

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO MARCOS, FLORENCIO GOROSPE, AND BERNARDO DOMINGO DEFENDANTS-APPELLANTS.

G.R. No. L-2106. April 26, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

The three above-named appellants were accused and convicted of robbery with homicide in the Court of First Instance of Ilocos Norte and sentenced to suffer reclusion perpetua with appropriate pronouncement as to indemnities.

On or about December 12, 1941, three Chinese families headed by Ang Bang King, his son-in-law Francisco Tan, and his married daughter Maria Ang, evacuated from the town of Laoag to barrio No. 12 of the municipality of Piddig, Ilocos Norte, for fear of being caught and killed by the invading forces of the Japanese army. The evacuees, numbering about thirty including men, women and children, occupied a house in said barrio situated by the side of a hill.

In January, 1942, said house was raided by seven or eight armed malefactors whose identity has never been determined, and who despoiled the said evacuees of personal belongings consisting of clothing and foodstuff. According to Maria Ang, one of the victims of the robbery, while the robbers "were yet far from the house we heard shots and the male companions of ours were frightened and they ran away from the house. I also started running, but I remembered my small baby who was then five months old and' went back to the house and hid between the sacks of clothing and then I heard footsteps in the house. When they saw me they covered my face with a piece of cloth, then they dragged me from where I was hiding and asked where Ang Bang King was. I answered I did not know because he had escaped then and /they/ dragged me to the ground from the house and they wound a chain around my body just under my armpits and then lowered me to a well. I do not know for how many minutes in that position I was and when they brought me up from the well I lost my consciousness. . . . They did not ask about money, but asked where Ang Bang King was. . . . When, they asked me where Ang Bang King was I could not tell them anything because of the torture to which I was subjected." (pp. 191-192 t.s.n.)

Between 11:00 and 12:00 p.m. on February 17, 1942, Ang Bang King was shot in the abdomen while he was downstairs. According to Dr. Gregorio M. Andres who attended him in the early dawn of February 17, 1942, "the wound was inflicted on the right epigastric region in the direction of a little bit downward and a little obliquely towards the left and internally. ... It seems to me the bullet was a caliber 25." As a result of the wound Ang Bang King died between 8:00 and 9:00 o'clock in the evening of February 18, 1942.

The theory of the prosecution is that the three appellants, accompanied by seven or eight unidentified individuals, robbed Ang Bang King, Maria Ang and Francisco Tan of P4,000 in cash on the night of February 17, 1942; that after Maria Ang had handed to the appellant Pablo Marcos a biscuit can containing the P14,000 in paper money, Ang Bang King begged him to leave part of the money for their expenses; that Pablo Marcos ordered him to be

silent, and as Ang Bang King spoke again the appellant Bernardo Domingo shot him once hitting him on the abdominal region, and thereafter the three appellants and their unidentified companions fled with the can containing the P14,000.

The theory of the defense is that the robbery was committed by unknown individuals in January, 1942: that no robbery was committed on February 17, 1942, but that on said date Ang Bang King was shot by unknown enemies, probably by the same persons who tortured Maria Ang in January, 1942, in their attempt to make her reveal the whereabouts of her father Ang Bang King; that none of the three appellants had anything to do with the murder of Ang Bang King; that in the early part of 1943 Maria Ang, suspecting that the appellant Florencio Gorospe knew who the killers of her father were, caused him to be arrested and investigated by the Japanese military police in Laoag where he was detained in jail for three months, after which he was turned over to the provincial fiscal for further investigation; that an effort was made by the guerrilla enemies of Pablo Marcos to induce Florencio Gorospe to testify as a witness against Pablo Marcos, but that he refused to do so because he knew nothing of the crime; that during said investigation in 1943 neither Maria Ang nor Francisco Tan ever complained to the provincial fiscal of Ilocos Norte that the herein appellants participated in the killing of Ang Bang King, notwithstanding that they were investigated, by said fiscal regarding the crime in question; and that after the liberation Maria Ang was persuaded by the guerrilla enemies of Pablo Marcos that the latter was responsible for the killing of her father and that Florencio Gorospe and Bernardo Domingo were included in the information because of their refusal to testify against Pablo Marcos.

In support of its theory the prosecution presented two witnesses: Francisco Tan and Maria Ang. To rebut their testimony and, to substantiate its theory the defense presented eleven witnesses: Daniel Domingo, Napoleon Hernaez, Patricio Pandaraon, Dr. Gregorio M. Andres, Maria San Luis Traviño, Inocencio Gorospe, Anastacio B. Valera, Pablo Marcos, Miguel Pandaraon, Bernardo Domingo, and Rosalino Leaño.

