

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMETERIO VELASCO AND JUANITO COMEL, ACCUSED-APPELLANTS.***G.R. No. 74658. July 19, 1989*

Ponente: CRUZ, J.

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It was nine o'clock in the evening of July 17, 1977, and the members of the Puri family were inside their house in the town of San Antonio in Quezon Province. Outside it was windy and rainy. Suddenly, several shots rang out from under the house and Sergio Puri moaned in pain, evidently hit. Moments later, he was dead with wounds in his neck, chest, arms and knee.

The sound of the shots and Gloria Puri's shouts for help drew neighbors to the house. The matter was immediately reported to the authorities and that same night three policemen came to investigate. They found six empty carbine shells under the house. They also went in search of the two persons claimed to have been seen walking away from the scene of the crime after its commission.

On August 29, 1977, an information for murder was filed against Emeterio Velasco, Juanito Comel and Rodrigo Comel. Upon reinvestigation on their motion, Rodrigo Comel was dropped from the charge for insufficiency of evidence. After arraignment and trial, the two remaining accused were found guilty. They were sentenced to reclusion perpetua plus payment of indemnity to the victim's heirs in the sum of P20,000.00.[1]

In this appeal, both Velasco and Comel claim that they were invalidly convicted on insufficient circumstantial evidence in disregard of their constitutional right to the presumption of innocence.

The principal witnesses for the prosecution were Clarita Puri and Domingo Puri, who both pointed to the two accused-appellants as their brother's killers. In their separate testimonies, they said that when they heard the shots, they went to the window and saw the two accused walking away. Velasco had a shotgun. Clarita was at the time carrying an oil lamp and Domingo a flashlight. They heard Sergio moaning and it was then they realized he had been shot. It was too late to help him.[2]

Pat. Demetrio Andaya, also testifying for the prosecution, said that he had investigated the killing that same night, together with three other policemen. They found six used carbine shells under the Puri house. Clarita reported to him that she saw the two accused walking away from under their house minutes after she heard the shots. He told her to go to the municipal building and make a formal statement.[3]

He was corroborated by Pat. Nemesio Alcantara, who was also in the investigating team. This witness said they found footprints under the house that led to the house of Juanito Comel.[4]

Another investigator, Pat. Manuel Vasquez, had a slightly different story. While confirming their discovery of the spent carbine shells, he testified that when Clarita was interviewed by Andaya and Alcantara, she could not tell who her brother's assailants were.[5]

Emeterio Velasco, testifying for himself, denied killing Sergio Puri and said he was residing in Tagkawayan, another town in Quezon, at the time of the killing.[6] As for Juanito Comel, who also took the stand, he said he was in his house with his family the whole night of July 17, 1977, and could not have committed the killing. Moreover, he was already 69 years old and had poor eyesight, which was the reason he had stopped working in his farm the year before.[7] Dr. Cornelio Maninang confirmed Comel's defective vision, saying the accused was suffering from presbyopia and cataract.[8]

Another witness was Capt. Valentino Gaerlan of the PC Crime Laboratory, who testified that he paraffin-tested Anselmo Comel, Casiano Comel and Armando Mercado on July 19, 1977, and found them negative for powder burns.[9] He did not say he had also tested the two accused-appellants.

It was disclosed at the trial that the Puri family used to be employed in Juanito Comel's farm as their harvesters but he had dismissed them several years earlier. Emeterio Velasco replaced them and became a close friend of Juanito Comel. Sergio Puri was charged with having killed Filemon Comel, Juanito's brother, but the case was dismissed in the fiscal's office after Sergio made a cash settlement with the family of the victim.[10]

These circumstances were regarded by the trial judge as the basis for the motive in the killing of Sergio Puri. Judge Palattao said the motive was revenge. This revenge was carried out by the two accused, with Velasco as the actual gunman in conspiracy with his close friend and employer, Juanito Comel, who had accompanied him that night. The fact that they were both not at home when the policemen went looking for them that same night indicated that they were hiding. Velasco was even seen crossing the river on the way to Tiaong, presumably to escape.

It bears noting at this juncture that the house where the victim was shot, like many houses in the province, was a one-story structure raised on pillars and with an empty space underneath. The elevation of the floor was about two-and-one half meters. Any person in this area could look up and see the occupants inside the house through its bamboo flooring. As the room where Sergio Puri was standing and mending a fish net (or sitting, according to Domingo) was lit with three oil lamps, it was easy for the killer or killers to identify and shoot him from below.

The Court does find it strange that the killing should have been done under these circumstances but the fact is that it did happen. It is not disputed that Sergio Puri died from the shots fired from under him. The only question is whether the killers were Emeterio Velasco and Juanito Comel, as the trial judge held.

Although the offense was committed on July 17, 1977, the record shows that it took one month before the accused-appellants were formally indicted. Moreover, although three persons were originally charged, one of them was dismissed after a reinvestigation. It is also noted that two days after the killing three persons were paraffin-tested by the police but not either of the two accused-appellants. This was a curious omission in light of the report made by Clarita Puri to Pat. Andaya on the very night of the killing that she saw Velasco and Comel leaving the scene of the crime immediately after she heard the shots.

