

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MARIANO R. MARCOS ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 47388. October 22, 1940*

Ponente: LAUREL, J.

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In the elections of 1934 in which Mariano Marcos and Julio Nalundasan, both of Batac, Ilocos Norte, were rival candidates for the office of representative for the second district of said province, Nalundasan was elected. The term for which the latter was elected was, however, cut short as a result of the approval of the Constitution of the Philippines under which the general elections for members of the National Assembly were by law set for September 17, 1935. In these general elections Julio Nalundasan and Mariano Marcos resumed their political rivalry and were opposing candidates for assemblyman in the same district. In the strife Nalundasan again came out triumphant over Marcos. In the afternoon of September 19, 1935, in celebration of Nalundasan's victory, a number of his followers and partymen paraded in cars and trucks through the municipalities of Currimaao, Paoay and Batac, Ilocos Norte, and passed in front of the house of the Marcoses in Batac. The parade is described as provocative and humiliating for the defeated candidate, Mariano Marcos. The assemblyman-elect, Julio Nalundasan, was not, however, destined to reap the fruits of his political laurels for on the night of September 20, 1935, he was shot and killed in his house in Batac. Very intensive investigation of the crime by the Government authorities, particularly the Philippine Constabulary, followed, as a consequence of which an information was filed in the Court of First Instance of Ilocos Norte charging one Nicasio Layaoen, a businessman of Batac, Ilocos Norte, with having committed the murder of Nalundasan. After trial, however, Layaoen was acquitted. This acquittal resulted in another protracted investigation and detective work by the Governmental agencies, particularly the Division of Investigation of the Department of Justice, with a view to solving the Nalundasan murder. On December 7, 1938, or more than three years after the death of Nalundasan, Mariano Marcos Pio Marcos, Ferdinand Marcos and Quirino Lizardo were prosecuted for the crime of murder in the Court of First Instance of Ilocos Norte under the following information:

"Que en o hacia la rioche del 20 de septiembre de 1935, en el Municipio de Batac, Provincia de Ilocos Norte, Filipinas, y dentro de la jurisdiccion de este Honorable Juzgado, los acusados arriba nombrados, armados con armas de fuego, puestos de acuerdo y conspirandose entre si, voluntaria, ilegal y criminalmente, con alevosia y premeditation conocida y con intencion de matar, dispararon contra Julio Nalundasan, entonces electo Diputado por el Segundo Distrito de Ilocos Norte, tocandole en su costado derecho habiendo la bala interesado organos vitales internos, lesionandolos, las cuales lesiones causaron la muerte instantanea de dicho Julio Nalundasan.

"Hecho cometido con infraccion de la ley y con las circunstancias agravantes de nocturnidad y de haberse cometido el delito en la morada del occiso.

" On June 10, 1939, before the conclusion of the trial, Mariano Marcos, Pio Marcos, Ferdinand Marcos and Quirino Lizardo filed eight separate complaints before the justice of the peace of Laoag, Ilocos Norte, charging Calixto Aguinaldo, the principal witness for the prosecution, who was still under cross-examination in the trial

against Lizardo, with the offense of false testimony allegedly committed in the preliminary investigation of December 7, 1938, and during the trial. The defense had not yet completed the presentation of its evidence, and the prosecution was preparing its rebuttal testimony. Upon motion of the provincial fiscal of Ilocos Norte, the trial court ordered the provisional dismissal of the complaints. Fiscal Higinio Macadaeg also moved said court to find the Marcoses and Lizardo guilty of contempt of court, by virtue of which the latter were ordered to show cause why the motion should not be granted. After the conclusion of the trial, the Court of First Instance of Ilocos Norte rendered judgment the dispositive parts of which read as follows:

