

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME CAPITO @ JIMMY, ET AL., DEFENDANTS, TOMAS SUPAT, CELESTINO COLLADO @ DODONG, AND CESAR MARATA @ LOLOY, DEFENDANTS-A...

G.R. No. L-24466. March 19, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Jaime Capito @ Jimmy, Celestino Collado @ Dodong, Tomas Supat, Cesar Marata @ Loloy, Icot Lacaya, Leonardo Abaa, and two John Does were accused of the crime of robbery with homicide with the attendant aggravating circumstances of superior strength, nocturnity and dwelling, and recidivism with respect to Tomas Supat and Celestino Collado, before the Court of First Instance of Zamboanga del Norte.

The trial proceeded only against Jaime Capito, Celestino Collado, Tomas Supat and Cesar Marata because Icot Lacaya and Leonardo Abaa were still at large.

After trial, the court rendered decision acquitting Jaime Capito on reasonable doubt, and convicting Celestino Collado, Tomas Supat and Cesar Marata of the crime charged, and sentenced each to reclusion perpetua, to indemnify, jointly and severally, the heirs of the victim, Hadji Mohamad Nol Akil, in the amounts stated in the decision in concept of damages.

Celestino Collado, Tomas Supat and Cesar Marata appealed from the decision.

The finding of facts made by the trial court with reference to the commission of the crime and the circumstances surrounding it, except the sufficiency of the evidence relating to appellants' identity as the perpetrators of the crime, are not disputed. In fact, the appellants have adopted as their own, and have reproduced in their brief, as statement of the facts, the findings of the trial court in that respect; they assail, however, the conclusion of the court that the evidence has established beyond reasonable doubt the identity of the appellants as the perpetrators of the crime, and claiming that their defense of alibi has been sufficiently proven, they pray for their acquittal.

The crime of robbery with homicide charged against the appellants was committed on February 20, 1963, in barrio Polandoc, municipality of Sindangan, Zamboanga del Norte. The victim was Hadji Mohamad Nol Akil, hereinafter referred to as Hadji Akil for short.

The facts of the case are as follows:

Testimony of Amina Sapihi. - For many years prior to February 20, 1963, the spouses Hadji Akil and Amina Sapihi were engaged in the farming of paddy and corn, beside attending to their coconut plantation. After every harvest, they placed the money proceeds from the products of their farm in a trunk for safekeeping. At about midnight of February 20, 1963, the spouses, together with their children Abdul Salam, Mohamad Akil, Fatima, Latip, Susan, Haron and Juanita, and their two grandchildren were in the house, situated in barrio Polandoc,

municipality of Sindangan, Zamboanga del Norte. With the exception of Amina Sa-pihi, who was awake preparing her chewing buyo, the rest of the members of the family were fast asleep. There were three big kerosene lamps that lighted the house, one was hanging near the door of the room occupied by Hadji Akil, another was in the room of Fatima, and the other in the sale where Abdul Salem was sleeping. The floor area of each room was about 3 x 5 sq. meters. The main door of the house was closed but not locked. Soon, Amina heard a truck stopped near the house. She did not bother to look out. All of a sudden, two persons entered the house and approached Amina. Amina recognized them, although she did not know their names, because their faces were not covered with masks, one of them, whom she pointed in court, was Jaime Capito, and the other, whom she also pointed in court, was Tomas Supat. She knew Capito because he was a companion of Samat, a son of Hadji Akil, working on the national road in Polandoc; she knew Tomas Supat because a week before the robbery, Supat came to their house offering to sell firearm to Hadji Akil, but the latter declined, tarried in the house and took his meal on that occasion. The man (Capito) asked Amina where her husband was. Amina pointed to the room where her husband was sleeping. Both entered the room, and the man (Capito) lifted the blanket which covered Hadji Akil. The latter was awakened and stood up. Suddenly, the two men delivered blows on Hadji Akil. A struggle ensued. Amina proceeded to the room where Fatima and Latip were sleeping to get help. Inside the room, she saw Celestino Collado and Cesar Marata hogtying Latip, Haron and Fatima. She withdrew and returned to the room of her husband. The struggle was still going on. She saw the man (Capito) holding the hands of Hadji Akil, while the other (Supat) fired one shot in the air, followed by two more shots at the body of Hadji Akil. The latter fell to the floor. Instinctively, Amina ran to the room of Fatima, but she was held by the hand by a man with a knife in his hand, whom she pointed in court to be Celestino Collado. She recognized the face of Collado because when he took the lamp, his face was exposed to the brightness of the light. Then Collado tied her hands, warning her not to shout, or they will all be killed.