Francisco Tan, 41, on direct examination testified in substance as follows: He knew the three accused, to each of whom he pointed in court. On the night of February 17, 1942, he was in barrio No. 12, Piddig, where he had evacuated with the families of Ang Bang King and Maria Ang. At about 12:00 o'clock on the night of February 17, 1942, Gorospe and companions came and shouted: "The Japanese are now coming here, you better run away." He (witness) became frightened and immediately jumped from the house to hide in a hilly place five meters from the house. From his hiding place he heard and saw Marcos, Gorospe and Domingo, each holding a revolver, run up. "More than ten persons came to our place, but I was able to recognize only Domingo, Gorospe and Marcos." He had known Pablo Marcos long before February 17, 1942. He had known the other accused Domingo and Gorospe since he had evacuated to that place from Laoag on December 11, 1941. He heard Pablo Marcos say: "You line up." He ordered them to bring out their money and pointed to them his revolver and said: "If you do not bring it out I will shoot you." Maria Ang said: "We do not have any more money, sir;" but inasmuch as Pablo Marcos did not believe her, he again pointed at her his revolver, for which reason Maria Ang was constrained or forced to go and get the money. Maria Ang followed by Pablo Marcos went and brought one can of biscuit and delivered it to Pablo Marcos. Ang Bang King supplicated Pablo Marcos not to take all the money inside the can because it was the only fund to support the three families, and because of that supplication Pablo Marcos got angry and told him to keep quiet. Ang Bang King insisted and said: "Everyone has his day," and because of those words Andong Domingo shot Ang Bang King. Ang Bang King died on the night of February 18 and was buried on February 19. The can contained P14,000 in paper money. Of that amount P3,000 belonged to Francisco Tan, P7,000 to Ang Bang King and P4,000 to Maria Ang. No Japanese came that night, only the accused and company. The money was delivered inside the house, but Ang Bang King was shot on the ground just in front of the house.

On cross-examination he further testified in substance as follows: When he heard Florencio Gorospe say "the

Japanese are coming" he (witness) was so afraid that he jumped from the stairs because he had heard that the Japs were after Chinese males in Laoag. He climbed the hill. After having run for two minutes he saw the companions of Gorospe reach the house. Witness was able to reach the top of the hill from which he saw all that happened as narrated by him on direct examination.

"Q. But it was necessary for you to reach the top of the hill because between the top of the hill and the house there were no vegetation in which you could have hidden yourself, is it not? A. In that hill there were not big trees or bushes on its side, but only plants and no grasses.

"Q. In which case it was necessary for you to reach the top of the hill because on the side of the same you could not have hidden yourself because grasses or vegetation were very low, is it not? A. In that hill there were grasses able to cover me when I sat down and in case they discover me in that position I could easily jump from that place to another hiding place.

"COURT: Q. The Court orders you to give a categorical answer. Because there was no sufficient vegetation tall enough to hide yourself, you had to go to the top of the Hill?" The Court orders the witness to give categorical answers and not evasive ones. A. Because I was afraid so I went to hide.

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"Q. You never revealed the name of Pablo Marcos, Andong Domingo and Florencio Gorospe to any person or persons in authority at that time, did you? A. No, sir.

"Q. So that you only mentioned for the first time the names of Gorospe, Marcos and Domingo when you were investigated in connection with Criminal Case No. 228 or with the present case? A. Yes, sir.

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"Q. You mentioned a case filed in the Fiscal's office during the Japanese administration, would you tell this Honorable Court how it happened that there was a case filed? A. Then I was called about this case during the Japanese occupation I did not make any declaration but I only answered questions, not a written declaration.

"Q. Were you called for investigation by the Fiscal or by the Court during the Japanese occupation in connection with, this case now being tried? A. Yes, I was called.

"Q. Who called you? The Fiscal or the Court? A. The Fiscal.

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"Q. How many times were you called to testify during the Japanese occupation in connection with the same crime? A. I was called many times but I only went twice for investigation.

"Q. Was that before the Fiscal or before the Court? A. Before the Fiscal."

Maria Ang, 28, married, on direct examination testified in substance as follows: She knew the three accused, to each of whom she pointed in court. Ang Bang King was her father, who died on February 18, 1942. On February 17, 1942, she was in barrio No. 12, Piddig, with the families of Ang Bang King and Francisco Tan. They evacuated there for fear of the Japanese. At about 12:00 o'clock on the night of February 17, 1942, Pablo Marcos, Florencio Gorospe, and Andong Domingo came there with other companions whom she did not recognize. They were more than ten including the three accused. About seven or eight carried long guns and the rest short guns. She had known Pablo Marcos since peacetime, and Andong Domingo during the evacuation. When she and her companions evacuated to barrio No. 12 Florencio Gorospe transported their belongings in his bulcart. When the accused and their companions came on the night of February 17, 1942, Florencio Gorospe said: "The Japanese are now coming, run away." Some of her companions jumped from the house and she ran also, but on the stairway she met Andong Domingo and Pablo Marcos who told her: "Better run away because the Japanese are coming." She remembered her small child and went back. Pablo Marcos followed her and said: "You must get down." She went down and found her father with Andong Domingo and Florencio Gorospe. Their seven or eight companions surrounded her father. Pablo Marcos ordered her father to line up and said: "Bring out your money. If you do not bring it out we will kill you all." Because of fear her father told her to bring out the money. Pablo Marcos immediately thrust his gun at her back and ordered her to go up the house. She went up to fetch the money followed by Pablo Marcos, while she was holding the can containing the money Pablo Marcos ordered her to go down pointing his gun at her back. "When we were already downstairs I was side by side with my late father in front of the house. The three accused were standing and Pablo Marcos said: 'Let me have that (referring to the can containing the money).' I gave him the can and my father knowing I was not able to get some of the money because of the presence of Pablo Marcos who followed me to the house, supplicated him to give us some of the money for our expenses. Pablo Marcos said: 'Shut up, be silent.' When my father insisted in his supplication to give or return to us a part of the money, but he did not yet finish uttering his words when Andong Domingo shot him, wounding him in the abdomen." She did not file a complaint during the Japanese occupation. She was called by the fiscal in 1943. "The Fiscal called for me and asked me to forgive Florencio Gorospe." Gorospe was captured by the Japanese in one of the mopping operations of the Japanese in Piddig in connection with their attempt to capture Governor Ablan, and that is how it happened that Florencio Gorospe was in the fiscal's office.

