

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL FONTILLAS, VENERANDO VELES, TEODULFO VELES AND
NICOLAS VELES, DEFENDANTS, MANUEL FONTILLAS, VENERANDO
VELES AND TEO...**

G.R. No. L-25298. April 16, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Manuel Fontillas, Venerando Veles, Teo-dulfo Veles and Nicolas Veles were charged with the crime of robbery with double homicide before the Court of First Instance of Agusan. The vic-tims were Alfonso Yu and Victor Yu, father and son, respectively.

After trial, the court rendered a deci-sion acquitting Nicolas Veles reasonable doubt, and finding Manuel Fontillas, Venerando Veles and Teodulfo Veles guilty as charged, and sentencing them to reclusion perpetua, with the accessories pro-vided by law, to pay jointly and severally, the heirs of the deceased in the amounts stated in the decision in concept of indemnity and damages, and to pay the proportionate costs.

Hence, this appeal from the decision by Ma-nuel Fontillas, Venerando Veles and Teodulfo Veles.

Alfonso Yu was the owner of a general merchand-ise store in Las Nieves, Butuan City, Agusan, Adjoin-ing the store at the back was a mill for grinding pa lay and corn, also owned by Alfonso Yu.

Alfreda Layno, wife of Alfonso Yu, declared that at about 6:00 O'clock in the evening of October 22, 1963, she was returning to the store from an er-rand. The store had two doors fronting the street. Upon reaching one of the doors, she saw six men seated on a bench thereat. She talked to one of them, later identified as appellant Manuel Fontillas, who was holding a Pepsi-Cola bottle. Isaac Zoleta, municipal judge of Las Nieves, who was boarding with the family of Alfonso Yu, was seated on another bench outside the store, conversing with a woman. Alfreda Layno be-came suspicious of the presence of the six men. She warned her husband. Alfonso Yu ordered that the store be closed. A man, later identified as Manuel Mango, dashed inside the store. He approached Alfonso Yu wanting to buy cigarettes. When the latter was about to open a drawer to get cigarettes, the man (Mango) poked a gun at Alfonso Yu telling him not to move. The latter raised his hand and uttered "waw". Ano-ther man, later identified as Teodulfo Veles, approach-ed Alfonso Yu and held his hand. Seized with fear, Alfreda Layno hid behind some boxes in the mezzanine whence she saw another man inside the store, later identified as Venerando Veles. After a while, she noticed that the man (Venerando Veles) was no longer at the place where she saw him before, so she ran away and went to the house of her neighbor Roman Mu-sico.

On cross-examination, Alfreda Layno was con-fronted by counsel for the defense with her affidavit sworn to before the provincial fiscal on October 28, 1963, and quoting several questions and answers from the said affidavit, counsel asked the witness if they were her statements, to which the witness replied in the affirmative. The quoted portions of the affidavit, marked as Exhibits 5-A and 5-B, are as follows:

"That the robbers forcibly took from us cash in the amount of about four thousand two hundred pesos (P4,200.00), jewelries valued at about P100.00, assorted items from our store like flashlights, dry goods and other items valued at about P300.00;

"1. Q.- Can you identify the robbers if you see them again?

A.- I do not know but I think I can identify some of them if I see them again.

"2. Q.- Showing to you these photographs (affiant shown the photographs of Manuel Mango, Manuel Fontillas, Nicolas Veles, Teodulfo Veles, Venerando Veles, Sofronio Balbuena) what can you say about these photographs?

A.- I can only remember this person. (Affiant pointing to the photograph of Manuel Fontillas) I remember him because he was the one who pretended to buy some cigarettes from my husband and pointed his gun to my husband during that incident."

Continuing her testimony on cross-examination, Alfreda Layno was asked why "she cannot recognize the persons who entered the store by their photographs?" and she answered, "If I use eyeglasses, because since the incident my eyes were defective," and "I cannot identify clearly (the photographs) because the lenses of my eyeglasses are blurred." However, the witness insisted that when she was investigated by the PC, and was asked if she could identify the persons who entered the store, she told the PC that she could identify them.

