, to procure that Asuncion Ajero should be sent to Cebu immediately after the crime had been committed, in order to prevent her from giving publicity to the crime; seventhly, she gave instructions, immediately before the crime, to the servant, Apolinaria Incierto, that she should not sleep with Gavina Gelsano while on the visit at Cahagnaan; eighthly, she availed herself of flattery and promises in her attitude to Apolinaria Incierto, promising to take her into her service and treat her well if she should reveal to no one the names of the aggressors; ninthly, before Tomas Baring was arrested, she tried to influence the chief of police in his favor, saying that Baring was innocent; tenth, immediately after the perpetration of the crime, she managed to procure sworn declarations from persons who knew of the case, not precisely for the purpose of identifying the true offenders but to make emphatic the fact that the guilty persons were unknown; eleventh, when Gavina Gelsano was wounded, Elena, in place of remaining at her side to take care of her, limited her visits to rare occasions and showed little interest in the woman's condition; twelfth, her conduct after the offense was committed showed that Elena desired her mother's death.

These circumstances and other items in the proof furnish a very strong array of evidence pointing to the conclusion that Elena Matondo is guilty of having induced the murder of her mother. It is obvious that the old woman was not murdered with any purpose of robbery, and she had no enemies that could have desired her death from mere malice. When the foregoing circumstances are given their true weight, in connection with the statement of Tomas Baring that Elena admitted to him that she had caused the assault to be committed on her mother, to prevent Roa from enjoying the usufruct of her property, a case is made out which to the minds of a majority of this court is convincing that Elena Matondo is guilty. The moral perversity of the crime unfortunately does not make the commission of the deed impossible, for human experience shows, and penal codes attest, that the crime of parricide is occasionally committed.

We entertain no delusion of course as to the possible connection of Tomas Baring, as an accomplice or even as a possible principal, in this crime. The opinion of the trial court suggests that there was a deeper confidence than ordinary between Elena Matondo and Tomas Baring. We suspect that he had probably been approached by her

with a view to inducing him to accomplish the deed. But, if so, it was doubtless discovered that some vestige of morality or lack of nerve made him an impossible agent. His participation was therefore doubtless intended by Elena Matondo to be limited to the conveying of the two principals to the place of the murder; and even supposing that his curiosity may have caused him to stay around for a while to watch the proceedings or take part therein, it does not result that the two principal agents convicted in this case are innocent.

With respect to Pelen, any possible doubt as to his guilt is removed by an affidavit which he has placed upon record, in connection with a motion for a new trial, in which he admits that he had been hired to kill Gavina Gelsano and that he was one of the two who entered the house at Cahagnaan on the morning of May 27, 1931, for the purpose of destroying her. It is true that, in this affidavit, Pelen pretends that Tomas Baring was his companion on that occasion and that it was actually he who killed Gavina.

As against Adriano Elicito we have the testimony of Baring and Asuncion to the fact that he, in company with Pelen, went in the automobile to Cahagnaan with them on the fatal morning. In addition to this, we have the testimony of Apolinaria Incierto to the fact that he was one of the two who passed out of the door after the wounds which caused the death of Gavina Gelsano had been inflicted.

We have already referred to the written decision of the trial court in this case, and we are here constrained to reproduce from that opinion the following passage in which the court discusses certain aspects of the case concerning which a trial judge is in a much better position to form a right opinion than any appellate court. Says his Honor:

"To one having no knowledge of the accused derived from the evidence herein presented, it would seem improbable that in this country there could be a daughter capable of committing so heinous a crime as that which the information imputes to her; and an affirmative conclusion as to her guilt can only be reached after a thorough examination of the circumstances surrounding the case as above set out, as well as the antecedents of mother and daughter. The first was all self-denial, having a blind, misguided affection for her daughter, to such an extent that even after she was convinced that she had been the victim of an attack instigated or engineered by her daughter, she did not utter a word of reproach or condemnation when the latter went to visit her on her death bed; but according to the testimony of one of the sisters of Gavina, she only cast toward her daughter occasional glances full of measureless sorrow. The latter was a pampered child, used to having her own way, an incomprehensible soul, capable on the one hand of great love and sacrifice as shown during the trial. When she was cross-examined by the prosecution on the conduct of her husband in abandoning her for a long time and in not visiting her but for a few moments during her long confinement in the provincial jail, when there was then pending against her so serious a charge as that of parricide, she even tried to justify her husband's conduct and evinced no resentment whatsoever against him, but, rather, she showed that she had for him the same affection she had entertained during the first months of their marriage, \* \* \*. The accused discloses at times a candid and childish mentality, as when she innocently executed acts and made statements highly incriminatory to her, like the confessions she made to the witnesses for the prosecution in regard to this offense; and at times, an extraordinary mentality, as shown by her skill in picking out the persons to execute the killing of her mother, \* \* \*. The court takes into consideration all of these circumstances in determining the degree of responsibility of the accused and the severity of the penalty to be imposed upon her."

