

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO TACON ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5960. August 07, 1911*

Ponente: ARELLANO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-5960/>**ARELLANO, C.J.:**

While Roberto Baun was living with his niece, Dolores Cabalu, a girl of about 10 years of age, in the barrio of Balincanauay of the municipality of Tarlac, Province of Tarlac, and while he was asleep and sick, on the 12th of May, 1909, at about half past 8 or 9 o'clock at night, two men dressed in black entered his house and, without saying a word or performing any other act, such as searching the house or penetrating therein further than the place where Baun was sleeping, slashed the latter and afterwards precipitately took to flight. Some of the children, and the tenants of Baun who lived in the immediate vicinity and the residents of the barrio that were assembled in a meeting at the schoolhouse, responded to the outcries made, first, by Dolores Cabalu and afterwards by the victim's son, Manuel Baun, but they found Roberto Baun already dead.

On August 19, an information was filed against Pedro Tacon, Simeon Sosa, Hipolito de la Cruz and Blas Evangelista, setting forth, in the following terms, the facts connected with the crime: That Pedro Tacon, as a result of resentment on account of a question concerning a piece of land, wished to revenge himself on Roberto Baun and for this purpose invited and induced the other three accused to assault and kill him, as they did by going to his house and striking him with their bolos until they killed him. After classifying the crime as murder and specifying the circumstances of premeditation and remuneration, with respect to the latter it is stated in the complaint that Hipolito de la Cruz cooperated in the commission of the crime and was paid P30.

Simeon Sosa was exempted from prosecution in order that he might serve as a witness. He was called as a witness but said absolutely nothing, nor was even a single question addressed to him relative to the crime; he was simply asked where he lived and whether he had seen anybody one night when it is said there was a meeting.

Blas Evangelista was acquitted and the case against him dismissed, because not the slightest evidence nor even a single word of testimony was produced against him at the trial.

The charge was sustained only against Pedro Tacon and Hipolito de la Cruz, and as the former was prosecuted separately two judgments were rendered, one against the said Tacon and the other against de la Cruz, both imposing the death penalty, an indemnity of P1,000 to the heirs of the deceased, and the payment of the costs, and, in case of pardon, absolute perpetual disqualification and subjection to the surveillance of the authorities, if these accessory penalties should not be remitted in the pardon itself. The penalty is a most serious one and should only be imposed when warranted by evidence which leaves no doubt in the mind as to the criminal responsibility of the accused.

The trial court, with respect to these two defendants and to the circumstances that attended the commission of the crime took account of the circumstance of known premeditation as one qualifying the crime of murder, and, as generic aggravating circumstances, the fact that the crime was perpetrated at night and in the dwelling of the

deceased. With regard to Hipolito de la Cruz, due weight was given, in addition, to the circumstance of treachery, but not so in relation to Pedro Tacon, since there was no proof that the latter knew how the crime was to be committed; on the other hand, with respect to Tacon, the circumstance of his being a brother-in-law of Roberto Baun, the deceased, was taken into account; while that of remuneration or price was not considered, as there was no other evidence bearing on this point than the testimony of a single witness.

The direct grounds of the conviction are common to both of the defendants. It is only the corroboratory circumstantial evidence that is relative, now to one, now to the other of them.

As circumstantial evidence, arising from the fact that Dolores Cabalu saw that the two aggressors were dressed in black on the night of the crime, the testimony of Cirilo Lumaquin was taken, who, it appears, affirmed that on that night, Wednesday, May 12, 1909, Simeon Sosa and Hipolito de la Cruz went to her house asking for water and were actually dressed in black, and carried nothing in their hands. But Lumaquin, on being questioned by the fiscal as a witness for the prosecution, stated:

"Fiscal. Do you know when Roberto Baun died?

"Witness. On Wednesday morning [he had not yet died].

"Fiscal. On Wednesday morning, you say?

"Witness. Yes, sir.

"Fiscal. How many days since he died?

"Witness. I heard the news only on that occasion, for the people said so.

"Fiscal. You learned of the death of Roberto Baun, in the morning; is that not so?

"Witness. Yes, sir.

"Fiscal. You say that you know Hipolito de la Cruz and Simeon Sosa. Do you remember having seen these two men before you had news of the death of Roberto Baun?