In fact, on direct examination, Alfreda Layno pointed to Manuel Fontillas as the man with whom she conversed and who was holding a Pepsi-Cola bottle; she declared that the one who wanted to buy cigarette was the dead man (Manuel Mango) in the picture, exhibit 1-A; the man who approached Alfonso Yu and held the latter's hand was Teodulfo Veles, and she pointed to him at the trial; and the man she saw guarding the store while she was in the mezzanine, was Venerando Veles, and she also pointed to him at the trial.

Emma Yu, daughter of Alfonso Yu, 24 years old, was seated at a table inside the store making entries in the business book, when she heard the order of her father to close the store. She stood up to help. Suddenly, a man, later identified as Manuel Mango, dashed inside the store to buy cigarettes. While Alfonso Yu was opening a drawer to get cigarettes, Manuel Mango, with a drawn gun, approached Alfonso Yu telling him not to move. Taken aback, Alfonso Yu raised his hands and uttered "waw". Another man, later identified as Teodulfo Veles, advanced towards Alfonso Yu, and both Mango and Teodulfo surrounded Alfonso Yu. A man brought Victor Yu inside the store. Six men entered the store. Teodulfo Veles and his companion ordered her to go upstairs. On the second floor of the house, she met her brother Jose Yu. Then, Teodulfo Veles entered the room of Judge Zoleta. After a while, Teodulfo Veles emerged from the room, and ordered her and her brother to go downstairs. Once downstairs, the men opened the drawers where the money was kept. They took the money in the drawer, and also jewelry, flashlights, batteries, textiles and many other things. When the opportunity for escape presented itself, she and her brother ran away and went to the house of a neighbor. On October 26, 1963, Emma Yu was investigated by the provincial fiscal, and her testimony in court substantially conforms with the contents of her affidavit.

Judge Isaac Zoleta declared that as he was preparing to go inside the store, a man grabbed him by the collar of his shirt. He was released when someone shouted "do not include him". Zoleta ran to a neighboring house and apprised the people of the robbery. The store was well-lighted with several electric bulbs. Zoleta was not able to recognize the man who grabbed him because he was at his back. At the same time, Maximo Bation, policeman of Las Nieves, was approaching the door of the store, when a man poked a pistol at his back and made him lie down with his face pressed against a pile of sacks.

Jose Yu, 11 years old, student, son of Alfonso Yu, declared that at about 6:00 o'clock in the evening of October

22, 1963, he was in the store of his father. A man approached his father to buy ci-garettes. Suddenly, the man drew a gun and pointed it at his father, and at the same time another man jumped over a table and approached his father. A man approached him (Jose) and ordered him to go up-stairs, and thereat he met his sister Emma. He re-recognized the man, later identified as Teodulfo Veles. The latter entered the room of Judge Zoleta from which he emerged after a while. The men ordered him (Jose) and his sister Emma to go down followed by the men. In the store, the men forcibly opened the drawers and took the money inside the drawers.

On cross-examination, he declared that on October 26, 1963 he executed an affidavit, marked Exhibit 2 for the defense. He affirmed the veracity of the answers to questions numbers 5, 6 and 7 thereof, as follows:

"5. Q.- If you will see that persons, can you still recognize him?

A.- I can identify the tall persons wearing yellow shirt and the person who pointed the pistol at Papa.

"6. Q.- These persons can you identify them? (Affiant shown to the persons of Venerando Veles, Nicolas Veles, Teodulfo Veles and Manuel, all of Mandamo, Las Nieves)

A.- These two persons are the ones that I know. (Affiant pointing to Teodulfo Veles and Venerando Veles.)

"7. Q.- Where is that person who brought you there your brother and sister?

A.- There were two robbers. Right now, it is only this whom I can recognize," (and pointed to Venerando Veles).

Being shown the pictures of two dead men appearing in Exhibits 1 and 1-A, he identified them as two of the robbers who were killed on that occasion, later identified as Manuel Mango and Sofronio Balbuena, and he declared that he could recognize them because he saw them in the store.

Benita Balonda, 18 years old, cook in the house of Alfonso Yu, declared that at past 6:00 o'clock in the evening of October 12, 1963, she was in the kitchen preparing supper; she saw her master, Alfonso Yu, being choked by a man, later identified as Venerando Veles; she saw three men, but could recognize only one of them whom she pointed at the trial to be Venerando Veles; she ran to the house of a neighbor. It was when she was running that she heard several shots inside the store and in the street.