In conclusion, we note that various motions for new trial have been filed on behalf of the appellants, while the record was still in the court below, and these have been renewed and supplemented by other motions filed in this court. These motions are accompanied by numerous affidavits procured since the trial below. The affiants include various individuals who were not examined at the trial, as well as some of the witnesses in this case and the appellants Pelen and Elicito. We have already referred to the affidavit of Rufino Pelen, in which he admits that he was employed to kill Gavina Gelsano but states that the assassination was actually effected by Tomas Baring. Asuncion Ajero would now have us believe that her testimony and statements made in her affidavit used by the

prosecution at the trial are mere fabrications. None of these affidavits are of convincing weight, and they evince all the features of post-trial efforts to divert the court from the conclusions derived from the proof submitted at the trial. All of said motions are now denied, as well as the petitions of Elena Matondo to be permitted to give bail.

The judgment appealed from will be in all respects affirmed, and it is so ordered, with proportional costs against the appellants.

Avanceña, C. J., Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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## DISSENTING

### VICKERS, J.:

I dissent, and vote for the acquittal of Elena Matondo and Adriano Elicito, because their conviction rests on testimony that ought not to be credited. The case for the prosecution depends chiefly on the testimony of Tomas Baring and his querida, Asuncion Ajero. An examination of the record convinces me that Tomas Baring was one of the two men that attacked the deceased. This is what the deceased herself believed. There can be no doubt that he was a party to the crime. His testimony therefore comes from a polluted source. Furthermore his testimony, given after he had turned state's evidence, is belied by his sworn statements made before the trial (Exhibits 1 and 2). Exhibit 2 was sworn to before the clerk of court. Asuncion Ajero, as well as the other witnesses for the prosecution, had made statements under oath that were directly in conflict with her testimony at the trial, and there has been submitted to us an affidavit, in which she repudiates all that she said at the trial and asserts that her false testimony was what Tomas Baring and Oisostomo Roa, the husband of the deceased, had taught her to say.

No satisfactory motive has been suggested to explain why Elena Matondo should commit the unnatural crime attributed to her, but the evidence, shows that as a result of these charges against Elena Matondo her mother substituted Crisostomo Roa for Elena as the beneficiary of her life insurance policy and executed a new will, whereby she disinherited her daughter and left all her property to Crisostomo Roa.

The trial judge enumerated twelve circumstances as indicating the guilt of Elena Matondo. It is said in the majority opinion that "these circumstances and other items in the proof furnish a very strong array of evidence pointing to the conclusion that Elena Matondo is guilty of having induced the murder of her mother."

I cannot assent to that conclusion. I have carefully considered these twelve points. Some of them are inherently improbable; others are trivial. Not one of them is convincing; and they all rest on the credibility of Tomas Baring and his querida, or the testimony of Apolinaria Incierto, a servant girl in the house of Crisostomo Roa.

There is even less justification for convicting Adriano Elicito.

Abad Santos, J.: I concur in the dissenting opinion of Justice Vickers.

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## DISSENTING

**BUTTE, J.:**

Upon the findings made in the foregoing opinion of the majority of the court a strong case is made out against the appellant, Elena Matondo. I have made an independent and thorough study of the entire record and as a result thereof entertain a grave doubt that the circumstantial evidence, upon which the majority opinion rests, is supported by the weight of the evidence. I cannot believe beyond reasonable doubt that Elena Matondo had any part in the assassination of her mother, and, therefore, feel constrained to register my dissent.

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