

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EPIFANIO MANABAT, DEFENDANT AND APPELLANT.***G.R. Nos. L-8904-05. December 28, 1956*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Nueva Ecija, finding Epifanio Manabat, guilty of robbery in band in G. R. No. L-8904 and of murder in G. R. No. L-8905, sentencing him in the first case to 12 years, 5 months and 1 day of reclusion temporal, to indemnify Mayor Villaroman in the sum of P17,500, and to pay the costs, and in the second case, to reclusion perpetua, to indemnify the heirs of Teofila Puno in the sum of P6,000, and to pay the costs. The above cases were heard in a joint trial and upon two separate informations. Only one brief was filed by counsel for accused-appellant in both cases.

The incidents giving rise to the two criminal actions above-mentioned occurred in the town of Licab, province of Nueva Ecija, soon after liberation, on the 13th day of November, 1945, when a period of confusion and chaos still reigned in the provinces, of Central Luzon. According to two witnesses for the prosecution, Alfredo Marquez and Buenaventura Liwag, both members of the Pambansang Kaisahan ng mga Magbubukid (PKM), an association of peasants in Central Luzon allied to the Hukbalahaps, in the afternoon of November 12, 1945, a gathering of members was held in Barrio Villarosa, near an irrigation dam about half a kilometer away from the poblacion of Licab. Among the persons who appeared at the meeting were accused-appellant Epifanio Manabat, known as Malvar, chief of the organization, Faustino de la Cruz, alias Magpayo, Ismael Mafigiduyos alias Monte-negro, another minor leader known as Balagtas, and many others. It was agreed in that meeting that Mayor Ernesto Villaroman of Licab would be robbed as he is an enemy of the PKM and did not like to support Juan Feleo's government. The following evening (November 13, 1945), at about 10:00 o'clock, around 200 persons headed by the said Malvar, Magpayo, Balagtas and Montenegro, many of whom carried firearms, surrounded the house of Mayor Villaroman. The house is a two-story edifice and is built beside a road. From this road the Mayor was called to come down. Villaroman peeped through the window and recognized the leaders of the band, among whom was the accused-appellant Malvar and Magpayo.

He did not, however, heed their call and so various shots were fired at the house. Villaroman took his fire-arm and fired back. Then he ran downstairs to the ground floor of the house and from a hole near a door under the house he watched the door of the ground floor then being forcibly opened. As the door was opened, he recognized three who entered the house, namely, the appellant Epifanio Manabat alias Malvar, and Faustino de la Cruz, alias Magpayo and Balagtas. Villaroman hid himself in the hole and then escaped through an undisclosed door at the back of the house where there was an engine. From there he heard those who had gone up, ransacking the house. He also heard the shouts of his wife, protesting her being brought down.

The house was ransacked, jewelries were taken. Clothes being sold by Villaroman's wife were also taken, and so were the shoes and clothes of Villaroman, as well as cash that he had in the house, amounting to about P4,000. The jewelries were worth P10,000; his shoes, P200, and the clothes, P300. The booty was put in sacks and carried

down and afterwards put inside a carretela and carried away.

The band that carried down Villaroman's wife conducted her to the fields, with Malvar and others behind her. When they reached the house of one Valdez accused-appellant suddenly gave the order to shoot her, and his men shot her and she fell down dead. That was when MPs were coming, so Malvar ordered his men to run away.

Upon examination of the dead body of Mrs. Villaroman it was found that there were ten wounds in her chest and in the lower part of the abdomen. The bullet wounds had powdered burns around, which indicate that the shots had been fired at close range.

There was a military police (MP) detachment in the town of Licab on that occasion, but it was composed of only 15 members. They were closely hidden in their barracks and did not dare to go out. Villaroman, pretending to be one of the members of the band that surrounded his house, was able to pass unidentified among them, and he succeeded in joining the MPs in their barracks. The identity of accused-appellant Epifanio Manabat as the leader of the band was testified to by Alfredo Marquez and Buenaventura Liwag. He was also identified by Mayor Villaroman as the latter peeped through the window, and as Manabat entered the door of the ground floor of the house.

It is interesting to note that the first complaint was filed by the Chief of Police on November 14, 1945. The complaint was for robbery with homicide. Subsequently, on November 20, 1945, two informations were filed in substitution of the first, one for robbery in band and another for murder. The information for murder contains no allegation as to the commission of the crime of robbery in band, just as the information for robbery in band contains nothing about the murder which was perpetrated on one of the inmates of the house which was robbed. The trial started in February, 1946, but the same was suspended with respect to appellant Manabat because he and some of his co-accused were able to escape from prison, and appellant was not apprehended again until the month of July, 1951, when the hearing was resumed. Separate and independent trials were held with respect to other accused, but as to appellant trial was continued in 1951 and decision rendered on January 13, 1954.

The defense presented by the defendant-appellant is an alibi. He also sought to discredit the testimony of prosecution witness Liwag, who was introduced by the defense to testify that the testimony given by him for the prosecution and against the appellant was false. He declared that his testimony against the appellant was induced by the promise of Mayor Villaroman to give him one sack of rice and P30 in cash. He further stated that on November 13, 1945, a political meeting was held at the "glorietta" of Quezon, Nueva Ecija, on which occasion appellant Manabat was present. Atty. Jose Cando also testified for the defense and declared that the defendant-appellant attended the political meeting of his in the municipality of Quezon, province of Nueva Ecija, on November 13, 1945; that witness arrived at the place of the meeting at about 6:00 o'clock in the afternoon, and that upon ascending the grandstand he saw accused Manabat among the members of the band; that witness began delivering his speech at about 8:00 o'clock in the evening and was through at about 9:00 o'clock, and at this time he heard shots from a nearby municipality, and while he heard these shots he still saw appellant Manabat at the grandstand; and that Manabat did not leave the grandstand till 9:00 o'clock that evening.

