

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARIANO NATIVIDAD, UY SAN (ALIAS UY CHU KING), AND MARCOS ENAGE, DEFENDANTS AND APPELLANTS.

G. R. No. 44337. August 22, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

Mariano Natividad, Uy San (alias Uy Chu King), and Marcos Enage, having been charged with and convicted of the crime of murder, the former two were sentenced by the Court of First Instance of Davao to reclusion perpetua, the latter, as accessory after the fact, to an indeterminate penalty of from six years of prison correctional to ten years of prison mayor, and the three of them to indemnify the heirs of the deceased Jesus Montojo in the sum of P1,000, with costs. They appealed from the sentence imposing said penalties upon them, attributing to the lower court the seven alleged errors assigned in their brief, which may be summarized as follows: (1) Declaring that the appellants had motive to commit the crime, not having had any; (2) not holding that the testimony of the principal witness for the prosecution, Hilario Capitan, is false; (3) giving credit to the other witnesses for the prosecution although they do not so deserve it; (4) unduly attributing the cause of Jesus Montojo's death to acts of violence of the appellants; (5) not giving credit to the witnesses for the defense nor giving consideration to the testimony thereof; (6) denying their motion for a new trial based upon newly discovered evidence, as the retraction of the principal witness for the prosecution, Hilario Capitan, merely because they had made an oral statement of their intention to appeal from the sentence" before filing said motion; and (7) finding them guilty instead of acquitting them of the crime with which they were charged.

The evidence shows that at about 8 o'clock in the morning of April 22, 1934, there appeared floating on the water near the Davao pier the body of a child nine years and several months of age, which turned out to be that of Jesus Montojo, son of Valentin Montojo, a Chinese resident of said locality. It appeared that the body bore the following marks of violence: an internal hemorrhage in the right eye and a contusion two and a half inches in diameter in the left cheekbone. His clothes were those worn by him the afternoon before: short Khaki pants and a colored shirt. During the autopsy made by the provincial health officer, no other marks of violence were noted than those already stated, but it was observed that the lungs as well as the stomach contained no water, from which fact it is inferred, according to the health officer who made the autopsy, that Jesus Montojo did not die of drowning. He failed to state, however, and he was not even asked, what might have been the cause of the said child's death.

After the lapse of nearly one year, that is, on March 15, 1935, Hilario Capitan, the principal witness for the prosecution, revealed for the first time what he claims to have seen at dawn of April 22, 1934, to Sergeant Gonzalez of the Constabulary who had gone to Capitan's house to ask that he be shown the best road to the place where hantac and clandestine cockfight were then being played. Capitan claimed to have told said sergeant, and he repeated it at the trial, that after he had disembarked from his boat on said occasion, he went to the house of one Juan Laurel who lived a meter and a half from the house of the appellant Mariano Natividad, to take shelter

from the cold; that upon arriving in front of Natividad's house he heard a child's groans coming therefrom and, goaded by curiosity to know what was going on inside, he mounted the stairs nearest the beach; that through a hole two inches in diameter in the wall, he saw Mariano Natividad holding the child Jesus Montojo by the neck with his right hand and carrying a stick in his left, there being present, looking on, the appellant Uy Chu King (alias Vy San), and another individual of whom he could see nothing but the feet, due to the size of the hole through which he was peeping; that he was horrified by said scene and he immediately left for "his boat to return home, as the wind had already subsided ; that upon arriving at the base of the stairs of Natividad's, house, he no longer heard groans from the child; that he saw nothing more that dawn; that at about 8 o'clock in the morning of said day, he witnessed the removal of the body of a child, which turned out to be that of Jesus Montojo whom he had seen maltreated by said appellant Mariano Natividad a few hours before; that he said nothing of this incident even to his own wife until after he accidentally met said Sergeant Gonzalez. During the cross-examination he was to admit that he appeared before the clerk of the Court of First Instance of Davao in March, 1935, to sign an affidavit, Exhibit 3 being a copy, containing the following statement:

"I afterwards returned to my banca where I sat quietly. A moment later Mariano Natividad opened the kitchen door and a small Chinaman left the house. The small Chinaman again returned and a few moments later Mariano Natividad and the small Chinaman in question came down carrying a heavy bundle wrapped in a piece of cloth. When they were already a short distance from me, heading for the pier, I likewise left in my banca." (T. s. n., page 89.)

Asked whether he Had really made such statement, he dared not deny it. He merely gave an evasive answer saying:

"I have stated to the clerk of court that I returned home after having been in the house of Mariano Natividad." (T. s. n., page 89.)

It should be noted that Hilario Capitan did not sign the statement in question before the clerk of court of Davao in March, but on April 12th of said year, as shown by Exhibit 3.