On cross-examination this witness testified in substance as follows: She did not file any complaint either with the fiscal's office or in court in connection with the death of her father prior to the present case. She was called only once by the fiscal during the Japanese occupation. The fiscal called her so that she might talk with Florencio Gorospe. The fiscal asked her to forgive Gorospe because the latter, according to her, asked for forgiveness. She said she did not know that Florencio Gorospe was detained in the provincial jail in 1943 in connection with the incident in question. Neither did she know why the fiscal asked her to forgive Gorospe for the robbery in Piddig. She said she did not have any conversation with the fiscal. "What I only told him is that we wanted to wait for a better time because there were many persons who were kidnapping at that time and that was why we were afraid." The fiscal said: "If you are afraid I will not force you."

"Q. How many times were you raided in the early part of 1942? A. We were raided twice but at the first time I did not recognize them.

"Q. Is it not a fact that in that first raid you were robbed of foodstuffs, clothings and money? A. They were only able to get clothings but money, no, because my father was able to run away with the money.

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"Q. Will you tell how long before the outbreak of the war you had known him? (referring to Pablo Marcos) A. That is what I cannot tell because I grew up in Laoag since childhood and I knew Pabling already.

"Q. Because of the fact that you had known Pabling since your childhood you have come to be very familiar with him, is it not? A. If we meet each other, we greet each other but our familiarity did not go beyond that.

"Q. I still wish to ask, Mary, that when you see Pablo Marcos you can right away recognize that it is Pabling, is it not? A. Yes, because I often see him.

"Q. When you were still in your evacuation place, did Marcos come to your evacuation place before you were raided? A. He did not come.

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"Q. Mary, you stated in your examination in chief that Pablo Marcos told you to run away, is that right? A. Yes, sir.

"Q. Where did he tell you to run away? A. When he met me at the stairs.

"Q. And did you run away? A. No, sir, because Pablo Marcos met me.

"Q. Where did you go then? A. We were standing face to face because he blocked my way.

"Q. "When he blocked your way, what then did you do? A. I stared at him and I could not say anything.

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"Q. You said that you were residing in Laoag before the outbreak of the war, were you born in Laoag? A. Yes, sir.

"Q. Is that why you knew Pablo Marcos intimately as a friend? A. Yes, sir.

"Q. And is that why you called Pablo Marcos Pabling whenever you address him? A. Since I became acquainted with him he was already called Pabling but I don't know if his name is changed.

"Q. Will you please tell us what you mean by 'nagpupulapulcami' (Ilocano word)? A. We were playmates during our childhood..

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"Q. When you and Pabling were in the corner of the house wherein you kept the money, did not Pablo Marcos tell you to give him the money in that spot? A. No, sir. He pointed to me his gun and ordered me to go down.

"Q. Do you mean to tell this Honorable Court that at that very moment Pabling was not interested in the money? A. That is what I don't know because as I said I did not know what was in his mind.

"Q. So that Pabling still waited to take the money in the presence of your father? A. When lie pushed me and I was already down, side by side with my father, he just grabbed the can from me without saying anything."

The foregoing constitutes the evidence in chief for the prosecution. We shall now relate the salient parts of the proofs for the defense:

Daniel Domingo, 50, a farmer residing in Piddig, Ilocos Norte, testified in substance as follows; He knew Ang Bang King-and Maria Ang. He did not know of any robbery committed against Ang Bang King in February, 1942, but he knew that Ang Bang King was robbed in January of that year. At that time there was an agreement among the residents of barrios Mos. 12, 13, and 14, of Piddig, of helping each other in case of any raid or emergency. Pursuant to that agreement, he and the accused Inocencio Gorospe responded to the sound of the-bugle and went to succor the victims of the raid (in January), but were stopped or met by soldiers who looked like Japanese and who apprehended them and took them to the house where Ang Bang King was living. Other people responded and arrived at the scene, among whom were: Lorenzo Mamuad, Zacarias Domingo, and Irineo Domingo. They were also bound by the raiders and later forced by them to carry the loot. Witness, however, was released. The following morning he returned to the house of Ang Bang King to look for his bolo. He was accompanied by Inocencio Gorospe and Bernardo Domingo. At that time he talked to Ang Bang King, who told him that they were robbed of P4,000 that night. Witness was investigated by the fiscal in connection with this case. Lorenzo Mamuad, Irineo Domingo, Jose Domingo and Zacarias Domingo were also investigated as to who killed Ang Bang King.

Napoleon Hernaez, 35, married, proprietor, and resident of Piddig, testified in substance as follows: In 1943 he

was a member of the Bureau of Constabulary, which he joined in order to save himself after he had been captured as a member of the Ablan guerrilla unit. He was assistant to Lt. De la Torre as chief of the economic police. He was in charge of papers and documents coming then from the fiscal's office regarding complaints of any kind.. He knew Maria Ang. One morning they received a message from the fiscal's office requiring Lt. De la Torre to appear before the fiscal and he being De la Torre's assistant, the latter took him along with him to the fiscal's office where he met Maria Ang. Maria Ang was then at the fiscal's office because of the death of her father. What he heard when he arrived at the fiscal's office was this: "The fiscal asked Maria Ang: 'How could we file an action against the supposed killers of your father when we do not know them?' and Maria Ang answered: 'One who knows is at present confined in jail.' Then the fiscal told Hiss San Luis that Gorospe be brought to the fiscal's office. The provincial fiscal then was Alfonso Donesá. Gorospe was brought before the fiscal and was asked many questions as to who killed Ang Bang King, but Gorospe insisted that he did not know who killed Ang Bang King. Maria Ang said that Gorospe 'would always be misled (?) because of the belief that he knows who killed Ang Bang King.' " During witness' stay in the fiscal's office the name of Pablo Marcos was never mentioned and neither was that of Bernardo Domingo. Before he was brought to the municipal jail Gorospe had been confined in the detention cell of the military police. Two or three weeks after that investigation Gorospe was set free.