On cross-examination, she declared that a few days after the robbery, she was brought to the PC headquarters at Butuan City and investigated. Her statement, dated October 28, 1963, before the provincial fiscal, is exhibit 4 for the defense. The PC asked her if she could identify the robbers; she answered in the affirmative. Confronting her with her affidavit, counsel for the defense read therefrom the answer to question number "3", thus:

"A.- After that time and date, I was about to go downstairs to get some vegetables because I (was) preparing our supper when I met my employer, Alfonso Yu, going up-stairs to the house followed by a person whom I do not recognize."

Questions numbered 5, 6 and 7 in the affidavit, marked Exhibit 4-A and the corresponding answers for the defense, were also quoted to the witness, thus:

"5. Q.- Showing to you these pictures (photographs) of these persons shown to you at the provincial jail on October 27, 1963, what can you say about that?

A.- This one, sir, was the person whom I saw following my employer and the one who choked him." (Affiant pointing to the photograph of Teodulfo Veles.)

"6. Q.- What made you so sure that he was the one?

A.- Because I still remember his face and I still remember that he was wearing a cap."

She affirmed the truth of her statements.

Teresita Arendayen, 14 years old, maid in the house of Alfonso Yu, declared that the man who choked Alfonso Yu was Teodulfo Veles.

Late in the evening, Emma Yu returned to the store with Judge Zoleta. They found Alfonso Yu already dead, and Victor Yu, seriously wounded. The latter died on the way to the hospital. The bodies of two slain robbers, later identified as Sofronio Balbuena and Manuel Mango, were found outside the store. Near the body of Manuel Mango, a pistol, caliber .38, and a single-bladed dagger were found. Inside the store were found live-bullets, slugs and cartridges, and a red cap all of which were turned over to the authorities.

Sgt. Ernesto Baril, chief investigator of the 66th PC at Butuan City, conducted an investigation the day after the commission of the crime. After information were gathered from the inmates of the house, the accused were picked up and brought to the PC headquarters for questioning. The accused denied having anything to do with the crime; they claimed that they were in Mandamo on the day and at the time the robbery was committed. In the provincial jail, the four accused were made to stand in a line-up, interspersed one another with other convicts, and the government witnesses Emma Yu, Jose Yu, Benita Balonda and Teresita Arendayen were asked to identify the robbers. On the basis of the evidence gathered by the PC and the provincial fiscal, the affidavits of the witnesses, and the identification of the accused in the provincial jail by the witnesses, the information was filed in court.

Summarizing the evidence of the prosecution, they tended to show that six men entered the store, namely: Teodulfo Veles, Venerando Veles, Nicolas Veles, Manuel Fontillas, Manuel Mango and Sofronio Balbuena. The last two, Manuel Mango and Sofronio Balbuena, were killed while attempting to escape from the scene of the crime; the first four were arrested and charged with the crime of robbery with double homicide before the Court of First Instance of Agusan; one of them, Nicolas Veles, was acquitted on reasonable doubt, and the remaining accused were found guilty of the offense charged and sentenced accordingly. The victims, Alfonso Yu and Victor Yu, were killed during and on the occasion of the robbery. The crime was committed between 6:00 and 6:30 o'clock in the evening of October 22, 1963, in Las Nieves, Butuan City, Agusan. The scene of the crime was well-lighted with several burning electric bulbs. At the scene of the crime and during its commission, the appellants were recognized by the witnesses of the prosecution and were identified during the trial; and in the affidavits executed by said witnesses just a few days after the robbery, the appellants were pinpointed as the perpetrators of the crime.

Contending that the evidence of the prosecution have not established beyond reasonable doubt the presence of the appellants at the scene of the crime, and relying heavily on their defense of alibi, the appellants have assailed the decision of the trial court under two (2) assignment of errors: First, "in giving weight and credit to the testimonies of the prosecution witnesses"; Second, "in convicting the accused of the crime charged."