"Witness. Yes, sir.

"Fiscal. When did you see them?

"Witness. On Wednesday night

"Fiscal. And when was that with relation to the news you had of the death of Roberto Baun?

"Witness. I heard that news on Wednesday night, and they passed on Wednesday night.

"Fiscal. That is to say, after you had news of the death of Roberto Baun?

"Witness. Not yet, but I had the news, on Wednesday morning."

Testimony of this kind is unreliable as circumstantial evidence.

The same may be said with respect to the motive which, it is said, brought about the victim's death, according to the complaint, to wit: a question in regard to some land. Roberto Baun had seven children, among them the one named Agaton, now dead, who had been married to Enrica Castaneda. Enrica Castañeda testified that one day, in the beginning of May, 1909, she was at Pedro Tacon's house to claim some land which she said her husband Agaton had cultivated when he was living and which, three years before, she had delivered to Tacon for cultivation. She testified that Tacon replied stating that she should present her claim to her father-in-law, Roberto

Baun, and that, having done so, the latter said to her: "Go to the pueblo and file a complaint and I will be responsible." But the history of this land was given by the witness Juana Tacusalme, without the slightest objection to or contradiction of her words.

This woman testified that she was the mother of Francisca Tacon and Pedro Tacon; that Francisca Tacon was married to Roberto Baun and had by him the seven children before mentioned; that at Francisca Tacon's death the only land to which the brother and sister were entitled was cultivated, a little more than half of it, by the seven children of Roberto Baun who survived him, and a little less than half of it, by Pedro Tacon; that the half first referred to was cultivated and owned by Roberto Baun's children and that Pedro Tacon was not concerned therein; that, while Francisca Tacon was still living, witness had conveyed, by a written instrument, one-half of the land to the latter and the other half to Pedro Tacon. No reason then is found, either for the interference of Enrica, or for the ill-will or resentment on the part of Pedro Tacon, as alleged in the complaint.

But what is of more importance is the direct evidence furnished by the testimony of two witnesses, Primitivo de Jesus and Cesareo Supan, which the lower court duly considered and used as grounds in support of the judgment of conviction.

Primitivo de Jesus testified twice, once in the case against Tacon and another time in that against Hipolito de la Cruz. He is a lad of apparently nineteen years of age and the substance of his testimony is that Tacon called him to his house Tuesday night and he there found Simeon Sosa and Hipolito de la Cruz, with whom Pedro Tacon was plotting the death of Roberto Baun, for the latter had sold a house and had at the time P900; that Tacon tried to induce witness to join in the plot and told him that he had offered to those two men P30; witness was unable to say whether the money was for both or for each of them; witness refused Tacon's proposition, saying that he did so because he was afraid; that on the night of Wednesday, the very day the deed was committed, Tacon again called him for the purpose of stating that those two men were going to commit the crime and inquiring of him whether he wished to join them, but witness again refused; that he left and the other two men, Sosa and de la Cruz, overtook him on the way and they all went along quite a distance together, without saying a word, until they arrived at a corner when witness continued straight ahead on the road to the school house where he had called a meeting for that night, and the other two men turned in the direction of the house of Roberto Baun; and that, a few moments later, the neighbors of Roberto Baun were in excitement over the latter's death.

The foregoing is a summary of the gist of the evidence, but the testimony given was textually as follows:

"Fiscal. Whom did you meet then [Tuesday] in Pedro Tacon's house?

"Witness. I met there, in Pedro Tacon's house, Simeon Sosa and Hipolito de la Cruz.

"Fiscal. What were Simeon Sosa and Hipolito de la Cruz doing then in Pedro Tacon's house?

"Witness. I heard it said, during the conversation they were holding, that they were going to make an assault upon Roberto Baun's house.

"Fiscal. Who said that?

"Witness. The teniente mayor, Simeon Sosa and Hipolito de la Cruz.

"Fiscal. Who is- this teniente mayor?

"Witness. Pedro Tacon.

"Fiscal. How far away were you when they were talking about that?

"Witness. I was near by.

"Fiscal. About how many varas away?

"Witness. I think less than three varas.

"Fiscal. And did Pedro Tacon say anything to you on that occasion?