On cross-examination this witness testified in substance as follows: It is not true that Gorospe was caught by the Japanese in a mopping operation. Gorospe was arrested because there was an order from the military police to the effect that Inocencio Gorospe should be apprehended and brought to the MP. It was Maria Ang who made the complaint before Fiscal Donesá. When witness arrived in the fiscal's office the fiscal and Maria Ang were conversing regarding the complaint of the latter. The reason the Bureau of Constabulary, particularly the economic section, interfered with the prosecution of criminal cases during the Japanese occupation was "because of the interference of the military police who abused and bound, people, the fiscal thought it best to utilize the economic police of the Bureau of Constabulary."

Maria San Luis Traviño, of legal age, married, and a resident of Laoag, testified that in 1943 she was a clerk in the office of Fiscal Donesá; that she knew Maria Ang; that she remembered having seen her at the fiscal's office in 1943 to complain about the death of her father Ang Bang King; that she did not mention any person supposed to be the author of the death of her father; that Gorospe was mentioned during the investigation in the sense that at one time he carted goods of Maria Ang's father to their evacuation place in Piddig, and that during the incident she (Maria Ang) saw Gorospe in the house at their evacuation place; that Maria Ang did not accuse anybody in that investigation in the fiscal's office; that Maria Ang brought the matter to the fiscal's office because she suspected that Gorospe was brought to the fiscal to reveal the perpetrators of the crime. On cross-examination she testified in part as follows:

"Q. Who brought Maria Ang to your office? A. Nobody.

"Q. Do you mean to say she came at her own volition? A. Yes, sir.

"Q. When she entered the room you were present? A. Yes, I was present.

"Q. Is it not a fact that Maria Ang was called by Fiscal Donesá? A. I don't know.

"Q. Are you sure? A. No.

"Q. Is it not a fact that Miss Maria Ang did not like to file a complaint during that time regarding the robbery or death of her father? A. That was precisely why she came to the Fiscal's office, to find who the accused were and file a complaint.

"Q. Is it not a fact that Maria Ang was summoned? Or she came at her own volition? A. Yes, I said that.

"Q. If you don't know whether she was summoned by Fiscal Donesa, what makes you believe that she was coming there to complain? A. "when the investigation prospered she wanted to know the killers of her father and if possible bring them to justice.

"Q. Do you know the dates of the first and second investigations? A. I don't know the exact date now.

"Q. What year? A. In 1943.

"Q. In what month was the first investigation? A. It was during the first half of the year."

The accused Inocencio Gorospe, 39, married, farmer and resident of Piddig, testified in substance as follows: 'He knew Maria Ang and Ang Bang King because when they evacuated to Piddig he transported their belongings in his bullcart to barrio No. 12. He was barrio lieutenant. One night in January, 1942, he was awakened by the sound of a horn. He went by the house of Daniel Domingo and the two of them went on the road leading to barrio No. 12 towards the house where Maria Ang lived. On the way they saw someone with a flashlight and as they approached him in the belief that he was a Chinese patrolling the road, they found out that there were several persons holding guns with fixed bayonets who bound them and brought them to the place where Ang Bang King evacuated. He thought they were Japanese because they uttered the word "Kura, Kura." He was one of those who was later commandeered by the raiders to carry the loot towards Gabu. Others who were commandeered were Zacarias Domingo, Lorenzo Mamuad, Jose Domingo, Irineo Domingo, and Bernardo Domingo. When the robbers released them the witness was given part of the loot consisting of dried fish as a reward. The following day he went to return to Maria Ang his share of the dried fish. Ang Bang King told him that he had lost P4,000 worth of goods. When Ang Bang King was killed on February 17, 1942, the witness was at home. In January, 1943, he was investigated in connection with the death of Ang Bang King. The municipal police of Laoag took him from his house in Piddig and brought him to the military police where he was investigated in connection with the death of Ang Bang King. He knew it was at the instance of Maria Ang that he was arrested and investigated by the military police "because when they brought me to the military police they sent for her. She came and she said to me: "You know the people who killed my father and if you are not going to tell them you will rot here in jail." He was detained in the military police for three months, after which he was sent to the municipal jail of Laoag where he was kept for ten days. During those ten days he was investigated by the provincial fiscal twice. During the first investigation he saw Maria Ang in the office of the provincial fiscal and she said to him: "If you are not going to tell the truth as to who killed my father you will be troubled all the time." During the investigation in the fiscal's office the names of Bernardo Domingo and Pablo Marcos were never mentioned. Five days after the second

investigation he was freed. Other persons called to the fiscal's office for investigation in connection with this case were Daniel Domingo, Lorenzo Mamuad, Jose Domingo, Irineo Domingo, Ruperto Vinoya and Mauricio Madanay. These persons were called because witness mentioned them as being his companions who carried the loot, and the fiscal sent for them. Before he was arrested for the second time, as a result of the filing of this case, Sgt. Fermin talked to him and told him to become a state witness so that he would not be accused, and to testify that Pablo Marcos and Andong Domingo were the ones who killed so that he (witness) might be saved.