1.- Citing the testimony of Judge Zoleta who, admittedly, was outside the store conversing with a woman, and simply because he had declared that he did not recognize the man who grabbed him by the collar of his shirt, the appellants argue that with more reason the witnesses of the prosecution could not have recognized the appellants because of their state of fear. The argument is non sequitur. It is to be remembered that, according to Zoleta, the man was behind him, and when he was grabbed by the collar of his shirt, a shout was heard "do not include him", and he was immediately released, and he ran away; on the other hand, the witnesses of the prosecution were inside the store where the crime was being committed, and they had the opportunity to recognize the appellants who were not masked, for the incident did not happen in a split of seconds but lasted for about twenty to twenty-five minutes.

2.- The testimony of Leonardo Cuvillar, witness for the defense, rural policeman of Las Nieves, later appointed chief of police of Butuan City, Agusan, is relied upon. He declared that the appellants were not at the scene of the crime. But, as we shall show presently, this witness, to our mind, had attempted to distort the facts, or perjured himself in his de-sire to help the appellants. To quote his testimony:

"Q.- On October 22, 1963, at about 6:00 o'clock in the afternoon, where were you?

A.- I was in my store.

Q.- In what place?

A.- In Las Nieves.

Q.- How did you learn that there was such robbery in the store of Alfonso Yu?

A.- Because Gabino Bisaya re-ported to me that the store of Alfonso Was robbed.

Q.- After you were told by Ga-vino Bisaya what did you do?

A.- I went towards their store.

Q.- What did you see when you arrived in the house of Al-fonso Yu?

A.- I saw a policeman of Las Nieves being held by the man and Emma Yu was being held also.

Q.- Can you remember the face of the person who held Emma Yu?

A.- I know their faces, but I do not know their names.

Q.- You look inside the court-room and find out if those persons whom you saw are here in the court room?

A.- Just to tell you the truth, those persons whom I saw on the date of the incident are not here. x x x.

Q.- This morning you said that you saw two persons holding Emma Yu and the policeman. If you are shown a picture of a cer-tain person whom you saw on the night of the robbery incident, can you recognize the person?

A.- I can identify the person.

Q.- I show you Exhibit 1 and Exhi-bit 1-A (pictures of the slained robbers) will you please look at these pictures if you can recog-nize them?

A.- This man in the picture is the man who held Emma Yu (witness is referring to exhibit 1-A picture of the slained robber Manuel Mango). This picture, exhibit 1, is the picture of a man who held the policeman. (Witness referring to the picture of Sofronio Bal-buena)."

The foregoing portions of the testimony of Cuvillar clearly show that the men he saw at the store were the two slain robbers, but he also affirmed that the appellants were not at the scene of the crime, and the basis of his affirmation is, that he did not see them at the store. His affirmation, however, as shown by the evidence, is without basis and a fabrication in his desire to help the appellants, because definitely he admitted that when he arrived at the store the robbers had already left. To quote his testimony:

"Q.- When you head the shots, you were still in your store, and upon hearing the shots, that was the time when you closed your store?

A.- I heard the shots that was the time I closed my store and immediately thereafter, I ran towards the house of Alfonso Yu but I had not reached yet the house of Alfonso Yu because there were persons there. I was already 7 meters away from the house of Alfonso Yu because there were already persons.

Q.- In other words, you were not able to get inside the store of Alfonso Yu?

A.- Yes, sir, at the time of the incident, I was not inside the store of Alfonso Yu. After the incident, as it was already silent and no more firings, I went inside the store.

Q.- And that was the time when you saw many people there and that was the time when you saw the victims of the robbery incident?

A.- When I got inside the store, I saw the victims lying flat.

Q.- You are referring to Victor Yu?

A.- Yes, sir, including Alfonso Yu.

Q.- And the time when you got inside the store of Alfonso Yu, after the incident, the people who perpetrated the robbery were no longer there?

A.- No more, sir."

