

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SERVILLANO FALTADO, BERNABE FALTADO ET AL., DEFENDANTS AND APPELLANTS.

G.R. Nos. L-1604, L-1712-13. June 27, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

In consequence of a robbing expedition, Servillano Faltado and his son Bernabe, together with Juan Ramos, Aquilino Agno and Rufino Magsanga faced in the Court of First Instance of Batangas three different informations, the first charging robbery in band (case No. 10513) the second, robbery in band with double murder and frustrated murder (case No. 10519) and the third, robbery in band with physical injuries (case No. 10520). All the offenses had allegedly been committed in barrio Balete, Batangas, Batangas, in the houses, respectively, of Santiago Biscocho, Angel Biscocho and Mamerto Biscocho.

The three cases were jointly heard before the Honorable Inigo Daza, Judge. At the request of the prosecution, Aquilino Agno was absolved from the charges to become a government witness.

Judge Daza found the accused guilty in the first case. The dispositive part of his decision says:

"* * * With regards to the accused Bernabe Faltado who is a minor, the sentence to be imposed is hereby suspended until he reaches the age of majority. In the meantime, the Court orders that he be confined at the Boys Training School at Mandaluyong, Rizal, under the supervision and visitation of the Public Welfare Commissioner enjoining said institution to report to the Court regarding the conduct and behavior of said Bernabe Faltado every two months. The Court sentences the accused Servillano Faltado, Juan Ramos, and Rufino Magsanga, under the provisions of article 295 of the Revised Penal Code in connection, with article 294, paragraph 5, to suffer each one of them an indeterminate sentence of from six years and ten months, of prision mayor, as minimum, to ten years of prision mayor, as maximum, to suffer the accessories of the law and to pay proportionately the costs of the proceedings."

Apparently Judge Daza left the province before deciding the other two cases which were consequently taken up by Judge Gustavo Victoriano, who likewise found the accused guilty, and sentenced them as follows:

"In view thereof, Servillano Faltado in accordance with article 248 in connection with article 48 of the Revised Penal Code is hereby sentenced to die by electrocution, Rufino Magsanga and Juan Ramos to reclusion perpetua and Bernabe Faltado being a minor under 18 at the time of the commission of the offense, in accordance with article 80 of the Revised Penal Code, the sentence against him is suspended until he reaches his age of majority and he is ordered committed to Welfareville subject to the visitation and supervision of the Director of Public Welfare or any of his agents or representatives, who are hereby ordered to submit to the court every two months a written report on the good or bad conduct of said minor and the moral and intellectual progress made by him. They are further sentenced to indemnify the heirs of the deceased Epitacio Biscocho and Juanito Biscocho in the sum of P2,000, and to Angel Biscocho the amount of P188 without subsidiary imprisonment in case of insolvency due to the nature of the principal penalty imposed upon them

and to pay the costs of the proceedings.

"In criminal case No. 10520, the court finds that the crime of robbery in band with less serious physical injuries with the aggravating circumstance of nocturnity have been duly established and the guilt of the accused proven beyond reasonable doubt and therefore in accordance with article 294 (5) in conjunction with article 295 of the Revised Penal Code sentences Servillano Faltado, Rufino Magsanga and Juan Ramos to suffer each one of them an indeterminate penalty ranging from six (6) years, one (1) month and eleven (11) days to ten (10) years of prison mayor, to return to Mamerto Biscocho the P5,700 Japanese notes and to pay $\frac{3}{4}$ of the costs of the proceedings. No pronouncement is made with regard to the stolen cow as the same has been recovered.

"As regards Bernabe Faltado, who is a minor at the time of the commission of the offense the sentence as against him is suspended until he attains the age of majority, and he is ordered committed to Welfareville subject to the visitation and supervision of the Director of Public Welfare or any of his agents or representatives, who are hereby ordered to submit to the court every two months a written report on the good or bad conduct of said minor and the moral and intellectual progress made by him. Exhibits C-submachine gun and D carbine are ordered confiscated."

Juan Ramos and Rufino Magsanga appealed in Case No. 10519.

Servillano Faltado and Bernabe Faltado appealed all the cases.