On cross-examination he testified in part as follows:

"FISCAL: Q. When you were investigated in the military police, did you see Maria Ang? A. Yes, I saw her.

"Q. What were the exact words of Maria Ang when she confronted you there? A. She said, 'If you don't tell the truth or confess who killed my father I will have you rot here.'

"Q. Are you sure she did not say, 'If you don't reveal your companions in killing my father you will rot here.' A. She said so.

"Q. She repeated that statement in the Fiscal's office when she confronted you? A. What she said in the Fiscal's office is that, 'If you don't tell or confess the truth, you will be troubled forever.'

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"Q. When were you taken to the MP? A. January 10, 1943.

"Q. You stayed there for three months? A. Yes, sir.

"Q. It was after you were released from the MP that you were sent to the municipal jail of Laoag? A. Yes, sir.

"Q. So that you were taken to the municipal jail of Laoag in April, 1943? A. Yes, sir.

"Q. And it was on that same month while you were being detained in the municipal jail in Laoag when you were investigated by the Fiscal together with Jose Domingo, Zacarias Domingo, Daniel Domingo, Irineo Domingo, Ruperto Vinoya, Lorenzo Mamuad and a certain Mauricio? A. Yes, sir.

"Q. You were investigated how many times in the Fiscal's office? A. Two times.

"Q. Why were you taken to the MP in January, 1943? A. Because they asked me whether I knew who killed Ang Bangking.

"COURT: Q. Does the Court understand from you that you were arrested on January 10, 1943 on the complaint of Maria Ang that one of you had something to do with the death of her father? A. Yes, sir.

"Q. You were made to understand that that was the reason for your arrest? A. Yes, sir.

"Q. Who told you that? A. The Japanese, sir.

"Q. You stayed in the jail of the military police garrison or in the jail of the constabulary? A. In the jail of the military police of the Japanese.

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"Q. Were you ever investigated in the garrison of the military police during that three months' confinement? A. Yes, sir.

"Q. who investigated you? The Japanese or constabulary? A. The Japanese, sir.

"Q. Not by the constabulary? A. No, sir.

"Q. And the Japanese insisted that you had something to do with the killing of Ang Bangking in that investigation? A. They said that I knew the perpetrators.

"Q. And you denied? A. No, sir.

"Q. You were maltreated by the Japs? A. Yes, sir, I was maltreated.

"Q. The constabulary did not participate in the investigation? A. No, sir.

"Q. Is it not a fact that one of the reasons for your arrest was that the Japanese suspected you of having resisted the Japs? A. No, sir.

Anastacio B. Valera, 59, resident of Laoag, on direct examination testified in substance as follows: He is a brother-in-law of the accused Pablo Marcos. On February 17, 1942, he lived in the barrio of Bolangon, Laoag. At ten o'clock on the night of said date his wife Socorro Marcos, the sister of Pablo Marcos, gave birth to a baby as shown by the baptismal certificate, Exhibit 3-A. Pablo Marcos was then staying in witness' house and was the one who called the midwife and who assisted the witness in taking care of his sister after the delivery. On crossexamination he testified that Bolangon is three kilometers from the poblacion of Laoag; that his family and that of his brother-in-law had evacuated to Bolangon at that time; that Pablo Marcos went to call the midwife at 7:00 o'clock in the evening when his sister began to labor; that at the outbreak of the war Pablo Marcos was a member of the Philippine Constabulary detachment in Ilocos Norte, a private first class, but that upon the arrival of the Japanese the constabulary dispersed.

Pablo Marcos, 34, married, businessman, and resident of Laoag, on direct examination testified in substance as follows: On February 17, 1942, he was in Bolangon, Laoag, his family having evacuated thereto together with the families of his brother-in-law and his parents. On the night of February 17, 1942, his sister gave birth and he was the one who called the midwife from the barrio of "Pasagi, about one kilometer distant. After his sister had delivered he helped his brother-in-law take care of her. He slept that night in the house of his brother-in-law from midnight to six o'clock the next morning. He did not go to Piddig on that night. He denied the testimony of Maria Ang against him. In February, 1942, he did not yet know his coaccused Andong Domingo and Inocencio Gorospe. He came to know them for the first time when he met them in the provincial jail of Laoag the year before the trial of this case. In 1943 he occasionally met Maria Ang. At that time he had a do car which Maria Ang utilised in transporting her goods for business. She employed him to bring rations of rice, molasses, cigarettes, etc. to the Japanese as a gift. She was engaged in the business of selling rice, molasses and garlic during the occupation and she had a pass from the Japanese military police. He was never investigated in 1943 in connection with the death of Ang Bang King.

"Q. If you said you are a good friend of Maria Ang, do you know the reason why she filed this case against you? A. This is what happened, sir. When I was imprisoned in the provincial jail in Laoag because of a guerrilla case, Sgt. Fermin sent for me and I was brought to the MFC barracks, northeast of the town. In that place, Sgt. Fermin and others investigated me. What I remember is that Sgt. Fermin said this: 'Before it was your time, but now it is ours.'