"Witness. Yes, sir.

"Fiscal. What did he say to you?

"Witness. He insisted that I should join Sosa and Hipolito de la Cruz in the assault to be made upon the house of Roberto Baun.

"Fiscal. And what did you reply to Pedro Tacon then?

"Witness. That I could not join them, because I was afraid.

"Fiscal. Why did Pedro Tacon order an assault to be made upon Roberto Baun's house?

"WITNESS. Because he had sold a house for P900.

"Fiscal. And then what did Tacon say?

"Witness. He said, 'Are you not envious of these two; I pay them P30.'

"Fiscal. P30 to both, or to each of them?

"Witness. I do not know whether it was for both or for each of them.

"Fiscal. Who were those two to whom he referred?

"Witness. Simeon Sosa and Hipolito de la Cruz.

"Fiscal. Were they present when he said that to you ?

"Witness. Yes, present.

"Fiscal. Did Pedro Tacon charge you to do anything when he told you that?

"Witness. Yes, sir, he charged me not to reveal the matter to anybody.

"Fiscal. On Wednesday night did anyone again call you?

"Witness. Yes, sir; the alguacil of the barrio told me that I should go to attend the meeting, but that I should first call at the house of the teniente mayor.

"Fiscal. And when you went to Pedro Tacon's house, whom did you meet there?

"Witness. I again met there Hipolito de la Cruz and Simeon Sosa.

"Fiscal. Did you hear the conversation they then had?

"Witness. I heard their conversation that they would go to make the assault at that hour on account of that money."

Inquiring into the grounds of credibility of such serious charges, the following peculiarities are found in the trial record:

- The defense itself, on cross-examination, asked:

"And is it true that Tacon said nothing as a preamble before speaking to you about the assault upon the house

of Roberto Baun?"

to which the reply was made:

"He said that he would give us money, but I did not wish to accept and they both accepted.

"DEFENSE. Those were Pedro Tacon's first sentences that night, were they not?

"Witness. To me?

"Defense. Yes, to you.

"Witness. Yes, sir. When he got tired quizzing me, he said to me, 'Are you not envious of this money of these two men, which they were willing to accept?'

"Defense. Did Pedro Tacon invite you on those two nights, Tuesday and Wednesday, to accompany Simeon Sosa and Hipolito de la Cruz for the purpose of making an assault upon Roberto Baun's house?

"Witness. Yes, sir.

"DEFENSE. And did he say that to you in the presence of Sosa and de la Cruz?

"Witness. Yes, sir.

"Defense. Did Pedro Tacon have money in his hand that night for the assault?

"Witness. I saw nothing, because it was dark."

In the testimony given by this witness in the case against Hipolito de la Cruz, on cross-examination, he was asked whether he had heard from a distance of five meters the conversation about Roberto Baun's death, to which he replied that he was not that far away, but was among them.

"Defense. Were you already there when they talked of that plot?

"Witness. I do not know the beginning of the conversation, but what I heard when I was once there is that they would go to assault Roberto Baun's house.

"DEFENSE. Did Pedro Tacon, while you were there, speak to you of that matter?

"Witness. He did.

"Defense. In the presence of both Hipolito and Simeon?

"Witness. He drew me aside a little from them and told me that, but in a low voice?

"DEFENSE. Did he afterwards again join the three?

"Witness. Yes, sir.

"Defense. And for that reason you heard what they were talking about?

"Witness. Yes, sir.

"Defense. So that you were called by Tacon expressly to hear that?

"Witness. No, sir; but he ordered me to take part in what he ordered Simeon and Hipolito to do."

- In view of the insistent refusal, which this witness testified that he maintained, to take part in the commission of the crime, it is natural that fear of an accusation should have been aroused by so many spontaneous expressions unexpectedly revealed to an outsider who must have been scandalized at the coolness with which they plotted'a

murder and a robbery, and it would seem that some precaution would have been taken or some dire threats resorted to; it is seen, however, by his testimony given in the case against Hipolito de la Cruz, that what this witness said was that "when cabezang Pedro questioned him and he did not wish to accept he ordered the witness to go to the schoolhouse," while in the case against Tacon it has already been seen that he testified that the latter charged him not to reveal to anybody what he had heard and, afterwards, replying on cross-examination, he testified that Sosa and de la Cruz said that, since he did not wish to accompany them, he should not reveal that to anyone "because Don Pedro might order even him to be killed," and those two men warned him in the same terms on Wednesday night when, while he was going to the schoolhouse, they overtook him, saying to him: "because, if this should come to be known to the people, perhaps cabezang Pedro would also order you to be killed;" but, on being cross-examined, he replied:

"They said to me, 'If you are unwilling, we should like this not to be known by anybody, because, if anyone should come to know it, we will kill you too.'