3.- Juanito Sabio, a guard in the provincial jail of Agusan, was presented to establish the fact that at the confrontation of the accused by the witnesses of the prosecution in the provincial jail on October 27, 1963, the witnesses were not able to identify the appellants. He declared thus: At 11:30 in the morning of October 27, 1963, Sgt. Ernesto Baril, investigator of the PC, brought to the provincial jail, Emma Yu, Jose Yu, Benita Balonda and Teresita Arenda-yen to find out whether the said persons would be able to identify the appellants; that they were not able to identify the accused; that the office of the provincial jail keeps a record book where are entered diverse matters transpiring in the jail, such as the visit of witnesses to identify certain accused; that on this particular visit of Sgt. Baril, accompanied by the witnesses of the prosecution, on October 27, 1963, he recorded in his personal diary and not in the record book (blotter) of the office of the provincial jail what transpired at the confrontation. To corroborate his testimony, he read on page 4 of his diary the following entry:

"At 11:30 a.m., Sgt. Baril arrived at the station for the purpose of identifying the accused, Mr. Fontillas and nobody was pinpointed.

He also declared that the entry in his diary was made by him "during and after the identification was finished." Thus:

"Q.- Will you please tell this Honorable Court whether or not you made this entry?

A.- Yes, sir, I made that entry during and after the identification was finished."

The foregoing, however, is self-impeached. On cross-examination, he admitted that the entry was made by him in the house and not during and after the identification. Thus:

"Q.- And you entered the event which happened at 11:30 o'clock in the provincial jail?

A.- Yes, sir, in the house.

Q.- In other words, you made this entry outside of your tour of duty?

A.- Yes, sir."

And the entry was made in his private diary and not in the official book (blotter) of the office of the provincial jail. Thus:

"Q.- You said that you entered some important items in your diary and you entered the same in your record book. Is that right?

A.- I entered the important item in my diary. That is pre-cisely the coming of Sgt. Baril and government witnesses."

Then, it is pertinent to ask: When did he make the entry in his personal diary? He failed to state the specific occasion or date. And why the entry made in his private diary and not in the official book or blot-ter of the office of the provincial jail as it was his duty to do? He kept the reason for himself. A read-ing of the testimony of the witness has persuaded us that the entry was made not to reflect the truth but to fabricate in order to help the appellants.

"A witness should not be allowed to see, consult or refer to a memorandum or other writing for the pur-pose of recollection of his memory unless and until it appears that the memorandum was written by himself or under his direction at the time when the fact occurred, or immediately thereafter, or to any other time when the fact was fresh in his memory." (Francisco, Criminal Procedure, Vol. III, 1345.)

The reason for the rule that the making of the memorandum must be contemporaneous with the event is that the evidentiary force comes, not from narration of facts by the witness, but from the fact that the memorandum is the record of a past recollection, re-duced to writing while there was an existing independ-ent recollection. The memorandum stands in the place of present recollection, the witness being at most a mere conduit for repetition of its statements. As one court remarks: 'It is for that reason that a memoran-dum to be available in such cases, must have been made at or about the time of the happening of the trans-action, so that it may safely be assumed that the re-collection was then sufficiently fresh to correctly express it.' The assumed reliability of the memorandum as a contemporaneous record is the sole justification of its use by the witness, and hence, it is essential in such cases that the witness should produce and testi-fy by reference to the original memorandum.' (Volusa Cty. vs. Bigelow, 33 So. 794)

4.- Maximo Bation, policeman of Las Nieves, de-clared that at about 6:00 o'clock in the evening of October 22, 1963, he was on his way to the store of Alfonso Yu; upon reaching the store "there were men who followed me and aimed their pistols at my back and told me to lie down"; and "my face pressed against the sacks"; he cannot tell how long he was in that posi-tion; he knows the appellants; he did not see them at the store; he did not recognize the men who held him; he never reported to anyone that he had been at the store of Alfonso Yu, except to the lawyer of the de-fense.

Relying on the testimony, the appellants argue that, as the witness knows the faces of the appellants, and he did not see them at the scene of the crime, ergo, the appellants were not at the store of Alfonso Yu. The argument is fallacious. It is obvious that Bation could not have seen the appellants who were inside the store, because he was outside the store with his face pressed against the sacks. He did not have the oppor-tunity to see what was happening inside the store.