The explanation given by the prosecution is that the Puri family was afraid to press charges, especially so since the former station commander was partial to the accused and was protecting them. It was only when he was replaced that the complainants dared to come forward and accuse Velasco and Comel.[11]

There are inconsistencies in the separate narrations made by Clarita and Domingo Puri but only on minor points that do not detract from their essential credibility. Whether Sergio Puri was standing or sitting shortly before he was shot or whether Clarita stayed by the window for thirty seconds or three minutes is not really that important as long as the testimony of the witness is on the whole credible. What is important is that, although Clarita and Domingo may have differed on some of the details, their common declaration was that they saw the two

accused-appellants walking away from under the house minutes after the shots were fired.

The defense theorizes that Clarita and Domingo could not have failed to see that Sergio had been shot and that their first reaction would have been to go to him instead of to the window. Sergio was in fact talking with Domingo, according to Clarita, when the shots were fired. Moreover, the room where they were all in at the time was after all not big and all the occupants were within sight of each other.

We can also only conjecture like the defense but the other plausible view is that Clarita's and Domingo's first impulse was to go to the window to see where the shots had come from, not yet realizing that one of them had been shot. It was Clarita who said Sergio and Domingo were conversing when Sergio was shot. Domingo never said that; what he said was that he was behind his brother shortly before he heard the shots.[12]

One may well wonder why a 69-year old man would go out on that windy and rainy night to accompany the killer and, stranger still, why they would simply walk away after the shooting. But the fact is that Emeterio Velasco and Juanito Comel were actually seen together that night under the house of the slain Sergio Puri and they were not running but simply walking away. It would have been more believable for Clarita and Domingo, if they wanted to be more convincing, to say that the two men they saw were running, for this was the natural thing to do. The fact that these witnesses did not do so is perhaps an index itself of their truthfulness.

The testimony of Alcantara that they found footprints in the mud leading from the Puri house to Juanito Comel's house must be taken with a grain of salt. It is doubtful how the footprints could have been preserved on that rainy night, let alone the fact that there were allegedly many such footprints and none was identified as belonging to either of the accused-appellants. On the other hand, the muddy soil might have been the reason why the accused-appellants were not running but carefully treading their way so as not to slip.

It is also noteworthy that when the investigators reached Juanito Comel's house and asked for him they were told he was not there.[13] Comel himself did not deny this particular statement of Pat. Alcantara although he insisted that he was at home all night on July 17, 1977. If he was really there and had nothing to hide, Comel would have come out and talked to the investigators. Velasco was also nowhere to be found that night after the killing and did not deny that he was seen crossing the river on the way to Tiaong.

The Court has carefully analyzed the evidence against the accused-appellants and finds that, although only circumstantial, it is sufficient to convict them. The various circumstances pointing to them as the killers have successfully overcome the constitutional presumption of their innocence and established their guilt beyond reasonable doubt.

They were seen immediately after Sergio Puri was shot and killed from under his house. Velasco was carrying a shotgun, later identified at the trial as a carbine. That same night six spent carbine shells were found at the scene of the crime. Juanito Comel was not in his house on the night of the killing when the policemen went to see him, and Velasco for his part was also missing. And there was also motive: the alleged killing by Sergio Puri of Filemon Comel, Juanito's brother, and Juanito's dismissal of the Puris as harvesters in his farm, as a result of which they and his family ceased to be on speaking terms.

Given these circumstances, it was inevitable that the accusing finger should point to Juanito Comel and his friend and employee, Velasco. And more so since there does not seem to be any other plausible explanation for the killing of Sergio Puri, who was an ordinary fisherman. Definitely, the killers did not come to rob, for they left immediately after the slaying. The only target was Sergio Puri although there were other occupants in the house who were equally exposed and defenseless. It has not been shown either that there were other persons who had a grudge against the victim and could themselves have committed the killing.

The trial court was correct in finding that there was a conspiracy between Velasco and Comel as they evidently acted in concert in pursuit of a common design. They were properly found equally guilty of the crime of murder, qualified by treachery, but without the aggravating circumstances of evident premeditation and night-time, which were not established. There is no reason why these factual findings should be reversed or modified, absent a showing that they were reached without basis or with grave abuse of discretion.

WHEREFORE, the appealed judgment is AFFIRMED except for the civil indemnity, which is increased to P30,000.00. Costs against the accused-appellants.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 28, Decision penned by Judge Rodolfo G. Palattao, Regional Trial Court, Branch LIII, Lucena City.

[2] TSN, June 25, 1980, pp. 23, 25 and 34; TSN, July 7, 1980, p. 17.

[3] Decision, p. 6; rollo, p. 33.

[4] TSN, December 3, 1980, p. 36.

[5] Decision, p. 9; rollo, p. 36.

[6] Ibid., p. 12; rollo, p. 39.

[7] Decision, supra.

[8] Ibid., p. 11; rollo, p. 38.

[9] Id.

[10] id., pp. 16 and 19; rollo, pp. 43 and 46.

[11] id., p. 17; rollo, p. 44.

[12] TSN, August 15, 1980, p. 2.

[13] TSN, December 3, 1980, p. 12.

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