"En su virtud, el Juzgado halla a los acusados Quirino S. Lizardo y Ferdinand E. Marcos culpables, fuera de toda duda racional, del delito de asesinato, con la agravante de morada, pero compensada por la atenuante de provocation en el caso de Quirino S. Lizardo, y por la circunstancia adicional de minoria de edad en el caso de Ferdinand E. Marcos, y condena al primero a la pena de reclusion perpetua, a las accesorias de ley, y al pago de una cuarta parte de las costas procesales; y al segundo, a la pena indeterminada de diez anos como minima a diecisiete anos y cuatro meses como maxima, a las accesorias de ley, y al pago de una cuarta parte de las costas procesales; y ambos a indemnizar mancomunada y solidariamente a los herederos del occiso en la cantidad de mil pesos (P1,000), pero sin prision subsidiaria en caso de insolvencia; y se absuelve a los acusados Mariano R. Marcos y Pio Marcos, con la mitad de las costas procesales de oficio, y con la cancelacion de la fianza que han prestado para su libertad provisional.

"Por lo expuesto, el Juzgado declara a los acusados en el incidente reos de desacato, y les condena a cada uno a pagar una multa de P200, o a sufrir la prision subsidiaria correspondiente en caso de insolvencia o falta de pago."

From this judgment the defendants Ferdinand Marcos and Quirino appealed, assigning the following errors:

- "1. The trial court erred in according greater credibility to the prosecution witnesses.
- "2. The trial court erred in convicting two and acquitting two accused upon the same evidence.
- "3. The trial court erred in considering the character of Quirino Lizardo against the accused.
- "4. The trial court erred in not crediting the electoral censo, Exhibit 84 for the defense, with any probative value.
- "5. The trial court erred in denying the motions of the accused for a reopening and a new trial.
- "6. The trial court erred in finding the four accused appellants guilty of contempt."

The defendants Mariano Marcos and Pio Marcos have also appealed, but only from so much of the judgment as found them guilty of contempt. A three-volume brief was filed by the appellants and a comprehensive brief submitted by the Government. Both briefs are, however, more valuable for their literary value. Oral argument was had and doubtful points eliminated.

In view of the importance of the case and the fact that the Government asks for the extreme penalty of death for the defendants-appellants, Ferdinand Marcos and Quirino Lizardo, we have taken over the case on appeal with utmost caution and searching scrutiny of the evidence presented both by the prosecution and by the defense. As a general rule, this court will not interfere with judgment of the trial court in passing upon the weight or credibility that should be attached to the testimony of witnesses; but this court may determine for itself the guilt or innocence of the defendant and may modify or reverse the conclusions of fact laid down by the trial court if there is some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.

The theory of the prosecution, stripped of nonessentials, is that Mariano Marcos, Pio Marcos, Ferdinand Marcos

and Quirino Lizardo were prompted to conspire against the life of Julio Nalundasan by the latter's electoral victory over Mariano Marcos, father of Ferdinand and brother-inlaw of Lizardo, on September 17, 1935; that Calixto Aguinaldo, the principal witness for the prosecution, was a trusted and loyal attendant and bodyguard of Quirino Lizardo; that the said Calixto Aguinaldo was present in various conferences of the Marcoses and Lizardo, in the last of which (that held on September 20, 1935) it was decided that Nalundasan must be killed; that Ferdinand was selected as the trigger man because he was a marksman and because, if discovered and convicted, he would only be sent to Lolomboy reformatory school in view of his age, and that Mariano Marcos, father of Ferdinand, would in the meantime be in Laoag; that about nine o'clock in the evening of September 20, 1935, Ferdinand Marcos and Quirino Lizardo, the first armed with an automatic pistol and the second with a police positive revolver, and accompanied by Calixto Aguinaldo, left for the fatal mission and, upon reaching Nalundasan's yard, they posted themselves at a point where they could not be detected but where they could get a full view of the intended human target; that Calixto Aguinaldo was asked to watch while his two companions, Ferdinand and Lizardo, were to execute the act that would put an end to Nalundasan's life; that Calixto Aguinaldo, after waiting for a few minutes, was seized by fear as a result of which he proceeded to return to the house of the Marcoses, but that on his way he heard the fatal shot from the direction of Nalundasan's home; that Ferdinand fired the fatal shot at Nalundasan while the latter's back was turned towards Ferdinand and Lizardo. On the other hand, the defense is one of complete denial of participation by any of the herein defendants in the commission of the crime. It is at once apparent that the validity of the theory of the prosecution rests upon the weight that should be accorded to the testimony of Calixto Aguinaldo, the principal witness for the prosecution and the alleged companion of the defendants-appellants, Quirino Lizardo and Ferdinand Marcos on the night of the killing of Julio Nalundasan.