"Defense. Why did you not reveal that plot to Baun?

"Witness. How could I have done that, when they told me that if anyone should come to know it they would kill me?

"Defense. But were you restrained by both of them from Tuesday to Wednesday?

"Witness. At all events, they could hold me because they were two.

"Defense. Were you guarded from Tuesday to Wednesday?

"Witness. No, sir; but if they came to know that, in any case they would have killed me."

This testimony by itself alone appears not to have borne the necessary conviction to the mind of the sentencing judge, for he gave no credence to it whatever in reference to the remuneration or price which the witness so often affirmed that Tacon offered to Sosa and de la Cruz, which the two latter accepted, a circumstance of the utmost importance as one supporting the alleged inducement, which is not considered to have the requisite force and effect as a cause of crime, when it is merely in the form of advice, except in the case where it consists of an order or an agreement dependent upon an offer or promise capable of producing an excitation of intention and a deliberate proposal in the mind of the agent to lend himself to the commission of the crime which, but for such promise or offer, he would not have committed. Such testimony by Primitivo de Jesus appears to have been weighed with that of Cesareo Supang which latter's, notwithstanding the accumulation of so many details in its rapid and brief narration, makes no reference to price or remuneration, but alleges the conspiracy and the causes leading to it, not the single, sole impelling cause stated by the witness de Jesus, which was utterly inadmissible, and went so far as to show why it was inadmissible by relating a mode of action which had not occurred to the first witness. And Cesareo Supang could not, like Primitivo de Jesus, speak of two days of conspiracy, as he was an accidental witness, not one like the former witness who was expressly called four times to be present at that concert twice plotted, always under a shed of the house of the alleged inducer and always in the same manner and nearly in the same words, the only ones that were to be uttered in the presence of a witness as being suitable to what was to be proved, - a frugality of words which appears to be naught else but characteristic of this delinquent inducer who, when outside of that shed and as soon as he chanced to meet another witness behind some bushes, also apprised him of his evil design, in a most brief and rapid account which was neither elicited by constraint nor provoked, but was spontaneous to excess, as may be seen by the following statements:

Cesareo Supang is a brother-in-law of Primitivo de Jesus. Both lived in the same house in the barrio of Balincanauay. He also was called, according to his testimony, to the meeting in the schoolhouse on Tuesday night

and went to it about an hour after Primitivo de Jesus.

"When I went, - he testified, - to the meeting after supper and while I was going from my house to that meeting, I met Pedro Tacon, Hipolito de la Cruz and Simeon Sosa in the low places of a cane thicket, on the edge of the road where one has to pass in coming from my house. There is a distance of one braza between this thicket and the street. In passing along the street, those persons could not be seen in the places mentioned, on account of the thicket; but they could be, from the road on which I passed." (Stenographic notes, pp. 44 and 45.)

The circumstance of place, in this testimony, is of the utmost importance for the due examination of the facts desired to be proved. In the record there is a rough sketch of the ground, drawn by an officer of the Constabulary. Cesareo Supang's house faces a street without name in the sketch, call it A, and which runs in a straight line to the neighborhood where Roberto Baun's house is situated. The street A is cut by a cross street, call it B, which is crossed by another one, call it C, parallel to A, which runs in a straight line to the schoolhouse where, according to the witnesses for the prosecution, the people of the barrio assembled on the nights of Tuesday and Wednesday. Near the point of intersection of A and B is the cane thicket in which Supang testified he had seen those three men. From his house to the thicket there is a trail, continually called a road in Supang's entire testimony, to distinguish it from the street A on which his house is located; so that he does not have to enter this street A to reach the cross street B, for the short cut from his house to this street B lessens the walk or distance. What is of the most importance in all this description is the street A, the road from Supang's house to the street B and the thicket between the road and the street near the point of intersection where it was alleged the three men met.