"Q. Were you investigated in that MFC barracks you mentioned in connection with this case? A. Yes, sir, and my other cases for which they are blaming me or imputing me. And they also said, 'You killed Bangking.'

"Q. During those investigations, do you remember having had any conversation with Maria Ang? A. Maria Ang was not then present.

"Q. How did it happen that you were blamed for the death of Ang Bangking? A. After I was investigated in the MPC they brought me back to jail. If I am not mistaken, after three or four days Mary came to the jail.

"ATTY. CASTRO: Objection, Your Honor. No predicate is laid.

"COURT: Let him continue.

"Witness, continuing: A. 'What Mary said to me is this, TI did not think you could do this, Fabling,' and I replied, 'Why do you say that?' And she answered, 'Yes, because Sgt. Fermin said you are the one who killed my father.'

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"Q. About how many criminal cases were filed against you? A. Five.

"Q. When were they allegedly committed? A. During the occupation.

"Q. On whose initiative were those cases filed?

"ATTY. CASTRO:Objection, Your Honor.

"COURT:He may answer.

"A. "What I know is that Maria Ang was convinced by Sgt. Fermin.

"Q. On those initiative were those five cases filed? A. Sgt. Fermin.

"Q. Do you know the reason why? A. They blamed me for having joined the 15th Infantry.

"Q. Do you know why you were blamed for joining the 15th Infantry? A. They allege, sir, that I was the leader' of the killings in Laoag and whatever bad thing committed, they blamed for it. That is what they said during my investigation in the MPC.

"Q. Are all those five cases tried already? A. Two of them are already tried.

"Q. What happened? A. They were dismissed.

"Q. What about the other three cases, . are they tried already or not yet? A. Not yet."

He further testified that Maxirmino Bueno, brother of Capt. Bueno, who belonged to a rival guerrilla unit, participated in his investigation and told him (witness), "You are the one who killed Ang Bang King and now they are going to accuse you"; that Captain Bueno was killed in Piddig, allegedly by Capt. O'Day, the commanding officer of the 15th Infantry, of which witness was a member.

On cross-examination this witness testified in substance as follows: Maria Ang was his friend since childhood. They were playmates. Before the outbreak of the war and since 1935 he had been a member of the Philippine Constabulary under the command of Lt. Bautista. When the Japanese entered the town of Laoag on December 12, 1941, the constabulary fled to the mountains. His wife evacuated to Bolangon about three kilometers from the town proper of Laoag and he joined her there off and on, staying there until the end of February, 1942. When Governor Ablan organized the Ablan guerrilla, he joined it under the command of Major Cortez. In answer to questions propounded by the court the witness reiterated that the present case and four other criminal cases filed in the Court of First Instance against him, were presented at the instigation of Sgt. Fermin and Maximino Bueno who belonged to the guerrilla unit of Capt. Bueno, but that all those cases were a frameup; that he knew that Sgt. Fermin instigated said cases because Sgt. Fermin "was the one who told me that I was the one who killed Ang Bang King and [liable for] all other cases filed prior to the present complaint . . . because I joined the 15th Infantry and they belonged to the Bueno faction which was vanquished, that is why they blamed me"; that Maria Ang herself told him (witness) that it was Sgt. Fermin who told her that he was one of the killers, and that it was Sgt. Fermin who induced Maria Ang to testify in the manner she testified here; that possibly it was Sgt. Fermin who told her what to say.

Miguel Pandaraoan, 50, married, and resident of Piddig, testified in substance as follows: On the night of February 17, 1942, he was in the house of his tenant Macario Manuel, which was north of the house where Ang Bang King evacuated. Macario Manuel is a brother-in-law of Maria Barruga, the owner of the house occupied, by Ang Bang King. He went to that house of Macario Manuel in order to have his palay pounded. When he and Macario Manuel were about to go to bed they heard a gunshot and shouts from the house where Ang Bang King and his companions were staying. He and Macario Manuel went there. The house of Macario Manuel was about 15 meters distant from that of Ang Bang King. He inquired from Maria Ang who the assailants of her father were and she told him that the assailants came from the hill. He ordered Macario Manuel to look for men to take Ang Bang King to town.

The accused Bernardo Domingo, 22, married, student, and resident of Piddig, on direct examination testified in substance as follows; He knew that Ang Bang King was robbed in the month of January and killed in February, 1942. He was present when Ang Bang King was robbed in January because he was one of those who responded to the sound of the horn together with Inocencio Gorospe, Zacarias Domingo, Lorenzo Mamud, Joss Domingo and Mauricio Madanay. He was disarmed by the malefactors who looked like Japanese soldiers, and required to carry the loot consisting of canned goods, clothing and dried fish. Later he was released by the robbers and given a part of the loot as compensation. He returned his share of the loot to Ang Bang King. He denied the testimony of the witnesses for the prosecution about his alleged participation in the robbery with homicide of February 17, 1942. He was in his house during the whole night of February 17. About 11:30 in the morning of February 18 he went to the evacuation place of Ang Bang King. On that morning he saw the children pick up an empty shell from a point marked with a red cross in the sketch Exhibit 4, which appears: to be on the hill far from the place where Ang Bang King was cooking lugao at the time he was shot. A Chinese companion of Maria Ang took the empty shell from the children, saying that it was to be used as exhibit after the war. He remembered that Inocencio Gorospe was apprehended by the military police in the year 1943 in connection with the killing of Ang Bang King. The MPs passed by his house and inquired from him where the house of Inocencio Gorospe was. He saw Gorospe when he was being led to town by the MPs. He (witness) was never questioned by anybody in 1943 in

connection with the death of Ang Bang King. He stayed in Piddig during the whole year 1943. Interrogated as to the reason why this case was filed against him, he replied: "When this case was filed before the court, Sgt. Fermin investigated Inocencio Gorospe who happened to mention my name as one of those who went to the place where they were robbed. . . . After Inocencio Gorospe informed Sgt. Fermin that I was one among those, Sgt. Fermin approached me. He said to me: 'Tell the truth because you saw Pablo Marcos on that night.' I answered, 'I did not see him, sir,' and because he wanted me to become a witness against Pablo Marcos, he said: 'You and Inocencio Gorospe are to be accused also.'"