It is important to observe that, as above stated, immediately after the death of Nalundasan and as a result of the efforts exerted by the agents of the Government, particularly the Philippine Constabulary, Nicasio Layaoen, a businessman of Batac, Ilocos Norte, was prosecuted for the murder of Nalundasan. In that case the star witness, Gaspar Silvestre, identified Layaoen as the man who fired the fatal shot at Nalundasan on the night in question, and the prosecution, with the same earnestness and vehemence exhibited in the instance case, prayed for the imposition of the extreme penalty of death upon the accused Layaoen. In that case it was claimed that the accused Layaoen was seen on the night in question with a revolver under the house of the deceased and that in a house immediately adjoining that of Layaoen and under the care and control of his wife, the Constabulary agents discovered eighty-one rounds of ammunition of the .22 long Lubaloy Western rifle, the brand and class of bullet which was alleged in that case and is alleged in the present case to have killed Nalundasan. Nevertheless the accused Layaoen was acquitted by the Court of First Instance of Ilocos Norte.

According to Calixto Aguinaldo, the principal witness for the prosecution, he was present in the various stages of the conspiracy to murder Nalundasan and, as noted above, he was present at the time of the commission of the murder on the night of September 20, 1935. Aguinaldo also alleges to have been present at the meeting in the house of the Marcoses in the morning of September 15th as well as at the meetings in the morning and in the afternoon of September 20th. The very evidence for the prosecution therefore shows that Calixto Aguinaldo Was a coconspirator. His testimony accordingly comes from a polluted source and should be received with a great deal of caution and, for this reason, should be closely and carefully scrutinized. A painstaking review of the evidence reveals several important considerations leading to the inescapable conclusion that the testimony of Calixto Aguinaldo does not deserve the credit that was accorded by the trial court.

It is noteworthy that Aguinaldo claims to have been present at the various stages of the conspiracy and to have participated in the commission of the offense herein charged to the extent admitted by him. Nevertheless he remained silent for approximately three years, it appearing that it was only in November, 1938, that he broke his

silence. The reason given by the prosecution is that his loyalty to the defendant Quirino Lizardo prevented him from betraying the latter's confidence, and in this connection it was admitted in the oral argument by the representative of the prosecution that it was only when Aguinaldo was approached by the Constabulary agents that he decided to speak out the truth. The pretended loyalty of Aguinaldo is conspicuously disproved by the circumstance that, as the prosecution itself admits, although he was asked to watch, he returned to the house of the Marcoses before Ferdinand Marcos and Quirino Lizardo had executed the alleged fatal act. But whatever might have been Aguinaldo's reason, the fact is that his long continued silence creates serious doubts in the mind of this Court as to his motives for breaking that silence. The change of attitude could not have been due to a desirable impulse to serve the interest of justice and proves, if it proves anything at all, the tardy revival of stultified civic consciousness.

According to the theory of the prosecution, Ferdinand was selected as the trigger man for two reasons, namely: because he is experienced in pistol shooting, having been cadet major in the University of the Philippines, and because he was below eighteen years of age and, if discovered and convicted, would be merely sent to Lolomboy reformatory school. With reference to the first reason, it is even represented that Mariano Marcos, father of Ferdinand, not only acquiesced in the arrangement but apparently encouraged his son to perform the foul task, with the simple remark that an assurance be made that the target was not missed and, if we may believe further the testimony of Calixto Aguinaldo, that he (Mariano Marcos) was to go in the meantime to Laoag, Ilocos Norte, thereby leaving his son to accomplish the dirty job while he, the person most affected by the electoral triumph of Nalundasan, was to stay away safe and sound. This is something extraordinary for a father to feel and to do, and we incline to reject the testimony of Aguinaldo and the inferences deducible therefrom, because the story is, while possible, devoid of reasonable probability and opposed to the lessons of common experience and the teachings of experimental psychology. As regards the second reason, it appears that both the prosecution and the defense agree that Ferdinand Marcos was at the time of the commission of the alleged offense already over eighteen years of age. As a matter of fact, one of the ground invoked by the Solicitor-General in asking for the modification of the judgment of the lower court and the imposition of the death penalty upon this appellant is that he was more than eighteen years old at the time of the commission of the offense. It is of course reasonable to assume that at least his father and the interested party himself, if not his uncle Pio Marcos and Quirino Lizardo, knew this fact. The theory that Ferdinand was chosen to be the trigger man because of minority must therefore be decidedly false.