5.- Angela Otero, declared that at about 6:00 o'clock in the evening of October 22, 1963, she was in the store of Alfonso Yu; "there were persons outside the store of Alfonso Yu", and they held the latter by the hands; "Q.- After that what happened to Alfonso Yu? A.- I did not know because I ran away." x x x" Q.- Now, before you ran away, who were the persons who were outside the store of Alfonso Yu whom you know and saw? A.- I do not know those persons"; she did not see the accused on that day, at six o'clock in the evening; prior to October 22, 1963, she had been in Madamo only once.

On cross-examination, she said that in the eve-ning of March 23, 1964, she went to see Estanislao Cataluña in Mandamo and told him that she will testify in the case (witness testified the next day, March 24, 1964), although she did not know that there was a case pending in court; she never told anyone that she was in the store on the occasion of the robbery; she knows that it was 6:00 o'clock in the evening when she was in the store of Alfonso

Yu, because "A- When I arrived home I looked at the watch", and "the dial indicated six o'clock"; on October 22, 1963, she did not even know who were Teodulfo Veles, Venerando Veles and Nicolas Fontillas.

We find no reason to accord credence to the testimony of this witness. From the fact that she did not see the appellants at the scene of the crime, even assuming that she was there, it does not necessarily follow that the appellants were not at the scene of the crime. It is not surprising that the witness did not see the appellants inside the store on that occasion, because she did not even know the appellants; she never saw them before, she was outside the store, and when she saw that Alfonso Yu was held by the arm by the persons whom she did not recognize, she ran away. Her testimony gives the impression that she was a tutored witness.

Testifying in their own behalf, the appellants are in consensus in the affirmation that from 5:00 o'clock in the afternoon until midnight of October 22, 1963, they were in the house of Estanislao Cataluña slaughtering pig and pounding rice in preparation for a celebration that night - of thanksgiving for the good harvest that year; the testimonies of the witnesses of the prosecution that they were seen at the scene of the crime were lies, for the truth is, they were in the house of Cataluña; they were arrested by the PC on October 25, 1963 for investigation; they were asked about the robbery-killing in the store of Alfonso Yu, and they told the investigator they did not have anything to do with it, because they were in the house of Cataluña.

Estanislao Cataluña, married to Oria Veles, is the brother-in-law of Venerando Veles and Nicolas Veles, and Teodulfo Veles is the nephew of Venerando Veles. Cataluña declared that he knows the appellants because they were his tenants, each cultivating about a two-hectare portion of his land situated at Mandamo, Butuan City. In the afternoon of October 22, 1963, the appellants were in his house pounding rice. On cross-examination, however, he said: "Q.- Since when have you stayed in Mandamo? A.- Since 1964." Since the first time he stayed in Mandamo was in 1964, therefore, he was not in Mandamo in 1963, and the appellants could not have been in his house in Mandamo on October 22, 1963. Assuming, that the mention of "1964" was a mistake, and what he meant was "1963", still it is improbable that the appellants were in his house on October 22, 1963, because -

"Q.- When you stayed in Mandamo these accused were not yet with you at that time. Is that right?

A.- The first time I lived in Mandamo, they were not yet residing there."

So, neither in 1963 could the appellants have been in Cataluña's house. Correlating the foregoing answers with his last on cross-examination -

"Q.- Who were with you in the house at 5:00 o'clock in the afternoon?

A.- My family and my wife."

it is clearly deducible that the appellants, who were not members of the family of Cataluña were not in the latter's house on October 22, 1963. Also improbable and incredible are the testimonies of the appellants, confirmed by Cataluña, that the former were in the latter's house on October 22, 1963, slaughtering pig and pounding rice in preparation for a celebration that night - of thanksgiving for the good harvest that year, because, as admitted by Cataluña, that year he did not harvest palay due to flood.

"Q.- In 1963 harvest you did not count the number of cavans?

A.- There was no harvest in 1963 because there was flood." x x x

"Q.- In 1963, how many piculs of abaca did you harvest?

A.- I did not count.

Q.- But the harvest in 1963 was very small. Is that right?

A.- A little number only." x x x x.

"Q.- What was your harvest in camote plantation?

A.- The same. I harvested enough for our food consumption." x x x

"Q.- You said you planted coconut trees. How many nuts did you harvest?

"A.- Not yet, sir."