On direct examination:

"Fiscal. And how near were you able to get to them?

"Witness. Close.

"Fiscal. Within how many varas?

"Witness. They were on the side of that road which starts from my house and I should have to pass along that road." (Sten. notes, p. 45).

On cross-examination:

"Defense. How many brazas away were they from the road?

"Witness. The thicket was on the border of the street

"Defense. I ask you how far away Tacon and his companions were from the road?

"Witness. One braza (not on the edge, on the very border of the street), I believe.

"Defense. And you, in passing, saw them and recognized them?

"Witness. Yes, sir, because I passed beside them on that road.

"Defense. So that they were in the middle of the street?

"WITNESS. No, sir; they were between the street and the thicket.

"Defense. How far were you from them when you passed in front of them?

"Witness. Less than half a vara." (Sten. notes, p. 51.)

He previously stated that the three individuals mentioned could not be seen from the street, on account of the

thicket that would conceal them; now, being close pressed by the defense, he says that the three men were "between the street and the thicket," so that the thicket would not cover them nor prevent their being seen from the street and they were no longer concealed; they were between the street and the thicket and visible to anyone who should pass along the street A; they had not chosen that position between the road and the street, in sight of a person coming from Supang's house and passing along: that trail or road. This being so, M, according to the direct testimony, the three could not have been seen from the street, on account of the thicket which would have prevented it, it is likewise to be inferred that, were they between the street and the thicket they would not have been visible to a person passing along the road, for the same reason, because of the thicket, which, in this position, would, in the same manner, have prevented it. These premises being established, if they could not be seen, what need was there for Hipolito de la Cruz to call attention to them, inasmuch as it was not easy for them to be seen, owing to the thicket which concealed them?

"And what did you do, on seeing them?" the fiscal went on to ask.

"Witness. On arriving in front of them, Hipolito said, 'Uncle, lest Nazario might tell about it at the schoolhouse.'

"Fiscal. But did you hear anything else besides that?

"Witness. Hipolito de la Cruz said to Pedro Tacon, "Uncle, you had better have a talk with Nazario, lest he may go relating or divulging these things."

"Fiscal. And did you hear Pedro Tacon say anything that night?

"Witness. Pedro Tacon said to me, 'When you go about, say nothing * * *.'"

Naturally enough, he might tell about that meeting in the thicket, and nothing more; but the witness testified: "Pedro Tacon said to me, 'When you go about, say nothing, for I am going to order an assault upon cabezang Berto Baun'; 'Yes, sir', I replied, 'I shall not reveal anything.'" And as if Pedro Tacon could not keep within himself his wicked purpose, that man, who was going to the meeting to which the residents of Balincanauay had been called by himself, continued to say to the witness, without the latter's showing even so much as curiosity to know anything about the matter, that to which the witness testified on direct examination:

"He told me that he [Baun] had money, the price of the house that he had sold to Manuel de Leon for P900, and, furthermore, he said that Teodorica, Baun's daughter-in-law, was trying to get and insisted on getting the land which I hold, and he said: 'If you [witness apparently refers to Sosa and de la Cruz] succeed in entering his house, kill him, don't leave him alive, and then he will no longer be able to testify.' " (Sten. notes, p. 46.)

This manner of effecting the assault had not occurred to Primitivo de Jesus with whom, on two occasions, Tacon had been quietly talking, under a shed, on Tuesday and Wednesday; and yet it was a mode of execution which could have suggested itself to Tacon on Wednesday night, at their second meeting under that shed of his house while he was coolly discussing the commission of the assault with Sosa and de la Cruz, but not on Tuesday, on his chancing to meet a stranger on the way, upon their being, as it were, surprised under the cover, of that thicket and precisely while they were endeavoring to avoid being denounced by that stranger, whose antecedents certainly were very bad, according to the testimony of the clerk of the court, Don Tomas Besa Solitario, who testified that some of his brothers-in-law from Bulacan had gone to Tarlac to look for some carabaos which had been lost by their tenants, among them Supang, and that the animal which the latter had taken away was found in his possession. Such is the man - who was not an intimate friend nor even a friend, but a mere acquaintance, of Tacon, as the latter himself testified - to whom Tacon suddenly disclosed his innermost thoughts in order that there might be another one who should know of his evil designs, which neither that encounter nor any constraint whatever arising from the situation made it in any wise necessary for him to reveal.