On cross-examination the witness testified in part as follows:

"Q. "Where did you have the supposed conversation with Sgt. Fermin in connection with the present case? A. After Inocencio Gorospe was investigated.

"Q. The question is where was that place? A. When they passed by our house on their return to the town.

"Q. Do you mean to say that Sgt. Fermin went to your barrio? A. They purposely dropped at our house because they wanted to talk with me.

"Q. Was he alone? Or he had companions? A. He had companions.

"Q. Civilians or soldiers? A. Soldiers.

"Q. But you were not present when Sgt. Fermin and Inocencio Gorospe were having their conversation? A. No, I was not.

"Q. So that you learned only from Inocencio Gorospe what they talked about with Sgt. Fermin? A. Sgt. Fermin himself informed me so when they dropped at our house."

Rosalino Leaño, 26, single, fanner, and resident of Vintar, Ilocos Norte, testified that on December 26, 1947, he and Maria Ang were co-passengers in the jeep of Atty. Raquiza on the way to Batac; that the other persons who rode in the jeep besides Raquiza, Maria Ang and himself, were Atty. and Mrs. Villalus, and Mrs. Raquiza; that he heard the conversation between Maria Ang and Atty. Raquiza in connection with this case, during which Maria Ang said: "Even if I lose all my property if I can secure the conviction of Pablo Marcos and absolve the two, Inocencio Gorospe and Bernardo Domingo."

In rebuttal Maria Ang was again called to the witness stand. She denied having used the doctar of Pablo Marcos in 1943. She said she never saw Pablo Marcos in Laoag during the Japanese occupation. She denied the testimony of Pablo Marcos that Sgt. Fermin had persuaded her to file the case against him. She said she never heard anything about the finding of an empty shell by the children. She admitted that she saw Macario Manuel shortly after the killing of her father. She said she only knew Miguel Pandaraoan when he came to testify in this case. She did not deny categorically having seen him in her premises in the night in question. She denied having told anybody that

the shot came from the hill. She denied the testimony of Maria San Luis Traviño.

On cross-examination she testified as follows:

"Q. And in order that your husband could bring out from Ilocos Norte onions, garlic and rice, they had to get permit from the Japanese military police, is it not?

"FISCAL:Objection, there is no basis, Your Honor. She never said that her husband conducted business in Ilocos Norte.

"ATTY. RAQUIZA:She answered that in the last question.

"A. He had. a permit with him but it was secured by the Chinese Association.

"Q. You said that you were robbed or raided in January, 1942, what were the things lost in that raid? A. Sacks of clothings were lost in that raid in January, 1942.

"Q. And in fact that was the time when somebody went up your house saying, 'Japanese are coming, Japanese are coming. Japanese are coming.' Is it not? A. No, sir. In January, 1942, while they were yet far from the house we heard shots and. the male companions of ours were frightened and they ran away from the house. I also started running but I remembered my small baby who was then five months old and went back to the house and hid between the sacks of clothings and then I heard footsteps in the house. When they saw me they covered my face with a piece of cloth, then they dragged me from where I was hiding and asked where Bangking was. I answered I did not know because he had escaped then and dragged me to the ground from the house and they wound a chain around my body just under my armpits and then lowered me to a well. I don't know for how many minutes in that position I was and when they brought me up from the well I lost consciousness.

"Q. And when you were subjected to such tortures you revealed the money that you were complaining of, is it not? A. No, sir, they did not ask about money but asked where Ang Bangking was.

"Q. From the looks of these people did you know if they were good friends of Bangking and that they went there for the purpose of bidding him good night? A. No, sir, because if they were friends of my father they would not have tortured me and dipped me into a well because I am the daughter of Ang Bangking.

"Q. Is it not a fact that they had to hang you in that well because at first you refused to reveal where the money of your father was kept to the robbers? A. They only wanted to know where Ang Bangking was.

"Q. After that they just took the bales of cloth and other dry goods of yours without asking for the money, is that what you want to tell the court? A. 'When they asked me where Bangking was I could not tell them anything because of the torture to which I was subjected.

"Q. In other words, you were first subjected to a torture before they asked for Bangking, is that what you mean? A. I heard them say, 'Let us hang her into the well so that she will tell us the whereabouts of Ang Bangking.

"Q. Did you recognize the people who robbed you in January? A. I did not recognize because they immediately covered my face when I was about to turn my face to see them."

Julian Fermin, 64, 1st Sgt. PC (retired), testified in rebuttal that during the time that Gorospe was in jail in connection with this case, he never saw Gorospe in the provincial jail. He denied he ever told Gorospe to testify for the government and to say that Pablo Marcos and Bernardo Domingo were the killers. He also denied having told Pablo Marcos: "Those were your days but now it is ours." He admitted having filed two or three cases against Pablo Marcos for multiple murder and murder with arson committed in Laoag, Ilocos Norte, but disclaimed any participation in the present case.

