

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PEDRO SIMBULAN AND RAYMUNDO YSIP, DEFENDANTS AND APPELLANTS.

G.R. No. L-5299. June 30, 1953

Ponente: TUASON, J.

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TUASON, J.:

The question for decision in this appeal is whether the appellants were the two armed persons who, on the night of December 22, 1946, in barrio Tulauc, municipality of San Simon, province of Pampanga, broke into the residence of Jose Pineda and killed him. The direct testimony pointing to the appellants as the men was given by the deceased's young son, Fernando, as eyewitness. Teodora Buco, Jose Pineda's mother-in-law and the only person with the deceased in the house besides Fernando, died before the trial. Jose's wife was convalescing in her daughter's house, not far away.

According to Fernando Pineda, who was eleven years old at the time of the killing, someone called from outside the house at about midnight announcing his presence. Jose Pineda was awakened, rose from bed and lighted a kerosene lamp. Thereupon two men pushed or kicked the frail door and entered. They were defendants Raymundo Isip and Pedro Simbulan alias Smith. Once inside the house, Isip told Jose Pineda to come downstairs because he had something to tell him but the latter made an excuse saying that he had stomachache; and as Isip started to take him outside by force, Pineda put his arms around a post in an effort to resist. Foiled in his attempt, Isip told his companion to shoot Pineda, and Simbulan did as told with his gun, killing Pineda then and there. After the deceased fell, the two intruders walked down the stairs and were joined in the yard by two other men who emerged from under the floor of the house. Together the four malefactors left in the direction of barrio Saluso, municipality of Apalit.

The case is very simple and lengthy discussion is unnecessary. Did Fernando Pineda recognize the murderers? And if he did, did he implicate the wrong men? All denials and pleas of alibi by the defense are subordinated and must yield to the answers to these questions.

That the witness recognized appellants can scarcely them at close range, and he had known them intimately for a long time, Raymundo Isip being a resident of the barrio altho living temporarily in another place, and Simbulan having frequented Tulauc during the occupation. There could have been no possibility then of mistake on the part of the witness.

The speculation that Fernando Pineda could have seen other men but falsely pinned the crime on the defendants for reasons of his own, has no plausible basis to back it up. His spontaneous mention of the appellants to his mother and the Constabulary soon after the killing—at a time and under the circumstances when no thought of prejudicing any particular innocent persons could have entered his youthful mind—precludes such theory. It should be noted at this juncture that, after the four men departed, Fernando ran to his sister's house, told his mother, who had heard the shot, that his father was dead, and named Smith and Raymundo Isip as the murderers; and to the

Constabulary under the command of a captain and the municipal policemen who came to the scene of the crime on the same night to investigate, he promptly made the same revelation of the killer's identities.

For the rest we quote the trial court's observation and comment on Fernando Pineda's veracity. Said the court:

"One cannot, indeed, refuse Fernando Pineda's testimony without being convinced of the boy's sincerity and truthfulness. His lengthy cross-examination, often repetitious, sometimes pointless, instead of destroying his testimony, only made it clearer."

The trial court found the appellants guilty of murder and sentenced them to reclusion perpetua, jointly and severally to indemnify the heirs of the deceased in the sum of P4,000, and each to pay one-fourth of the costs. (Two other defendants were included in the complaint, but one of them was still at large at the time of the trial and the other was acquitted on grounds of insufficiency of evidence.) The Solicitor General agrees with the verdict of guilty and that the offense committed was murder but opines that in view of the presence of the aggravating circumstance of dwelling without any mitigating circumstance to offset it, the extreme penalty should be imposed. He also recommends that the indemnity be increased from P4,000 to P6,000.

The necessary number of votes to inflict the punishment recommend by the Solicitor General is lacking and so the penalty of reclusion perpetua imposed by the lower court will stand. As to the indemnity, the Solicitor General's recommendation is concurred in by the whole Court and adopted.

With the above modification, the appealed judgment is affirmed, with costs of this against the appellants.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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