

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAYMUNDO MARANAN, AGAPITO TORANO, AND DOMINADOR
GALARIO, DEFENDANTS-APPELLANTS.**

G.R. No. L-18211. April 30, 1965

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PER CURIAM:

Accused of robbery in band with homicide and serious physical injuries, defendants Raymundo Maranan, Dominador Galario and Agapito Torano were, after due trial under a plea of not guilty, convicted as charged, but sentenced, for the crime of robbery in band with homicide, to the extreme penalty, and to indemnify the heirs of Tan Gnat in the sum of P6,000.00, and, for the crime of physical injuries, to an indeterminate penalty ranging from six (6) years, eight (8) months and one (1) day of prision mayor to twelve (12) years and one (1) day of reclusion temporal, with the corresponding accessory penalties and to jointly and severally indemnify Tan Hoc in the sum of P5,656.70, with costs. Hence, this appeal by said defendants.

It is not disputed that, while Tan Hoc was in his Bakery and Grocery Store, in San Vicente, Calapan, Oriental Mindoro, together with Tan Guat, on December 5, 1959, at about 8:00 p.m., somebody knocked at the door. As Tan Hoc opened it, a man handed him P0.20, stating that he wanted to buy cigarettes with it. When, after picking up the cigarettes, Tan Hoc tried to deliver the same, he found the supposed buyer of cigarettes pointing at him an open "balisong" knife, accompanied by three (3) persons, later identified as defendants Raymundo Maranan, Dominador Galario and Agapito Torano, one of whom had a knife, whereas the others had a pistol each. Thereupon, the malefactors entered the store tied the hands of Tan Hoc and Tan Guat in their back. Soon later, they were tied to the legs of a table. After ransacking in the premises in search for money, the malefactors later blindfolded and gagged the Chinese of the malefactors then said "Let us finish them because they know us", whereupon, Tan Hoc heard Tan Guat moaning. Soon thereafter, Tan Hoc became unconscious in consequence of several blows in his head. When he came to, Tan Guat was dead with eight (8) incise stab wounds, a lacerated wound, a fracture and a contusion. Tan Hoc, in turn, had multiple injuries on the head, aside from a blackeye, and several contusions, which required hospitalization for about forty-five (45) days. Moreover, four (4) watches, worth about P400, and the sum of P5,260.70, in addition to a ring and fountain pen worth P25.00 and P11.00 respectively, were found missing.

Tan Hoc testified that appellants Raymundo Maranan, Dominador Galario and Agapito Torano are the persons who accompanied the malefactors who pretended to buy cigarettes; that Maranan had a pistol and it was he who inquired from Tan Hoc about the place where money was kept; that Torano was the malefactor who accompanied Tan Hoc to the place indicated by the latter; that Galario was one of those who tied Tan Guat; and that Tan Hoc was tied by Torano and Maranan.

Moreover, according to Porfirio Macatangay, a bus dispatcher of the Mindoro Transportation Co., the office of which is adjacent to Tan Hoc's store, on December 5, 1959, between 5 and 6 p.m., appellant Galario had been in said office, sometimes sitting on one of the benches therein reading newspaper, and when he (Macatangay) left his office, at about 7:30 p.m., he saw four men, including appellants Galario, Torano and Maranan conversing at

the sidewalk in front of said office.

On December 9, 1959, Maranan and Torano executed before the Clerk of Court of Oriental Mindoro their respective affidavits, Exhibits B and E, admitting their Participation in the commission of the crime, charged. Two (2) days later, Galario made before the same officer, a similar sworn statement (Exhibit C). In addition to revealing that he had stabbed Tan Guat with the "balisong" Exh. L, Galario indicated to the peace officers who investigated him, the place where he had hidden his share of the loot (at the foot of the ladder of his house), where the sum of P54.00, wrapped in a piece of paper, was found.

Prior thereto, or on December 8, or 9, at about 10 a.m., appellants had reenacted, in the presence of the Provincial Fiscal, the Assistant Provincial Fiscal, an officer of the Constabulary, a photographer - who took several pictures (Exhibits G, G-1 to G-5, H, H-1 to H-4, I, I-1, J, J-1, K, K-1 and K-2) of the proceedings and many other persons, the commission of the crimes, at the very scene thereof.

A complaint was, accordingly, filed with the then Justice of the Peace Court of Calapan, Mindoro Oriental, charging appellants and one Esteban Manalo, alias Esteban Hernandez, with said crime, but eventually, Esteban Manalo was not included in the information, he being still at large.

The main question raised in this appeal is whether or not the lower court has erred in not sustaining the respective alibis of herein appellants. In this connection, Torano would have us believe that on December 5, 1959 he was in the municipality of Baco, Oriental Mindoro he having been arrested for alleged disorderly conduct, owing to drunkenness, and detained in the municipal jail of that locality, from 6:30 p.m., to midnight. Although the testimony of policemen Basilio Diokno and Silvestre Corrales, as well as that of one Casiano Amorado, were introduced by the defense in support of this pretense, the lower court gave no credence thereto, and we think correctly, for it is not borne out by the blotter of Baco.

So too, Galario and his alleged mistress, one Maria Mendoza, testified that he left their home in Baba, Calapan, Oriental Mindoro, on December 3, 1959 and proceeded to Taysan, Batangas, from whence he did not return until December 6. It should be noted, however, that, upon investigation by the authorities, Galario admitted having participated in the commission of the crime charged and even led them to the place where he had buried his share of tile loot. Indeed, Porfirio Macatan, gay, a bus dispatcher of the Mindoro Transportation Co., the office of which is adjacent to the store of Tan Hoc, testified that he saw the appellants loitering in the vicinity thereof in the evening of the occurrence, thus corroborating Tan Hoe's testimony about Galario's presence therein at that time. Galario's alibi is thus obviously untenable.

So is that of appellant Maranan, who claimed to have spent the evening of December 5, 1959, with his wife, in their house, in New Baco, Oriental Mindoro, making lanterns up to midnight. Although one Anacleto Andrade sought to corroborate this alibi, the lower court found the evidence for the defense in support thereof unworthy of credence and the record before us does not warrant interference with the conclusion thus reached in the decision appealed from, not only because of the aforementioned testimony of Macatangay, but also, because His Honor, the trial Judge, has had better opportunity, than that afforded us, to observe the behavior of the witnesses during the trial and hence, to gauge their veracity.

We agree, however, with appellants Maranan and Galario, that they and appellant Torano have committed, not two (2) crimes as held by the lower, but only one (1) crime, namely, that provided for in Art. 294, subdivision (1) of the Revised Penal Code. In view of the Presence of the aggravating circumstances of nighttime, dwelling and aid of armed men, aside from, as regards appellant Maranan, that of recidivism, he having been previously convicted by final judgment of the crime of homicide no other penalty than the maximum of that prescribed in said Art 294 (1), or death, should be imposed upon the appellants.

WHEREFORE, with the elimination of the indeterminate sentence imposed in the decision appealed from, the same is hereby affirmed in all other respects, with costs against appellants herein.

SO ORDERED.

Bengzon, J.P., C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Bengzon, J.P. and Makalintal concur.

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