After a careful review and consideration of the evidence, we are not persuaded that the prosecution has proved its theory beyond reasonable doubt. On the contrary, we think the preponderance of the evidence tips the scale in favor of the theory of the defense. The case hinges on the credibility of the testimony of the two witnesses for the prosecution—Francisco Tan and Maria Ang—as against that of Daniel Domingo, Napoleon Hernaez, Maria San Luis Travino, Inocencio Gorospe, Anastacio B. Valera, Pablo Marcos, Miguel Pandaraoan, Bernardo Domingo and Rosalino Leaño.

We entertain serious doubt as to the credibility of the witness Francisco Tan, one of the offended parties. According to him, upon hearing that the Japanese were coming, he jumped from the house and ran for about two minutes up the top of the hill to hide himself. It was about midnight. Even assuming, as he said, that there -was "moonlight, we cannot believe that he could, see and hear from his hiding place at the top of the hill everything that occurred in the house, including the alleged act of Maria Ang in going up the house to get the money, which he said Maria Ang delivered to Pablo Marcos inside the house. In this connection, he is contradicted by Maria Ang who swore that she did not deliver the money to Pablo Marcos inside the house, but that Pablo Marcos waited until she got downstairs before asking for and grabbing the biscuit can containing the money from her. 'Much less could Francisco Tan recognize the faces of the alleged robbers from the top of the hill. We do not believe that the hiding place of this witness was only five meters distant from the house, as he claimed. We believe the testimony of some of the witnesses for the defense, who drew a sketch of the premises, that the top of the hill was much farther than five meters from the house, specially taking into consideration Francisco Tan's own assertion that he had run for about two minutes before stopping and hiding himself. Moreover, this witness admitted that in 1943 he was investigated twice by the fiscal about the crime in question and that he answered his questions. Yet it does not appear that during that investigation he ever denounced the herein accused as the perpetrators of the crime.

As to the testimony of Maria Ang, we find it to have been completely discredited or overcome by that of the witnesses for the defense. The defense proved that the appellant Pablo Marcos was a member of the constabulary, who, upon the arrival of the Japanese in Laoag, went into hiding; that on the night of February 17, 1942, he was in the barrio of Bolangon, about three kilometers distant from the poblacion of Laoag; and that he was not

acquainted with his co-appellants Florencio Gorospe and Bernardo Domingo who were residents of barrio No. 13, of the municipality of Piddig. Although Maria Ang tried to deny it, the evidence for the defense sufficiently establishes the following facts: That Maria Ang and her husband engaged in the business of buying and selling foodstuff during the Japanese occupation, and were in the good graces of the Japanese military police; that at the instance of Maria Ang, who claimed that Florencio Gorospe knew who the killers of her father were, the Japanese military police in January, 1943, caused Gorospe to be apprehended and detained him for three months, during which he was investigated about the killing of Ang Bang King; that failing to obtain the information from him, the Japanese military police sent him to the municipal jail of Laoag and he was thereafter investigated by the provincial fiscal at the instance of Maria Ang; that during that investigation Maria Ang never denounced Pablo Marcos and Bernardo Domingo, not even Gorospe himself, as the killers of her father; and that the fiscal ordered Gorospe's release after the investigation.

The trial court refused to believe the theory of the defense that Ang Bang King was killed by unknown enemies of his, saying that Ang Bang King "was an evacuee, a stranger in the place and could have no enemies there." It is clear that his Honor, the trial judge, overlooked the significance of the testimony of Maria Ang herself who swore that in January, 1942, she was subjected to torture by unknown malefactors in their effort to make her reveal the whereabouts of her father at that time; that said malefactors were not interested in knowing where her money was but where her father was. That, to our mind, shows that Ang Bang King had enemies who sought to do him harm. It is not improbable then that the same unknown malefactors were the ones who shot Ang Bang King in the following month of February while he was cooking lugao at the foot of the stairs of the house where he was staying.

There is evidence to show that the belated complaint presented by Maria Ang against the appellants in September, 1946, was instigated by Sgt. Fermin and Maximino Bueno, who were guerrilla enemies of the appellant Pablo Marcos and who presented four other criminal cases for murder against him arising from acts that occurred during the enemy occupation. It is not improbable that Maria Ang and Francisco Tan, who were interested in having the killers of their father and father-in-law, respectively, punished, were persuaded by Sgt. Fermin and Maximino Bueno that the appellants were the killers of their father, and that it was in that belief that they testified against said appellants in this case.

We are not satisfied that the accusers have proved the guilt of the accused beyond reasonable doubt. The crime imputed to them is a capital offense. We cannot convict and sentence the accused to death, as recommended by the Solicitor General, upon the discredited testimony of the only two interested witnesses for the prosecution. There were at least thirty companions of the deceased at the time he was killed; yet no other witness was called to corroborate or strengthen the testimony of said two witnesses, and no explanation was made for the failure to call other and more credible witnesses. In these circumstances we are constrained to acquit rather than to convict, it being preferable to set free an accused who might be guilty rather than to convict and sentence to death an accused who might be innocent. That is why the law gives the accused the benefit of the doubt.

The sentence appealed from is reversed and the appellants are acquitted and ordered released from the custody of the law, with costs de oficio.

Moran, C.J., Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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