About noon of February 27, 1946, three persons carrying firearms and leading two cows were detained as suspicious characters by the people of Barrio San Ignacio, municipality of Rosario, Batangas. The men were Juan Ramos, Aquilino Agno and Rufino Magsanga. Questioned by the local chief of police, they said they had come upon the animals on the railroad track of Batangas, Batangas, and that the guns had been bought from colored soldiers. It seems that the police chief of Batangas, Batangas, got wind of the arrest, and having been notified of robberies and killing in his territory, he asked for the custody of the captives. Further investigation enabled the authorities to initiate and successfully prosecute these proceedings. The witnesses for the People established these facts:

Mamerto Biscocho is the father of Angel Biscocho and Santiago Biscocho. They lived in nearby houses in barrio Balete, Batangas, Batangas. Servillano Faltado was the brother-in-law of Angel and Santiago by his deceased wife Teofila. He harbored a grudge against Angel, because the latter had caused the indictment for rape of his son Nicanor, and had supposedly denounced him to the guerrillas during the Japanese occupation and to the Constabulary for illegal possession of firearms. Servillano even suspected Angel of having killed his horses.

Now, on February 26, 1946, while Aquilino Agno, Juan Ramos and Rufino Magsanga were in barrio Santa Rita, Batangas, Servillano Faltado arrived and invited them to his house in Balete. They accepted the invitation and when they reached Servillano's residence, the host gave his guests coconut wine (lambarong), and in their conversation he related his grievances against his brother-in-law. Supper served, the invited guests were allowed to sleep only to be awakened at midnight and given the same coconut wine. Thereafter they were invited to accompany Servillano in a raid against his enemy Angel Biscocho and his relatives. (Aquilino Agno swore that Servillano "told us to go with them.") Stating his determination to kill even several lives, if necessary, Servillano equipped his companions with firearms, handing a pistol to Aquilino Agno, a carbine to Juan Ramos and a submachine gun to Rufino Magsanga. Bernabe Faltado, minor son of Servillano, also joined, armed with a carbine; and his father, with a submachine gun, led the party to a place about one hundred fifty meters away in the same barrio, where the families of the Biscochos lived. Nearing the house of Angel Biscocho, Servillano informed his three co-conspirators Agno, Ramos and Magsanga that he and his son would go up. Father and son entered the door and ordered the occupants to keep still because they were "officers of the law." Thereafter Servillano

demanded money, and when Raymunda Perez, wife of Angel, replied they had none, she was asked the whereabouts of the man of the house. She indicated the mosquito net. Promptly the intruders tore the net aside and fired several shots at Angel who was lying there with his children Juanito and Eпитacio aged 4 and 13, respectively. Juanito died instantly; Eпитacio was severely wounded and died the next day. Angel was wounded in several parts of the body; but he survived. (This is criminal case No. 10519.)

Meanwhile Servillano's companions i. e., Ramos, Agno and Magsanga broke into the house of Santiago Biscocho nearby, tied Santiago's hands behind his back, and asked for money. Santiago's daughter Remedios opened the trunk to show they had no money. Upon their insistence she took out a small box and scattered on the floor its contents which consisted of small coins that the robbers gathered.

Obviously the loot was not enough, and they seized Santiago's cow downstairs. (This is criminal case No. 10513.)

Servillano and Bernabe proceeded to the house of Ma-merto Biscocho a few meters away, wherein this octogenarian and his daughter Silveria resided. They fired volleys at the house before entering it. Hearing the detonations, Mamerto arose to get out, but was met at the door by Servillano who struck him thrice with the submachine gun knocking him down. Demanding money, Servillano searched the premises. To force the opening of a trunk Servillano hit Silveria on the head and mouth. Silveria's mother got P5,700 in Japanese war notes, wrapped in a white handkerchief and she delivered it to Faltado. Thereafter father and son descended to carry away the cow of Mamerto tied under the house after giving Silveria a kick on the leg which produced a contusion and a scar. (This is criminal case No. 10520.)

The cattle were entrusted by Servillano to the custody of Ramos, Agno and Magsanga with the understanding they would drive them to Rosario, Batangas, where he (Servillano) would pick them up later. The result we already know: the bandits were caught red-handed, and these proceedings began.

The defendants, denying participation in the murder and robberies, attempted to establish two defenses. The Faltados tried to show that in the night of February 26, Bernabe was working as night laborer in the LCM Beach of the U. S. Army Port Command at Bauan, Batangas, about ten kilometers away, and that Servillano was in the home of Crispin Mendoza eight kilometers from the scene of the brigandage. But this defense can not prevail over the positive identification made by the victims, specifically by Silveria Biscocho, Angel Biscocho and his wife who could not be mistaken, Servillano being their brother-in-law and Bernabe their nephew by their own sister. No reason is shown why these witnesses should falsely testify against such close relatives.