With the foregoing admissions of Cataluña, the claim, that under those circumstances he would still think of having a celebration of thanksgiving for the good harvest that year, when he did not have any harvest of palay at all, does not appeal to reason. Also, the appellants said that beside slaughtering pig, they were also pounding palay. This is strange. Cataluña declared that he knows Alfonso Yu because "A.- We used to go to his house (like milling our palay and corn)." Then it may be asked: Why did they have to pound palay that afternoon when there was the mill of Alfonso Yu where they used to grind their palay and corn? Was it because Cataluña had no available stock of rice to serve to his visitors in that celebration of thanksgiving? If so, then it is believable that the preparation for that celebration was an eleventh hour decision. This is to our mind, out of the ordinary.

Five more witnesses, Ricardo Aristan, Damian Cataluña, Guillermo Aninao, Estela Cagas and Aurea Cataluña, were presented to corroborate the alibi of the appellants. On cross-examination, however, their testimonies showed, let us take Guillermo Aninao, that the affirmations have no basis in fact. Thus: "Q.-Since (when) have you known the accused? A.- Since they were arrested by the PC (They were arrested on October 25, 1963)." Since he did not know the appellants on October 22, 1963, how could he be sure that they were in the house of Cataluña, even assuming that the witness was there? What was his interest for taking particular attention of the presence of the appellants and to make him remember that they were there when he did not even say that he had a conversation with them or something had happened to arouse his interest to make him remember?

With regard to Aurea Cataluña and Ester Cages, wife of Teodulfo Veles, it is enough to remember their relationship by blood and affinity with the appellants.

Upon the foregoing facts, two questions confront the Court in the solution of the case. First, has the prosecution's evidence established the guilt of the appellants beyond reasonable doubt? Second, has the defense of alibi been successfully proved by evidence which satisfy the Court of the truth thereof?

The commission of the robbery and the slaying of Alfonso Yu and Victor Yu thereof by the malefactors, are facts conclusively established by the evidence.

The testimonies of the witnesses of the prosecution appear to be straight-forward, plausible and consistent. It is true that in some respects they suffer from slight discrepancies in the details of the occurrence related by them. There can be no doubt, however, that they agree in the essential fact that the appellants were the perpetrators of the crime. The credit of a witness is tested when from a rigid cross-examination the general veracity of his testimony in chief is not impeached. The witnesses of the prosecution remained firm and unshaken in the case at bar notwithstanding a long and detailed cross-examination, and they corroborated each other in substantial details regarding the occurrence. There is reason to accord full credence to their testimonies because they had the opportunity for a better observation, they recognized the faces of the appellants who were not masked, and they identified the appellants in their affidavits and at the trial of the case.

On the other hand, the testimonies of the witnesses for the defense suffer from flaws, inconsistencies and improbabilities which have a cast serious doubt, in the mind of the trial court, as to their trustworthiness. The court's observation finds support in the evidence. The alibi set up by the appellants is sought to be corroborated by

witnesses bound by ties of consanguinity and affinity with the appellants. Thus, appellants Venerando Veles and Ni-colas Veles are the brothers-in-law of Estanislao Cataluña, and the other witnesses are bound by ties of friendship with the appellants. But more than this consideration, it has been demonstrated that even witnesses holding official positions, have shown a predisposition to distort the facts in their desire to help the appellants. Leonardo Cuvillar, for in-stance, who, at the time of giving his testimony, was the incumbent chief of police of Butuan City, tried to make the court believe on his direct testimony that the appellants were not, and could not have be-en, at the scene of the crime; but, on cross-exami-nation, he had to tell the truth, impeaching his previous testimony, and admitting that he did not see the appellants at the scene of the crime, be-cause when he arrived at the store where the crime was committed, the perpetrators of the crime had al-ready left the place.

