

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO CAEL ET AL., DEFENDANTS AND APPELLANTS.***G. R. Nos. L-2961-2964. January 31, 1951*

Ponente: PARAS, J.

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Maximo Manzano, Sabino Barlaan, Pedro Cael, Juan Corpuz, Andres Bedana and Francisco Besares were charged in the Court of First Instance of Pangasinan in two informations with robbery in band, in one information with murder, and in another information with frustrated murder. The charges against Francisco Besares were dismissed on petition of the provincial fiscal, because he was utilized as a prosecution witness. After trial, and in a single decision of the Court of First Instance of Pangasinan, Pedro Cael, Juan Corpuz and Andres Bedana were acquitted of the charges for murder and frustrated murder, but were found guilty of two charges for robbery under article 294, paragraph 5, of the Revised Penal Code, as amended by Republic Act No. 18, and sentenced in each case to an indeterminate penalty of from 6 months of arresto mayor to 4 years, 2 months and 1 day of prision correccional, with legal accessory penalties, and to indemnify proportionately the offended party in each case in the sum of P59, plus the costs. Maximo Manzano and Sabino Barlaan were found guilty of the two charges for murder and frustrated murder, and were each sentenced, for murder, to the penalty of reclusion perpetua, with legal accessory penalties, and to indemnify jointly and severally the heirs of the deceased Apolonio Consolacion in the amount of P2,000, plus the costs, and, for frustrated murder, to suffer 10 years of imprisonment. Maximo Manzano and Sabino Barlaan were also found guilty of the two charges for robbery, but no penalty was actually imposed by the trial court for the reason that the total penalty which would have been imposed on them would exceed 40 years.

Pedro Cael, Juan Corpuz and Andres Bedana have appealed from the judgment convicting them in the two robbery cases. Maximo Manzano and Sabino Barlaan have appealed from the judgment convicting them of the crimes of murder and frustrated murder.

According to the evidence for the prosecution, at about nine o'clock in the evening of March 25, 1948, Maximo Manzano, Sabino Barlaan, Pedro Cael, Juan Corpuz, Andres Bedana, together with Francisco Besares, went to the house of the spouses Marcelino Mendarus and Mercedes Bermudez, located in the barrio of San Pedro, municipality of San Quintin, Province of Pangasinan. Maximo Manzano and Sabino Barlaan proceeded to enter the house, while their companions remained in the yard. Thereupon, Maximo Manzano and Sabino Barlaan, threatening the inmates with their guns and after tying Marcelino Mendarus, took from the latter's trunk two pieces of jewelry valued at P35 and cash in the amount of P12. The group then left, taking along Marcelino Mendarus, and proceeded to the neighboring house of Esberta Canaway. Maximo Manzano and Sabino Barlaan, together with Marcelino Mendarus, entered the house, while their companions stayed in the yard. Esberta Canaway was asked by Maximo Manzano and Sabino Barlaan to give money, and on failure to do so, the two opened her trunk and took therefrom a man's jacket worth P12. Maximo Manzano and Sabino Barlaan brought Marcelino Mendarus back to his house, whereupon they and their companions went to another neighboring house

of the spouses Apolonio Consolacion and Potenciana Laureano. Maximo Manzano and Sabino Barlaan thereupon ordered the male inmates of the house to come down, and upon failing to do so, the two went up the house and then and there fired shots at the inmates, hitting Apolonio Consolacion and Potenciana Laureano. Apoionio Consolacion died shortly thereafter, while Potenciana Laureano was saved by timely medical assistance.

We are convinced, after a thorough review of the record, that appellants Maximo Manzano and Sabino Barlaan were rightly convicted. They have been positively identified by the spouses Marcelino Mendarus and Mercedes Bermudez and by Esberta Canaway and her son Jesus Clarin as the authors of the robbery perpetrated in their respective houses. They have also been identified by Elena Consolacion, daughter of Apolonio Consolacion and Potenciana Laureano, as the authors of the shots fired at her father and mother. Moreover, Francisco Besares, one of their companions on the occasion in question, was a prosecution witness and gave a version corroborative of the testimony of their victims. The defense of alibi set up by appellants Maximo Manzano and Sabino Barlaan, namely, that Man-zano was on duty as policeman in the municipal building, and Barlaan was in the house of his father-in-law during the night in question, cannot prevail over the positive testimony of eyewitnesses, especially in the absence of any showing that they had sufficient motive for incriminating said appellants. Upon the other hand, defense witness Francisco Juliano testified that, at least up to 2 a.m. on March 26, 1948, appellant Manzano had not appeared at the municipal building.

Appellants Maximo Manzano and Sabino Barlaan were properly convicted of murder for the killing of Apolonio Consolacion and of frustrated murder for the shooting and wounding of Potenciana Laureano, it being established by the evidence that no sooner had they entered the house of said spouses than they began firing shots at them. The attack was so sudden and unexpected as to be properly qualified by treachery in which nighttime is absorbed. The aggravating circumstance of dwelling was, however, present.

We have also no doubt that appellants Pedro Cael, Juan Corpuz and Andres Bedana were correctly convicted by the trial court in the two cases for robbery. Prosecution witnesses Francisco Besares, Mercedes Bermudez and Elena Consolacion had identified said appellants as the companions of Maximo Manzano and Sabino Barlaan, and as having posted themselves in the yards of and under the houses of the victims. The testimony of these witnesses had not been controverted by appellants Pedro Cael, Juan Corpuz and Andres Bedafia, in addition to the fact that said appellants, after Maximo Manzano and Sabino Barlaan came down from the first house with Marcelino Mendarus whose hands were tied, proceeded successively to the house of Esberta Canaway and to the house of the spouses Apolonio Consolacion and Potenciana Laureano, instead of withdrawing, if they really had no criminal connection, from the scene while Maximo Manzano and Sabino Barlaan were yet in the house of Marcelino Mendarus and Mercedes Bermudez busy in their mission. The aggravating circumstance of nighttime was present in the commission of the two crimes of robbery, without any mitigating circumstance.

There being one aggravating circumstance, without any mitigating circumstance to offset it, the proper penalty to be imposed upon appellants Maximo Manzano and Sabino Barlaan for the crime of murder is death, but for lack of necessary vote, they are hereby sentenced only to the penalty of reclusion perpetua. The indemnity which they should pay to the heirs of Apolonio Consolacion is increased to six thousand pesos. The crime of frustrated murder is penalized by prision mayor in its maximum degree to reclusion temporal in its medium degree. In view of the aggravating circumstance of dwelling, without any mitigating circumstance, the maximum period should be imposed, or from 14 years, 8 months and 1 day to 17 years and 4 months. Pursuant to the Indeterminate Sentence Law, appellants Maximo Manzano and Sabino Barlaan are sentenced, for the crime of frustrated murder, to an indeterminate penalty of from 8 years and 1 day, prision mayor, to 14 years, 8 months and 1 day, reclusion temporal.

The penalty for the crime of robbery committed in each of the two cases herein is prision correccional in its

maximum period to prision mayor in its medium period, or from 4 years, 2 months and 1 day to 10 years. In accordance with the recommendation of the Solicitor General, appellants Pedro Cael, Juan Corpuz and Andres Bedana are sentenced, for each of the two crimes of robbery, to an indeterminate penalty of from 6 months, arresto mayor, to 8 years and 1 day, prision mayor, and the indemnities to be paid by them are reduced to P47 in criminal case No. 17854, and P12 in criminal case No. 18066.

Modified as above indicated, the appealed judgment is affirmed in all other respects. So ordered, with costs against the appellants.

Moran, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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