We find the claim of Calixto Aguinaldo that he was present at the alleged various conferences held in the house of the Marcoses as a mere bodyguard of Quirino Lizardo to be incredible, in view of the absence of a valid reason for the latter, admitted by the prosecution to be "a domineering, blustering giant of a man" and by the trial court to be "un hombre de robusta constitucion fisica, de caracter impulsivo, valiente y decidido," to employ as his bodyguard Calixto Aguinaldo, who is only about one-half of Lizardo in size and who has not been shown to be capable, either by experience or by nature, to discharge such office. More incredible still is the alleged participation of Aguinaldo in the actual conspiracy to kill Julio Nalundasan, especially in view of the fact that, notwithstanding the attempt of the prosecution to show that he was a trusted man of Quirino Lizardo, there is evidence to prove that the relationship between the two could not be said to be of the best, it appearing, according to the admission of Aguinaldo himself, that he lost his job in the Government by order of the Undersecretary of Labor upon the strength of the findings in an administrative investigation in which Lizardo testified against Aguinaldo. It is hard to believe that either the Marcoses or Quirino Lizardo would allow themselves to commit the stupidity of permitting Calixto Aguinaldo, who was a stranger to the Marcoses and who, as already stated, had reason to be antagonistic to Lizardo, to know their alleged plan to kill Nalundasan and of later asking Aguinaldo to merely play the insignificant, nay unnecessary, role of watcher, unless it was the intention of the defendants herein to facilitate the discovery of the alleged crime and to preserve the only means of their conviction. Since,

according to the theory of the prosecution, Ferdinand Marcos was selected to be the trigger man, Quirino Lizardo, Mariano Marcos or Pio Marcos could easily have personally done the alleged watching. Calixto Aguinaldo testified that when he and Quirino Lizardo arrived at noon in Eatac, Ilocos Norte, Ferdinand was in the house of the Marcoses to whom he was introduced. It is a fact, however, that Ferdinand was a student of the University of the Philippines and left Manila in the morning of September 15, 1935, arriving in Batac only at 8.30 p. m. of that day. Aguinaldo therefore declared falsely when he stated that he met Ferdinand in the house of the Marcoses at the time he (Aguinaldo) and Lizardo arrived in Batac at noon of September 15, 1935.

The prosecution has pictured Quirino Lizardo as a person more interested and enthusiastic than his brother-in-law, Mariano Marcos, in seeing the latter win in the elections of September 17, 1935, against Julio Nalundasan at all costs. Thus it is represented that when Pio Marcos informed Lizardo prior to the elections about the imminent defeat of Mariano Marcos, Lizardo is alleged to have impulsively exclaimed "¡Eso no puede ser! Si! vamos a perder la election ganaremos en otra cosa, y es * * * matar a Nalundasan! Con una bala voy a terminar la politica en Ilocos!" In this connection it is well to recall that after the marriage of Quirino Lizardo to Maria Marcos, sister of Mariano and Pio Marcos, animosity and ill feeling arose between the Marcoses and Lizardo as a result of family questions, which culminated in the filing in court of a criminal complaint against Lizardo for attempted homicide in which the offended party was the mother of the Marcoses. In the light of this circumstance, we cannot align ourselves with the theory that Lizardo could thereafter have shown such interest in the candidacy of Mariano Marcos as to take the initiative not only of suggesting but of participating in the murder of Julio Nalundasan, even granting that previous family differences had been patched.