The same observation may be made as to the wit-ness Juanito Sabio. In his desire to help the appel-lants, he tried to make the court believe, contrary to the truth, that the witnesses of the prosecution could not identify the accused at the confrontation on October 27, 1963, and to give a semblance of relia-bility to his affirmation, he read an entry purporting to be from an official record of the provincial jail, but when he was asked by the private prosecutor to pro-duce the entry, he could only show a personal diary and not an official record or blotter which is kept in the provincial jail where entries of such kind, the visit of witnesses in jail to identify certain accused, should be entered. As it has been discussed herein-above, the entry in the personal diary of the witness is incompetent and has no probative value as evidence for failure to lay down the prerequisite basis for its admission. The motivation for making the entry in his private diary is apparent. Considering that the witnesses of the prosecution had really identified the appellants as the perpetrators of the crime, as the evidence on the record have shown, the falsity of an entry in the official record or blotter to the con-trary could have been easily discovered. On the other hand, with an entry in his private diary, witness was free to produce it or not as his interest dictates.

With reference to the testimonies of the appel-lants which was sought to be confirmed by Estanislao Cataluña, it has been shown that the account of the whereabouts of the appellants at the time of the com-mission of the crime, is unbelievable.

The weight to be given to the testimony of wit-nesses possessing integrity and intelligence, as are the witnesses of the prosecution in this case, who have no motive to fabricate the facts and to foist a very serious crime against the appellants, depends chiefly upon their observation and means of knowing the facts testified to by them. Other things being equal, in case of conflict of testimony, the great weight should be given to the testimony of those wit-nesses whose position gave them the best opportunity for observation. (Moore on Facts, p. 734.) The testimony of Judge Zoleta is negatively pregnant; the tes-timony of Leonardo Cuvillar, Juanito Sabio, Maximo Bation and Angela Otero are pregnant with inconsist-encies and improbabilities, and at times, they border on distortion of facts. On the other hand, the testi-monies of the witnesses of the prosecution are direct, clear and positive, and they had the best opportunity for observation. Possibility of a higher degree of attention and interest gives rise to a presumption of considerable force that a person's recollection of his own acts and of the attendant circumstances is more definite and trustworthy than another person's recollection of it who had no special interest than that of an observer. Apart from comparative tenacity of memory, the actor usually knows better than any one else what he did or did not do, or saw, and his testi-mony is generally entitled to superior weight on that account. (Moore on Facts, p. 870) There are some facts of which the importance, with regard to the in-dividual, is so great, that unless on the supposition of an almost total decay of the faculty, it will not be credible that the picture in them should have ef-faced out of his memory by any length of time. So where a man and a wife were dragged from their bed at nighttime, and cruelly tortured by robbers partly masked (in our case, the robbers were not masked), and heard the voices of their torturers, observed their figures, their movements, and the manner and pe-culiarity of each of them, must have been literally burned into the memory of their victims and enable the

latter to identify them subsequently with confidence. (Moore on Facts, p. 890)

There is, therefore, no convincing, corroborative evidence adduced, to establish the defense of alibi. Under these circumstances, there is no reason, by any means, to allow the defense of alibi to prevail over the clear and positive proof as to the identification of the appellants and their participation of the crime, as testified to by the witnesses of the prosecution who saw and observed the faces of the appellants who were not masked, from vantage positions.

The trial court, with its superior facilities for weighing the conflict in the testimonies of witnesses, accorded credence to witnesses of the prosecution, and this Court will not interfere with the conclusion of the trial court which saw them in the act of testifying, observed their manners and demeanors as witnesses, unless it is satisfactorily shown that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and influence sufficient to induce belief to warrant a reversal of the decision.

In the case at bar, the facts brought out and discussed in the brief of the appellants have not shown that the trial court committed such error; on the contrary, We are persuaded upon the evidence that the guilt of the appellants has been proven beyond reasonable doubt.

The conspiracy among the appellants in the commission of the crime, is evident upon the facts as proven. Their acts, collectively and individually executed, have demonstrated the existence of a common design towards the accomplishment of the same unlawful purpose and objective. The killing of Alfonso Yu and Victor Yu, bears a direct relation and intimate connection between the robbery and the killing, for the killing happened during and on the occasion of the robbery. Whether the latter be prior or subsequent to the former, for the element of conspiracy having been proven, it is unquestionable that the complex crime of robbery with homicide has been committed, and all the appellants are liable therefor.

There being no mitigating nor aggravating circumstance present and the decision is in accordance with the facts and the law, the same is affirmed, in all respects, with proportionate costs against the appellants.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

Concepcion, C.J., on leave.

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