

94 Phil. 522

[G.R No. L-5732. March 12, 1954]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FEDERICO FADER, ETC., DEFENDANT AND APPELLANT.

D E C I S I O N

PARAS, C.J.:

This is an appeal from the judgment of the Court of First Instance of Ilocos Norte, finding the defendant-appellant, Federico Fader alias Fernandico Fader, guilty of frustrated robbery with double homicide and sentencing him to *reclusion perpetua* and its legal accessories, to indemnify the heirs of the deceased in the sum of P5,000, and to pay the costs. Fausto Fedalizo alias Ustong Fedalizo was originally included in the information but, upon motion of the provincial fiscal, the court dismissed the case as to him for insufficiency of evidence.

According to the prosecution, on the night of April 13, 1951, at about ten o'clock, after the appellant and an unidentified companion had gained entrance to the house located in the barrio of Tigui, municipality of Curimao-Ilocos Norte, owned and occupied by Marcos Fernandez, his wife, and his six children named Dionicio, Maria, Juanita, Fernandico, Jose and Gervasia, the appellant directed everybody to lie with face downward. After putting out the oil lamp, the appellant approached Juanita and, pressing his gun against her breast, asked for the key to the family trunk. Juanita answered that the trunk could just be opened as it was unlocked. Whereupon the appellant demanded money from Juanita and, noticing that Dionicio (who was in another part of the house beside his brother Fernandico) was still awake, fired at the latter. Fernandico was thereby awakened and

was warned by the appellant not to move. Defying this threat, however, Fernandico stood up and proceeded to resist, and the appellant thereupon started to make his exit, pursued by Fernandico. In the meantime, Maria (who was sleeping near Juanita) was likewise awakened, and appellant's unidentified companion dragged her by the head towards the stairway. Following, however, appellant's conduct, this unknown companion jumped to the ground obviously also to flee away. No sooner had the appellant and his companion started on their flight than the former fired a few more shots at the house hitting Maria at the stairway where she was dragged by appellant's companion. Marcos, also awakened by the noise of appellant's first shot, was so frightened that he slipped out of the house and, hiding behind a post near the gate of his yard, saw the male-factors as they passed out to the road, and recognized the appellant by the moonlight. The assailants gone, Marcos rushed to his house only to find that his son Dionicio and daughter Maria were already dead. That same night he reported the occurrence to the chief of police, specifying the appellant as one of the intruders. The police officer hastily went to the house of Marcos where he found the dead bodies of Dionicio and Maria, some empty carbine shells by the roadside nearby, a slug embedded in the post near the stairway where Maria was lying dead, and some live ammunition's inside the house. The chief of police was also informed by a daughter of Marcos that the appellant was one of the assailants. According to Dr. Estanislao Resurrection, charity clinic physician of the municipality who performed the autopsy, the two victims died from severe profuse hemorrhage and shock.

The evidence for the defense tends to show that on April 13, 1951, the appellant was in his house in the poblacion of Paoay, Ilocos Norte, about five kilometers away from the scene of the crime; that some visitors (who came in the afternoon of that day to congratulate him on his graduation as an elementary school teacher) stayed in his house up to three o'clock in the morning, of the following day, playing mahjong; that appellant served *arroz caldo* to his visitors between 10 and 11 o'clock; that at about five o'clock of the following morning he and Constancio Diaz went out to measure a piece of land belonging to

the latter's wife and her brothers which appellant's father intended to buy, the appellant returning home already at about eight o'clock in the morning; that appellant was incriminated because he dismissed Marcos as a tenant in March, 1951.

After a careful study of the record, we are convinced of appellant's guilt beyond reasonable doubt. Appellant's alibi cannot prevail over the positive testimony of Marcos and his two children, Fernandico and Juanita, who were inmates in the same house where Dionicio and Maria were shot by the appellant. These witnesses could not have made a mistake in appellant's identity, because the latter was known to the former, Marcos admittedly being appellant's tenant, apart from the circumstance that the assailants were not disguised. It is significant that, at the time the malefactors entered the house of their victims, there was an oil lamp, and Juanita had the occasion to recognize appellant within close range because he pressed his gun against Juanita's breast. Indeed, it was also from Juanita that the appellant demanded the key as well as money.

Appellant contends that the testimony of Marcos to the effect that he was able to identify the appellant because of the moonlight is untrue, because it is alleged that on the date in question, the moon rose at 10:25 o'clock in the evening and set about two hours later, or thirteen minutes past midnight. This observation cannot negative the probative value of said testimony, since Marcos and Juanita both declared that the incident occurred between ten o'clock and midnight

Appellant capitalizes certain discrepancies between the affidavits of the prosecution witnesses and their testimony in court, in that while in the first it was claimed that appellant's companion was Fausto Fedalizo alias Ustong Fedalizo, in their testimony during the trial said witnesses declared that they did not recognize said companion. The point is of no moment, inasmuch as Fausto Fedalizo, though originally included in the information, was subsequently discharged for insufficiency of evidence after a reinvestigation of the case, and upon motion of the provincial fiscal; and the Government witnesses had made a consistent statement regarding appellant's identity and main

participation. Another discrepancy pointed out by the appellant refers to the fact that, while Juanita claimed that it was the appellant who dragged Maria to the stairway, Fernandico testified that it was appellant's companion who did it. The detail, in our opinion, is not of such importance as to destroy the testimony both of Juanita and Fernandico in relation to the fatal acts committed by the appellant, preceded by his demand from Juanita for the key of the family trunk and for money.

It is argued that Marcos harbored some resentment towards the appellant growing out from his dismissal as appellant's tenant in March, 1951. Aside from the assurance of Marcos that he was never dismissed, appellant's imputation is rather inconsistent with his statement that, on the alleged date of dismissal, the appellant bought a cow from Marcos. Neither is there weight in appellant's argument that it is improbable that he would rob his own tenants. In the first place, it is admitted that the appellant had previously been imprisoned for theft. In the second place, he must have believed and known that the Fernandez family had money, because appellant himself stated that he bought from them a cow on March 25, 1951 for P160.

Lastly, it is noteworthy that the commission of the crime was reported to the authorities immediately, thereby showing spontaneity on the part of the informant (Marcos) and preventing the latter from having sufficient time to fabricate an untrue story.

The crime committed is, as charged in the information and found in the appealed decision, attempted robbery with double homicide, penalized under Article 297 of the Revised Penal Code with *reclusion temporal* to *reclusion perpetua*.

The trial court ruled that there were present in the commission of the crime the aggravating circumstances of dwelling, nighttime and treachery, without any mitigating circumstance. While nighttime cannot be considered separate from and independent of treachery, there are still two aggravating circumstances which justify the penalty imposed by the trial court

Wherefore, the appealed judgment is affirmed with costs. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Jugo, Reyes, Bautista Angelo, Labrador, Concepcion, and Diokno, JJ., concur.

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