The trial court was of the opinion that the Marcoses and Lizardo conceived the idea of killing Nalundasan with some seriousness only in the morning of September 20, 1935, after the provocative and humiliating parade held by Nalundasan's followers and partymen in the afternoon of the preceding day. But while the defeat of Marcos, followed by such insulting parade, might have irritated the herein defendants, the existence of a motive alone, though perhaps an important consideration, is not proof of the commission of a crime, much less of the guilt of the defendants-appellants.

By and large, we find the testimony of Calixto Aguinaldo to be inherently improbable and full of contradictions in important details. For this reason, we decline to give him any credit. In view of this conclusion, we find it neither necessary nor profitable to examine the corroborative evidence presented by the prosecution. Where the principal and basic evidence upon which the prosecution rests its case fails, all evidence intended to support or corroborate it must likewise fail.

In passing we may state that the prosecution deserves commendation for the industry and zeal it has displayed in this case, although its failure to obtain the conviction of Nicasio Layaoen in the first case is not necessarily vindicated by the instant effort to secure a judgment against the herein defendants-appellants, unless the latter's guilt is shown to the point of a certain degree of moral certainty and the judicial mind is set at ease as to their culpability. The judgment of the lower court, herein appealed from is accordingly reversed, and the defendants-appellants, Ferdinand Marcos and Quirino Lizardo, acquitted of the charge of murder and forthwith liberated from imprisonment and discharged from the custody of the law, with costs de oficio.

With reference to the incident of contempt, it appears that on June 10, 1939, the four accused below filed eight separate complaints with the justice of the peace of Laoag, Ilocos Norte, charging the principal witness for the prosecution, Calixto Aguinaldo, with the crime of false testimony because of alleged false declarations made by the latter in the preliminary investigation of December 7, 1938, and during the trial of the aforesaid four accused. When the several complaints for false testimony were filed, it appears that Calixto Aguinaldo was under cross-examination in the separate trial against Quirino Lizardo, and the trial of the other three accused, Mariano,

Pio and Ferdinand Marcos, had not yet commenced. The Judge of the Court of First Instance who was trying the murder case, upon motion of the provincial fiscal of Ilocos Norte, ordered the provisional dismissal of the various complaints filed in the justice of the peace court of Laoag against Calixto Aguineldo and, thereafter, a motion was presented asking that the Marcoses and Lizardo be declared in contempt. Lizardo and the Marcoses were ordered to show cause why they should not be punished for contempt and, simultaneously with the judgment on the principal case for murder, Quirino Lizardo, Mariano Marcos, Pio Marcos and Ferdinand Marcos were adjudged guilty of contempt and sentenced each to pay a fine of two hundred pesos, with corresponding subsidiary imprisonment in case of insolvency:

It is evident that the charges for false testimony filed by the four accused above mentioned could not be decided until the main case for murder was disposed of, since no penalty could be meted out to Calixto Aguineldo for his alleged false testimony without first knowing the extent of the sentence to be imposed against Lizardo and the Marcoses (Revised Penal Code, art. 180). The latter should therefore have waited for the termination of the principal case in the lower court before filing the charges for false testimony against Calixto Aguineldo. Facts considered, we are of the opinion that the action of the Marcoses and Lizardo was calculated, or at least tended, directly or indirectly to obstruct the administration of justice and that, therefore, the trial court properly found them guilty of contempt. (Iv re Gomez, 6 Phil., 647; U. S. vs. Jaca, 26 Phil., 100.) In view of the result, however, arrived at in the principal case, and considering that the inherent power to punish for contempt should be exercised on the preservative and not on the vindictive principle (Villavicencio vs. Lukban, 39 Phil., 778), and on the corrective and not on the retaliatory idea of punishment (In re Lozano and Quevedo, 54 Phil., 801), it is our view that this purpose is sufficiently achieved and the principle amply vindicated with the imposition upon each of the four accused above mentioned of a fine of fifty (50) pesos, with subsidiary imprisonment in case of insolvency. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur. concur.

Judgment reversed in part and modified in part.

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