Juan Arantes, Maria Kiamko and Remigio Ugbinar testified corroborating Hilario Capitan. Arantes stated that he was a watchman of "Columbia Rope" and of "Hansen & Orth" of Davao; that, as such, he was charged with the vigilance of the warehouse of "Columbia Rope" and the offices of "Hansen & Orth" which faced each other about 520 meters from the light post beside which he had gone to rest for a moment that dawn; that said light post was located in the environs of and very near the pier; that the warehouse and offices the vigilance of which was entrusted to him were not visible from said place; that every half-hour he was obliged to wind the watchman's clock situated in the warehouse of the "Columbia Rope", an operation requiring five or six minutes because he had to use six keys placed in various corners of said warehouse; that he was absent from his post for about 27 minutes, having gone near the pier for the above-sighted purpose; that while he was standing beside the light post at about 3.15 at dawn, he saw the appellants Mariano Natividad and Marcos Enage pass by, scarcely three or four meters from him, the former preceding the latter, carrying a tied bundle one meter long and two feet in diameter on their shoulders, the appellant Uy Chu King (alias Uy San), trailing them very near behind; that the three were headed with their burden for the pier all the lights of which were lighted at that time, and that when they returned therefrom shortly afterwards, they no longer carried any burden.

Maria Kiamko, who was one time a tenant of the appellant Mariano Natividad, according to her own admission, stated, in turn, that at 3 o'clock in the afternoon of April 21, 1934, she saw the child Jesus Montojo in the vicinity of Mariano Natividad's house, being led by the hand without the least opposition on his part by the other, appellant Uy Chu King (alias Uy San) ; that Uy Chu King was looking at the upper story of said house, and that she saw all of this because she had gone to buy thread at the store of one Lim Sui, situated near the house in

question. During the cross-examination, she could not explain why, having paid attention to Jesus Montojo and Uy Chu King to the extent of giving a very detailed description of their respective clothing, notwithstanding the fact that there was nothing in their attitude capable of attracting attention, she failed to pay attention to the other persons known to her whom she had met on that occasion.

Remigio Ugbinar, who claimed to be a fisherman, testified that in the afternoon of the day in question, April 21, 1934, he saw the child Jesus Montojo accompanied by Uy Chu King on the stairs of Mariano Natividad's house, while Mariano Natividad, from above, signalled them to come up. Asked why he happened to pay attention to this insignificant detail, he answered as Maria Kiamko, that it was because he likewise went to buy thread at Lim Sui's store. He failed to explain why, there being other stores where thread was also sold near his house, it was necessary for him to go to Lim Sui's about 500 brazas away.

To prove that the appellants had motives to commit the crime in question, the prosecution presented the witness Valentin Montojo, father of Jesus Montojo, and the documents Exhibits C, D, E, G-1 to G-15, consisting in letters addressed to Lee Leong Cho, president of the National Chinese Saving Association of Davao, to the Chinese Community of said province, and to the Constabulary thereof, and in the indorsements and letters sent by the Constabulary to the persons concerned in the matter referred to therein, all of which bear dates covering the period between August 18, 1933, and February 12, 1934. Said evidence shows that Uy Chu King several times claimed from Valentin Montojo the payment of a certain prize of P1,000 which the Chinese Community of Davao, of which Valentin Montojo was then the president, had offered to the person denouncing the Chinese who, by their bad conduct, deserved to be deported from Davao. Valentin Montojo informed Uy Chu King, when the latter once appeared before him to claim the prize personally, that it would not be paid him until the Chinese Community had passed upon the claim, after presentation by Uy Chu King of satisfactory evidence that he had really denounced a Chinese who, by his bad behaviour, deserved to be deported. The Chinese Community held a meeting to that effect and notwithstanding the absence therefrom of its president Valentin Montojo who, according to Uy Chu King's statement, was the only one opposed to his claim, Uy Chu King failed to realize his purpose because the prize was denied him. After this incident, there appeared on the scene the appellant Marcos Enage, who was then the president of the Davao Chinese Chapter of the Filipino Federation of Labor, to claim the promised prize in the name of Uy Chu King. His efforts did not meet with any better luck and thereafter the differences existing between the Chinese residents of Davao became more marked, those belonging to the group of the Chinese Community of Davao having arrived at the extreme of sending letters to the provincial commander of the Constabulary asking him for protection for their persons and properties. Among the complaints filed with said provincial commander there were several against Mariano Natividad and against his alleged followers including Uy Chu King, charging them with threats and attempt to molest the members of the Chinese Community of Davao. Such was the state of affairs when the honorary consul of Nueva Ecija, Cabo Chan, visited Davao and, wishing to end the differences existing between his countrymen, he proposed to them the collection of a contribution from everybody, with him in the lead, in order to procure funds to pay Uy Chu King. They succeeded in collecting the sum of P150 and Uy Chu King very willingly accepted said sum by way of a compromise to renounce his claim of P1,000. Among those who asked the Constabulary for protection, fearing the threat of the opposite group, was Valentin Montojo, father of the deceased Jesus Montojo. A month had elapsed from the time Uy Chu King received the P150 to Jesus Montojo's death and, granting that Mariano Natividad and his followers had sided with Uy Chu King, there is nothing to show that in the meantime they had done anything to carry out their former threats to the members of the Chinese Community of Davao or to Valentin Montojo. With the foregoing evidence and facts, together with those not stated herein because they merely serve to corroborate details of very little importance, the prosecution claims to have shown and proven the guilt of the appellants. Leaving aside, for the time being, the evidence for the appellants which, as they correctly state in their

