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[G.R. No. L-24491. August 11, 1970]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* RUFINO GENSOLA, FIDELINA TAN and FELICISIMO TAN, *defendants-appellants.*

SYLLABUS

REMEDIAL LAW; NEW TRIAL; GROUND; NEWLY DISCOVERED EVIDENCE; CASE AT BAR.— Where, as in this case, the affidavits of Ernesto Gargaritano, and more particularly, of Ildefonso Capinding and Restituto Gersaneva, (Annexes A, B and C) whose testimonies on certain crucial matters could not be presented at the trial due to no fault of the accused appellants, raise grave and substantial doubt that the original judgment imposing the near-extreme penalty of *reclusion perpetua* would have been so rendered if the material testimonies of these affiants were then introduced and admitted. The court believes it imperative, therefore, in order to assure against any possible miscarriage of justice, to grant a reopening of the trial at which the testimonies of these affiants and such other evidence of both prosecution and defense as the trial court may in the interest of justice allow to be introduced, may be duly presented.

APPEARANCES OF COUNSEL

Solicitor General Antonio P. Barredo, Assistant Solicitor General Isidro C. Borromeo and *Solicitor Pedro A. Ramirez* for plaintiff-appellee.

Dominador Garin for defendant-appellant Rufino Gensola.

Juan C. Orendain for the other defendants-appellants.

RESOLUTION

PER CURIAM:

Before the Court for consideration are the second motion for reconsideration and new trial on the ground of newly-discovered

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evidence filed by accused-appellants Fidelina Tan and Felicisimo Tan (with leave duly granted), the State's opposition thereto, appellants' reply, and said appellants' memorandum and the State's reply thereto, in lieu of oral argument, filed pursuant to the hearing on said motion set by the Court on June 17, 1970.

The affidavits of Ernesto Gargaritano, and more particularly, of Ildefonso Capinding and Restituto Gersaneva (Annexes A,B and C), whose testimonies on certain crucial matters could not be presented at the trial due to no fault of the accused-appellants, raise grave and substantial doubt that the original judgment imposing the near-extreme penalty of *reclusion perpetua* would have been so rendered, if the material testimonies of these affiants were then introduced and admitted. The Court took into account its findings on the evidence of record in its decision under reconsideration that there was no evidence of conspiracy between the accused and that "the command shouted by Fidelina, 'Rufino, strike him' was not the moving cause of the act of Rufino Gensola. The evidence shows that Rufino would have committed the act of his own volition, even without said words of command."

The Court believes it imperative, therefore, in order to assure against any possible miscarriage of justice, to grant a reopening of the trial at which the testimonies of these affiants and such other evidence of both prosecution and defense as the trial court may in the interest of justice allow to be introduced, may be duly presented.

The Court's judgment of September 30, 1969 is hereby reconsidered and set aside, insofar as the accused-appellants Fidelina Tan and Felicisimo Tan are concerned. The trial court's original judgment of February 8, 1965 against the said accused-appellants Fidelina Tan and Felicisimo Tan is likewise set aside. The records of the case are remanded to the lower court for new trial pursuant to Rule 121, Section 5(b) and (c) of the Rules of Court, at which the evidence already taken shall stand and the evidence of the three above-named affiants and such other evidence of both prosecution and defense as the trial court may in the interest of

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justice allow to be introduced, shall be taken and considered with the evidence already in the record, and a new judgment thereafter rendered by the lower court.

Insofar as the accused, Rufino Gensola, is concerned, the appealed judgment against him, as modified by the Court's judgment of September 30, 1969, reducing his penalty from life imprisonment to an indeterminate penalty of from 3 months of *arresto mayor* as minimum to 3 years of *prision correccional* as maximum, has become final and stands, since no motion for reconsideration thereof was filed on his behalf. Let the corresponding judgment against him be entered as of the date of its finality.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee and *Villamor, JJ.*, concur.
Barredo and *Makasiar, JJ.*, did not take part.

[G.R. No. L-19641. August 14, 1970]

GREGORIO RESUENA and EPIFANIA RESUENA, *petitioners, vs.* MARCIAL BAS, *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY ACT; SECTION 50 (a) AS AMENDED; GOOD FAITH INDISPENSABLE; CASE AT BAR.**— Upon the facts and circumstances above set forth, the good faith of petitioners in wanting their son Aldrico to cultivate the landholding in question does not appear to have been established. Petitioner's evidence is devoid of any showing that Aldrico has ever done any farm work in his life or attempted to learn by actual practice any of its rudiments. One does not become a farmer by merely watching other farmers perform their work, any more than one