

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
POLICARPIO KATANGKATANG ET AL., DEFENDANTS, POLICARPIO
KATANGKATANG AND GONZALO HEMBRA,
DEFENDANTS-APPELLANTS.**

G.R. No. L-5134. May 29, 1953

Ponente: REYES, J.

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REYES, J.:

Policarpio Katangkatang and Gonzalo Hembra were, together with four unknown persons, accused of robbery in band with double homicide in the Court of First Instance of Leyte. As the four unknown persons were not apprehended, Policarpio Katangkatang and Gonzalo Hembra were tried alone and, having been found guilty as charged and sentenced to death, indemnity and costs, they have appealed to the Court of Appeals, but because of the nature of the penalty, the case has been elevated to this Court.

From the evidence for the prosecution it appears that on the night of October 21, 1950, Luis Grana, his wife Victoria Cahinde, and their two sons Juan and Crestituto were in their house in barrio Villapas, Jaro, Leyte. With them were their guest Sotera Cañezos and her three little children. At about 8 o'clock that evening those in the house became aware of the approach of strangers, because of the barking of dogs, and very soon heard footsteps outside and voices saying: "Padi, Padi Luis, abrehi ako, tague sapi" (Compadre, Compadre Luis, let in, give me money). As no one in the house gave reply, those below fired shots in the air and tried to open the main door, but failing to do so, they went to the door of the kitchen and opened it by cutting the rope by which it was secured. Then two armed men, identified as the appellants herein, entered. They had their faces covered with handkerchiefs from the nose down. Addressing Luis Grana they asked him for money, and when he refused, he was fired upon by the appellant Policarpio Katangkatang. He was hit in the neck, but he did not die at once. Seeing that further resistance was useless, Luis Grana got out P200 from his pocket and handed it to the appellants, and thereafter remarked: "Now I know that you were the same ones who had robbed us before." Believing obviously that he and his companion had been recognized, Katangkatang shot Luis in the stomach, killing him. Thereafter, the other inmates of the house were ordered to lie on the floor face down, including Crestituto, who was already wounded. And as soon as the latter had done so Katangkatang finished him off by stabbing him five times in the back with a bolo. The intruders then asked for more money and ordered Luis Grana's other son, Juan (aged 16), to look for more. Seeing his chance to escape, Juan stood up, jumped out of the house and ran away, whereupon the intruders put out the light and left.

Both appellants put up an alibi.

Denying any participation in the crime, Policarpio Katangkatang claimed that he was in his house in barrio Jupit (about 8 kilometers from the scene of the crime) on the night in question and on this he was corroborated by Fernando Hipe, a school teacher in that barrio, who said that he was boarding in the house of this appellant though he had his own house and family in another barrio about three kilometers away. The trial court, however, thought

it unlikely that this teacher would pass the night in question (which was a Saturday) in another man's house when his own was not far away. And anyway it was not at all impossible for this appellant to have slipped out of the house and gone to Luis Grana's place without his absence being noticed by Hipe, who was busy preparing his lesson plan.

Gonzalo Hembra on his part also denied having participated in the commission of the crime and testified that from 7 to 12 o'clock that night he was at a dance in Jaro Elementary School together with a friend, Norberto Lompa. The latter corroborated the testimony. But as the Solicitor General points out, it is surprising that intimate friend though he claims to be of this appellant, Lompay does not know whether appellant is married or not; and that while Lompay could recall the date of the dance he attended with this appellant, he could not remember the dates of any of the other dances he attended that same month.

Though the defense claims that the robbery part of the charge has not been established because of the confusion in the testimony of the widow as to the source of the P200 taken by the appellants from the deceased, we find that the handing of the money to the malefactors is a clearly proven fact, and that the widow's confusion may be attributed to her ignorance and lack of schooling if not to a defective memory. Moreover, no other motive has been proved or even suggested to account for the killing of father and son in their own house that night.

The really important question for determination refers to the identification of the appellants.

Appellants were identified by three witnesses: the widow Victoria Cahinde, her son Juan Grana, and their guest Sotera Cañezo. There is no question that all three were in the house that night and saw appellants at close range. It is true that appellants had their faces partly covered. But then there was light in the house and appellants were familiar figures to the three, living as they did not far from them and having been known to them for a long time. In the case of the appellant Hembra, there is the further circumstance, admitted by him, that he was a former sweetheart of the witness Sotera Cañezo. The widow's mistake in pointing to Katangkatang as Hembra and vice-versa may indicate that she did not know them by name but does not necessarily prove that she did not know them by face. And in any event, there is still the clear and positive testimony of Juan Grana and Sotera Cañezo respecting the identity of the malefactors even if that of the widow should be doubted. The circumstance that the names of the perpetrators of the crime were not immediately revealed to the authorities appears to have been due to the survivors' fear of reprisals which made them withhold that information until they had moved to the poblacion after the burial of the deceased and the end of the customary number of days of prayer in their house in the farm.

After going over the evidence we find appellants guilty of robbery with homicide. The defense is right in saying that the evidence does not show that the crime was perpetrated by a band. And with the exception of nocturnity, we are also with the defense in rejecting the aggravating circumstances appreciated by the trial court. But as nocturnity is not compensated by any mitigating circumstance, the penalty impossible is still death. However, there is no sufficient vote for the imposition of this penalty so that appellants can only be sentenced to reclusion perpetua.

Wherefore, reducing the penalty imposed below from death to reclusion perpetua, the judgment appealed from is affirmed in all other respects, with costs against the appellants.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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