The foregoing is the testimony given by Supang in the case against Tacon; in that against Hipolito de la Cruz, he testified as follows:

"Fiscal. And on the way, while you were going to the schoolhouse that night, did you meet anybody?

"Witness. Yes, sir.

"Fiscal. Whom did you meet?

"Witness. Pedro Tacon, Simeon Sosa and Hipolito de la Cruz.

"Fiscal. Where did you meet that Hipolito de la Cruz?

"Witness. In a thicket.

"Fiscal. Is that thicket a secluded place, concealed, or is it a street?

"Witness. That place where the thicket is located is at the end of the rice fields of the barrio.

"Fiscal. Can that place, where they were, be seen from the street at night?

"Witness. If it is dark, it can not be seen.

"Fiscal. Was it dark or light that night when you saw them there?

"Witness. It was a dark night and raining.

"Fiscal. Do you know what they were doing there?

"Witness. Yes, sir; on my arriving in front of them, for, in going from my house I had to pass along the road which starts from my house and leads to the place where they were, Hipolito said to Pedro Tacon, 'Uncle, lest Sario may go divulging and circulating the matter at the schoolhouse.'

"Fiscal. What did he say it was that you would divulge in the schoolhouse?

"Witness. The fact of my having seen them in that thicket.

"Fiscal. Did you hear them speak anything that night?

"Witness. Tacon said to me, 'Sario, lest you go divulging there in the schoolhouse.'

"Fiscal. What I ask is whether you heard any conversation when you saw them there in the thicket?

"Witness. Yes, sir; Tacon said, 'I am ordering an assault to be made upon cabezang Berto' (Roberto Baun, before mentioned)."

On cross-examination:

"Defense: When Tacon said that he was ordering an assault to be made upon Baun's house, whom did he address?

"Witness. Hipolito and Simeon Sosa."

On direct examination:

"Fiscal, What else did he say?

"Witness. That the money he had was P900, the price received for his house that he had sold to Manuel de Leon.

"Fiscal. Why did he say that?"

The witness, instead of replying to this question, made the following statement:

"He insisted in getting away from me the land that is in Panduyucan.

"FISCAL. And what else did he say?

"Witness. He then said to Hipolito, 'If you go up there, you must finish him and he must not be left alive and then he will be unable to give testimony.'

"Fiscal. After that, what did you do?"

The witness, instead of saying what he did, obsessed by what he had in mind, said:

"He [Tacon] said to me, 'If you go about divulging that, I will kill you, too.'

"Fiscal. Did Hipolito de la Cruz say anything that night?

"Witness. He said nothing to me.

"Fiscal. But in their conversation did you not hear Hipolito de la Cruz say anything?

"WITNESS. I heard nothing of what he may have said; what I did hear was what Tacon said."

Neither the liberty nor, much less, the life of a man should be placed in jeopardy by testimony so bunglingly concocted as the foregoing, so unlikely, and so unbelievable, as it is contrary to the most rudimentary, natural instincts and to common sense.

Moreover, there is not the slightest proof, once the alleged fact of the promise or offer of remuneration has been rejected as unproved, with respect to the force of the inducement, nor, even as regards any ascendancy which Pedro Tacon might have exercised over Hipolito de la Cruz, or of the extreme venality and corruption of this man, in order that one may be enabled, from the facts adduced on the witness-stand, to follow a logical trend from the potential fact of the inducement to the necessary consequence of a real act, that is, the infliction of death, not by some other agent but precisely by those who held the pretended conversations.

It is a serious thing to sentence a person to the loss of his liberty, but far more so, to the loss of his life.

The judgments appealed from and reviewed are hereby reversed, with all the costs de oficio. So ordered.

Torres, Mapa, Johnson, and Moreland, JJ., concur.

DISSENTING

CARSON, J.,

I dissent. I think the judgments of conviction should be affirmed.

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