brief, have not even been mentioned by the lower court, we have to state that the evidence for the prosecution and the statement of facts made by its witnesses are improbable and unworthy of credit. A man who saw what Hilario Capitan claims to have seen cannot behave as he did because the natural reaction of a person who witnesses the commission of a crime, unless he himself is the author thereof, would be to report it to the corresponding authorities or, at least, tell it to other persons. Said witness was emphatic in his assertion that he kept the secret for himself alone, without communicating it even to his wife, until he met Sergeant Gonzalez of the Constabulary in a very casual manner one year after the incident. A criminal himself, who has no sufficient self-control, in the long run reveals his crime, either because his conscience compels him to do so or because he wants to brag about it. It is unbelievable and improbable that one, through a hole two inches in diameter in a wall made of thin board, would fail to see and observe all that may be on the other side of said wall at a radius of not less than four or five meters, particularly if the object he wishes to see is about three or four meters from the place he peeps through. If Hilario Capitan saw the act imputed by him to the appellant Mariano Natividad, he should necessarily have seen also the third person who witnessed what Natividad was then doing because, according to him, the two were about four meters from him and he testified that he saw only the feet of said person because the size of the hole prevented him from doing so. Granting that the appellants killed the boy Jesus Montojo, it is incredible and improbable that they should wrap him in a piece of cloth and carry him procession-like to the pier whose lights were all burning, passing precisely through places where it was easy to see and recognize them, because it would seem most natural for a criminal to seek darkness to hide his crime. On the other hand, there was no need for them to take their victim's body to the pier as they could have left it on the beach or thrown it into the sea. The witness for the prosecution himself, Alipio Miranda, who recovered Jesus Montojo's body from the sea, testified that when he saw it it was clothed only in short khaki pants and colored shirt which shows that the bundle taken by the three appellants to the pier the night before, if any, was not the body of the child Jesus Montojo, otherwise it would have been found wrapped.

The testimony of the witness Juan Arantes is not more worthy of credit or more probable because a watchman who is charged with and paid for watching a warehouse and an office at night is not supposed to leave his post to go to rest 520 meters away, as he claims to have done, as he could have done so at his post or in the vicinity thereof. The improbability of the testimony of this witness is all the more obvious because his entire statement appears to be fantastic and puerile. He testified that by means of the light besides which post he had gone to rest, he saw Mariano Natividad and Marcos Enage three or four meters away, headed for the pier carrying a tied bundle on their shoulder, with Uy Chu King trailing near behind. If the bundle carried by the appellants to the pier to be thrown from the pier to the sea were the body of Jesus Montojo, it is unbelievable that they should pass near him because their own instinct would have told them not to do so in order not to be discovered, as it is to be assumed that they saw him because he was near a light. If he really saw what he claims to have seen, it is strange beyond measure that he did not report it to the authorities at the time, the following day or some days later. It should be noted in connection with this fact and with the testimony of the former witness, Hilario Capitan, that Dr. C. H. Deles, who made the autopsy, found no other marks of violence on the body of the child than those already stated, which fact excludes the idea that it had been tied.

The testimony of Maria Kiamko and of Remigio Ugbinar is not less puerile and unworthy of credit than that of the former two witnesses, Juan Arantes and Hilario Capitan. The coincidence that the two went to the same store to buy the same thing, there being other stores where they could have obtained it, particularly taking into account the time of the day and the distance of said store from their respective houses, and the fact that Maria Kiamko, besides having a grudge against the appellant Mariano Natividad because the latter had ejected her from his house some months before the trial, could relate no other incident than what he stated with respect to the child Jesus Montojo and Uy Chu King, prove that said two witnesses have stated what they knew from memory, having

memorized it.

