

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VENERANDO VIERNES ET AL., DEFENDANTS, DANIEL ARTATES,
DEFENDANT AND APPELLANT.**

G.R. No. L-1794. June 30, 1949

Ponente: TUASON, J.

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TUASON, J.:

This appeal, from a judgment of conviction for robbery with homicide, raises the sole question of identity.

There were six defendants. Two were discharged for lack of sufficient evidence after the prosecution rested, and two others were acquitted for the same reason after both parties submitted the case.

Hermogenes Cabuang and Daniel Artates, the remaining accused, were pronounced guilty of the crime of robbery with double homicide, and sentenced to reclusion perpetua. with the accessories of the law; to pay, jointly and severally, the sum of P500 to Serapio de la Cruz; to return the two wrist watches or pay their value, P300, jointly and severally, to the heirs of Francisco Natividad; to indemnify the said heirs and those of Evangelina Natividad, also jointly and severally, in the sum of P4,000, and each to pay his proportionate share of the costs. From this sentence only Daniel Artates appealed.

The conviction of the appellant;rests on the testimony of two eyewitnesses, Leonora de la Cruz and Feliciano Arellano, and on his sworn confession.

It appears that at about 8 o'clock on the evening of September 21, 1946, two armed men broke into the house of Serapio de la Cruz in barrio Pongonsile, municipality of Aguilar, province of Pangasinan, forcing their way through the back door. Before the two robbers rammed the door, a volley of shots was fired into the house killing a nineyear old daughter of Leonora de la Cruz and wounding the latter in the left arm and the right elbow.

Inside the house, one of the two robbers kicked Serapio de la Cruz, Francisco Natividad (Leonora's husband), and Feliciano Arellano, and then shot and fatally wounded Francisco Natividad with a pistol. Afterward he demanded money from Serapio de la Cruz and got P500. He also searched the house with a flashlight and grabbed two wrist watches, worth P150, which he saw hanging on the wall. Both watches belonged to Francisco Natividad.

While all this was going on, the other robber in the house was seated on an army cot nursing a wound. He carried a rifle. An undetermined number stayed downstairs.

At the trial, the two eyewitnesses pointed to Hermogenes Cabuang as the man carrying a rifle and seated on a cot. The other man, who, they said, shot down Francisco Natividad, received P500 from Serapio de la Cruz, and picked the two watches from the wall was Daniel Artates.

Very little or no weight can be given to these witnesses' identification of Daniel Artates. In an affidavit (Exhibit 1 and 1-A) subscribed and sworn to by Leonora de la Cruz soon after the crime, this woman declared that she recognized only one of the malefactors. She further stated that she recognized that person because she had often

seen him in the public market in Mangatarem, Pangasinan. She had not seen the other before. (According to the two witnesses, the man whom they had frequently seen in the public market was Cabuang, and it was Cabuang, they said, who was seated on a cot and had a rifle.) Now, Leonora de la Cruz also admitted that before the trial of this case she was summoned to the office of the provincial fiscal for the purpose of pointing out the two men she had seen in the house, and it appears that out of four accused who were made to stand up in front of her she identified Hermogenes Cabuang only. Daniel Artates, who was one of those four prisoners, she did not pick out.

Feliciana Arellano, the other witness, admitted that on September 23, she made and signed a statement (Exhibit "2" Cabuang-Artates) before the municipal mayor, and that she said "No, sir" when she was asked, "Do you recognize the robbers who went to the house that night?" And in answer to the question of the provincial fiscal on redirect examination, "To whom did you refer, out of these six accused, as the man holding the caliber .45 pistol, 'about 5 feet tall, about 48 kilos and about 30 years old, who wore a fatigue shirt terno rolled until the knee?' ", she pointed to Daniel Artates. But to the fiscal's next question asking her which of the six defendants "sat on the cot with a rifle, is about 5 feet and 3 inches tall wearing a fatigue terno?" (Cabuang's description) she indicated Daniel Artates again.

It is manifest from this confusion and from the contradictions between the witnesses' testimony at the trial and their previous statements, that Leonora de la Cruz and Feliciana Arellano were uncertain about the identity of Cabuang's companion who came inside the house with him. As a matter of fact, Daniel Artates said in his extra-judicial statement, which was introduced in evidence by the prosecution, that it was Hermogenes Cabuang and Paran who entered the house.

However, we are satisfied that appellant's confession was voluntary. Apropos of this confession, the trial court observed that "prior to the trial of the case in the Court of First Instance, both accused, Cabuang and Artates, appeared in the preliminary investigation before the Justice of the Peace of Mangatarem, Pangasinan, and they did not then complain to the judge or any other civil official that they had been subjected to ill-treatment, or that they had been intimidated;" that they did not show "to the judicial official the traces of maltreatment that they received;" "that both Artates and Cabuang remained silent and made revelation for the first time of the supposed maltreatment only during the trial in the Court of First Instance, knowing pretty well the importance of this confession." The court concluded that "the repudiation by the accused of their affidavits or confessions is an afterthought born of their eleventh hour attempt to escape responsibility."

The record does not disclose any circumstance of weight which would justify us in reversing the above findings. One important point which the court below may have overlooked strengthens rather than weakens its conclusions. It is the fact that the appellant expressly ratified the truth of his confession to the Justice of the peace of Lingayen who took his oath.

Judged by its contents, we do not believe the confession was framed by the military police out of their own mind. The narration is lengthy and rich in details which only the appellant could very well have supplied, while the military police had no reason or necessity to invent them. Furthermore, the confession contains matters calculated to exonerate the declarant or mitigate his responsibility. For example, it named Hermogenes Cabuang and Paran as the two men who broke into the house, and it said that the declarant had been forced to join the band. The first assertion is in direct contradiction to the prosecution's theory that it was Artates who killed Natividad, carried away Natividad's watches, and was handed the cash. A confession fabricated by the police would have been patterned after the main features of the eyewitnesses' testimony—to bolster, not weaken or destroy, it.

The appellant's confession constitutes sufficient evidence to convict. The appealed judgment is therefore affirmed with costs.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J.:

I certify that Mr. Justice Pablo voted to affirm the appealed decision.

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