As to the recanting of the testimony by witness Liwag, we can do nothing better than cite Our decision, per curiam, in G. R. No. L-6939, *People vs. Ubina*, promulgated on August 31, 1955, where we stated that:

"* * * it would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. * * *"

Even disregarding the testimony of Liwag, we still have the testimonies of Marquez and Villaroman as to the

identity of the accused-appellant as the leader of those who attacked the house of Villaroman on the evening in question and thereafter entered it. As to the testimony of Atty. Jose Cando, which might be believable in view of his position as a lawyer and a political leader in the community, to the effect that appellant was present at 9:00 o'clock in the evening of November 13, 1945, at a political meeting in Quezon, a neighboring town, the mere presence of appellant at said meeting does not preclude the possibility and probability of his having joined, after said meeting, the attack on the house of Villaroman, as the attack must have taken place later in the night. Liwag testified that the members of the band were deployed around the house of Mayor Villaroman between 10:00 o'clock and 11:00 o'clock in the evening, on the day in question. For his part, Mayor Villaroman stated that he first heard the defendant-appellant calling for him at about 8:00 or 9:00 o'clock in the evening. In another part of his testimony, he stated that the Huks went away between 10:00 o'clock and 11:00 o'clock in the evening. In view of the attack on the house of Mayor Villaroman, the members of the band could not have stayed in Licab for a long time, in view of the possibility of soldiers coming to the rescue of the beleaguered mayor. According to Mayor Villaroman the MPs of Guimba in fact arrived at around 11:00 o'clock in the evening when the Huks had gone. The attack must, therefore, have taken place after 9:00 in the evening. The mere fact, therefore, that the appellant attended a political meeting in Quezon up to 9:00 o'clock in the evening did not preclude his presence in Licab after 9:00 o'clock, because Licab is only five kilometers from Quezon and is connected thereto by a road. In view of these circumstances, the defense of alibi presented can not be given any weight, especially in view of the positive identification of appellant by two witnesses.

Objection is made on this appeal to the procedure of the trial court in not having witness Alfredo Marquez included in the information as required by the Rules. This is not error; witnesses not included in the information may be called to testify. (U. S. vs. Avansado, 37 Phil. 658.) It is further argued that the testimony, of said Marquez must have been biased, prejudiced and given with promise of reward. We cannot assume that such partiality has attended the testimony of this witness for the sole reason that he is not included as one of the accused in the case. If such was the claim or contention of appellant, this matter should have been brought out in the cross-examination to impeach the credibility of witness. In the absence of such impeachment, his testimony must be taken as any other testimony, with the presumption of truthfulness as it was given under oath.

Another objection against the decision is that the judge who rendered it could not possibly have read all the transcripts of the stenographic notes taken during the hearing, especially those of the testimonies of Alfredo Marquez and Buenaventura Liwag. But contrary to this contention we find that Marquez' testimony was transcribed on March 20, 1947. As to the testimony of Liwag, the date when the notes were transcribed does not appear in the records, but if it was not filed before the decision was rendered it could not have influenced the mind of the court. If the judge who rendered the decision did not read it, at least his subsequent testimony was heard by him, so no objection can be had against the late filing of the said testimony.

Claim is made in appellant's brief that there was no evidence as to the property which had been taken away. We believe that these properties were sufficiently identified by the Mayor who testified as to their disappearance after that day.

The testimony of Liwag that when the wife of Mayor Villaroman and the band led by appellant reached a certain place near the house of Candida Valdez, the appellant gave an order to his men to shoot her, which they did, sufficiently proves the charge of murder. That it must have been the accused-appellant who gave the order is inferred from the fact that he was the leader of the assaulting band. The presence of the many wounds also indicates that many persons must have fired at her, and this shows that the order for the shooting must have come from the leader of the group, who was then appellant Manabat. This corroborates Liwag's testimony that appellant gave the order to shoot Mrs. Villaroman.

For the foregoing considerations, we find that the guilt of the accused-appellant in each of the cases presented against him has been proved beyond reasonable doubt. Finding that the penalty imposed in the murder case is within the range prescribed by law, the same is hereby affirmed.

In criminal case No. 173, for robbery in band, the appellant is hereby found guilty of robbery under Article 294, paragraph 5, of the Revised Penal Code, prior to its amendment by Republic Act No. 18, and not robbery in band, as found by the trial court. As the commission of the offense was attended by the aggravating circumstances of nighttime and by a band, the maximum of the penalty should be imposed upon the defendant-appellant, and as he escaped from jail during the pendency of the proceedings, he is not entitled to the benefits of the Indeterminate Sentence Law. The penalty imposed by the trial court is beyond the range provided by law. The sentence is hereby modified and the same is reduced to ten (10) years of prision mayor. With the above modification, the sentence is hereby affirmed in all other respects. Costs shall be against the defendant-appellant.

Paras, C. J, Bengzon, Padilla, Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

[*] 97 Phil., 515

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