But leaving aside the foregoing considerations in order to discuss the evidence for the defense, we are constrained to state that, as the prosecution has failed to refute it, the testimony of Hilario Capitan and Juan Arantes is questionable and very far from the truth. The room where, according to Hilario Capitan, the crime was committed by the appellants was not then occupied by Natividad but by persons who were strangers to him, as Egmidio Gaking with his wife and children, Capitan's brother-in-law named Candido de la Rama, Domingo Salvador and their housemate named Ramon, who died before the trial. The stairs which Hilario Capitan claims to have climbed directly overlooks, as formerly, the room occupied by the three persons last mentioned, namely Candido de la Rama, Domingo Salvador and the deceased Ramon, and it formed part of the place occupied by Egmidio Gaking and his family. In the adjoining rooms there live other persons: Mariano Natividad's brothers-in-law and sister-in-law named Julio Pigarido, Fidelina Sextoso and Cirilo Sextoso. All of this, which has not been refuted by the prosecution, together with the circumstance that Juan Laurel's house was one and a half meters from Natividad's house and that around the latter house there were other houses not more than four meters away, makes it improbable that the appellants, particularly Mariano Natividad, did to the person of Jesus Monte to what is attributed to them by Hilario Capitan. If Capitan heard the groans of the child, the other neighbors would likewise have heard them, particularly by those living in the same house.

There is no doubt that the child Jesus Montojo did not die a natural death. Such is shown by the contusion on his left cheekbone and by the "internal hemorrhage" believed to be the effect of the blow received on said part of the body. Who caused his wounds. The evidence does not say so. However, there exists Hilario Capitan's insinuation, in emphatically mentioning: the stick carried by Natividad in his left hand, that the latter may have used it in attacking the Montojo child, but such insinuation cannot be true because the physician's description of the contusion found on the body does not coincide with that might be produced by means of a stick of the nature described by said witness. And it is unbelievable that the child died of asphyxia, having been strangled by Natividad, because the evidence does not say so, the physician who made the autopsy having remained silent with respect to the cause of death.

No importance should be given to the contention that if the body floated on the occasion of its discovery, it was due to the maneuvers of the steamship Fernandez Hermanos which was then in the port, because there is nothing of record to show such fact. If it floated, it was undoubtedly due to the fact that gases had already formed in the cavities thereof, which shows that the death of the Montojo child did not take place at 3 o'clock in the morning of said date, or that the appellants had caused it as the witness Hilario Capitan would make us understand, but the day before, because as stated by the witness for the prosecution, Dr. C. H. Deles, a body floats only after twelve hours.

If all the foregoing circumstances, considerations and facts were insufficient to create a strong doubt in the mind as to the responsibility and guilt of the appellants, we have the written retraction made by Hilario Capitan before the appellants formally appealed from the sentence of the lower court. Said court should have taken into consideration the appellants' motion for a new trial based on newly discovered evidence which consisted in the retraction of said witness, because the interests of justice so demanded. There was no valid reason for not doing so as the excuse that the court had lost jurisdiction to pass upon said incident, just because the appellants had orally expressed their intention to appeal beforehand, is untenable. Under sections 45 and 46 of General Orders, No. 58, appeals in criminal cases do not take place and are not considered perfected until after the interested party, or parties, has personally or through his attorney, filed with the clerk of court a written notice expressly stating the appeal. (U. S. vs. Tenorio, 37 Phil., 7; U. S. vs. Sotavento and Sotavento, 40 Phil., 176; Ricana and Glory vs. Provincial Warden of Tayabas, 54 Phil., 821; Elegado vs. Tavora. 59 Phil., 140.) Therefore, an error is committed

when the court, under the pretext that an oral notice of intention to appeal from its sentence in a criminal case has been filed before it, while it still exercises jurisdiction over the case as the period fixed by law for filing a written notice of intention to appeal has not yet expired, refuses to pass upon a motion for a new trial based upon newly discovered evidence. It must decide said motion one way or the other, as it deems proper, because theretofore it should be considered as continuing to retain its jurisdiction, all the more so because Act No. 3785 provides that motions of that nature interrupt the period of fifteen days within which to appeal.

For all the foregoing this court holds that all the errors assigned by the appellants are well founded.

Wherefore, giving said appellants the benefit of a reasonable doubt which is very strongly in their favor, and reversing the appealed sentence, this court acquits them of the crime with which they were charged, with the costs of both instances de oficio. It is hereby ordered that the appellant Uy Chu King who is actually confined in jail be released immediately, unless he is confined for other causes, and it is ordered furthermore that a copy of this decision be sent to the Solicitor-General so that he may order the person concerned to take the necessary steps for the prosecution of Hilario Capitan, for false testimony, if sufficient evidence is found to warrant such step. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, and Recto, JJ., concur.

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