Ramos and Magsanga insisted in their original statement before the police of Rosario that they had just found the animals on the railroad track. This is belied by the testimony of Aquilino Agno who told their connection with the depredations as hereinabove related.

And although it is true that the declarations of an accomplice should be taken with caution, coming as they do from a polluted source, we are satisfied from a reading of the whole record that his version, corroborated on important points by the circumstances disclosed, may be made the basis or one of the bases of a judgment of conviction. The contention is not true that the Faltados are convicted "solely and exclusively on the strength of the testimony" of Aquilino Agno. They were identified among others by the offended parties, Angel Biscocho, Raymunda Perez and Silveria Biscocho.

In this connection, the Faltados claim the lower court erred in granting the fiscal's motion to dismiss the cases against Agno so that he may witness for the prosecution. It appears that their objection to such motion was planted mainly on the proposition that Agno "was not the least guilty" among the five defendants. Of course the position has no merit. All the law requires is that the defendant whose exclusion is requested "does not appear to be the

most guilty." (Rule 115, sec. 9, par. [d]). In this instance it is alleged the lower court erred in failing to make specific findings showing that the requisites prescribed by law had been complied with. We think it was unnecessary to do so. The act of granting the motion was enough. Anyway supposing for the sake of discussion that there was error, it does not affect the competency of the witness as our predecessors have decided.[1]

It is plain to see from the mass of evidence introduced at the trial that the companions of Servillano Faltado agreed to help him in his punishing and looting raid against Angel Biscocho and his relatives. No other inference may be drawn from their collective actions and the surrounding circumstances. All the accused are therefore responsible as principals.

In case No. 10519 all of them are guilty of double murder (of Juanito and Epitacio Biscocho) and frustrated murder (of Angel Biscocho) with the aggravating circumstances of evident premeditation, band and dwelling. In case No. 10513 the Faltados are guilty of robbery in band with aggravating circumstances of nocturnity and dwelling. (Art. 294, par. 5, Rev. Penal Code.) (Ramos and Mag-sanga have not appealed.) And in case No. 10520 the Faltados are likewise guilty of robbery in band with less serious physical injuries attended by the same aggravations. (Same legal provision.) (No appeal by Ramos and Magsanga.)

In case No. 10519 there being no question as to the minority of Bernabe Faltado his commitment to Welfareville till he becomes of age is in accordance with article 80 of the Penal Code. For lack of sufficient votes the accused Servillano Faltado, Juan Ramos and Rufino Magsanga are sentenced to life imprisonment for each of the consummated murders. For the frustrated attempt upon the life of Angel Biscocho they are each sentenced to a minimum of 4 years, 2 months and 1 day of prision correccional and to a maximum of 14 years, 8 months and 1 day of reclusion temporal. The indemnity should be raised to P4,000 for the heirs of the two persons who died. As recommended by the Solicitor General the indemnity to Angel Biscocho is raised to P423.

In case No. 10513 the commitment of Bernabe Faltado to Welfareville is approved. Robbery of large cattle under article 294 is punished with a penalty next higher in degree than prision correccional to prision mayor in its medium degree (Com. Act 417) i. e., prision mayor in its maximum to reclusion temporal in its medium (Art. 61, par. 4, as amended.) (Viada,Codigo Penal, 5th Ed., Vol 6, p. 153 et seq.) Consequently Servillano Faltado is sentenced to imprisonment for not less than six years and one day of prision mayor nor more than fourteen years and nine months of reclusion temporal. Thus modified the appealed decision is affirmed. Note that Ramos and Magsanga have not appealed.

In case No. 10520 the commitment of Bernabe Faltado to Welfareville is also correct. Servillano Faltado is given the same term of imprisonment as in case No. 10513, and with such modification the judgment of the lower court is affirmed in all other particulars.

In the three cases the appellants shall pay costs. In accordance with the provisions of article 70 of the Revised Penal Code, as amended, none of the appellants shall be imprisoned for more than forty years. So ordered.

Moran, C. J., Ozaeta, Paras, Ferva, Tuason, Montemayor, and Reyes, JJ., concur.

Judgments modified.

[1] United States vs. Abanzado, 37 Phil., 658; United States vs. Alabot, 38 Phil., 698; Moran, Comments on the Rules, Vol. II, p. 705.

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