The robbers then ransacked the house. A big trunk belonging to Fatima and two other smaller trunks were forcibly opened. They took and carried away money in paper bills of undetermined denomination, contained in bags made of fabrics, rings, ear-rings, bracelets and gold chains, worth P840.00; one .45 caliber pistol, Remington, SN-830873 worth P300.00; 12 gauge shotgun, Winchester, SN-618162, worth P200.00; and other personal effects.

After the robbers had left the house, Fatima untied Amina and Latip. Amina repaired to the room of her husband, found him covered with the mat, already dead.

The next day, the incident was reported to the local authorities who immediately started an investigation. The cadaver of Hadji Akil which appeared to be well-built (see picture, Exhibit C), was examined by Dr. Sevellano Quiachon, health officer of Sindangan, Zamboanga del Norte, and found the body in rigor mortis. He prepared a necropsy report, Exhibits A and A-1, and his post-mortem findings were as follows:

“1. Wound, incised, 4 cm. x 1, cm. With clean cut borders, located above the eye-brow.

“2. Wound, gunshot, thru and thru, circular in outline 1 cm. in diameter, edges inverted with contused-abraded collar and an area of blackening around the wound, located at the left hypochondriac region, 5 cm. below the left nipple, directed inward, downward and posteriorly perforating part of the heart, left lung, diaphragm, stomach, intestines and right kidney, with exit, slit-like in outline, at the right infra-scapular area, 12 cm. above the right anterior superior iliac spine. (See sketch.)

“3. Wound, gunshot, thru and thru, circular in outline, 1 cm. in diameter, edges inverted with contused-abraded collar and an area of blackening around the wound located at the left lumbar region, 6 cm. above the left anterior superior iliac spine, directed inward and posteriorly perforating part of descending colon and left kidney, with exit, slit-like in outline, at left portion of infra-scapular area, 22 cm. above the left anterior

pos-terior iliac spine. (See sketch.)

"CAUSE OF DEATH:

"Hemorrhage, internal and shock, secondary to gunshot wounds, thru and thru, perforat-ing the heart and left abdomen. (Exhibit A)"

Testimony of Abdul Salam Akil. - On the night of February 20, 1963, there were three big lighted wick lamps inside the house. While he was asleep, he heard three gunshots. He stood up and dashed to the main door, but he was met at the door by a masked man with a knife pointed at him. The man kicked him, but he was able to get hold of the foot of the man, and the latter fell to the floor, face upward. As he stooped to choke the fallen man, the latter yelled - "Loloy, help", and Loloy, who was also masked, struck Abdul Salam Akil with the handle of a pistol on the left side of his head, causing him injuries which required medi-cal treatment for a period of four to six days. (Ex-hibit F) Loloy and the other man dragged Abdul towards the room of Fatima, and as he was struggling, the mask of Loloy dropped to this neck, and Abdul recognized him to be Cesar Marata. He knew Cesar Marata because they used to play basketball in Sindangan on opposite camps. While he was being dragged, he saw other persons in the house. Once inside the room of Fatima, his hands were tied. The five persons ransacked the trunks in the room. Soon, he heard a whistle from outside the house, and the robbers departed, warning them not to shout, or they will be killed.

Testimony of Latip Halid. - He corroborated Amina and Abdul Salam Akil as to the occurrence inside the house. He declared that he was able to recognize Mara-ta because the lighted lamp in the room of Fatima was bright, and he was only a meter away from Marata. He knew Marata because the latter's house in Lipakan was only a kilometer distance from his house; Marata has a mole on his face, and a gold tooth, which he often noticed when together they rode in the bus.

Testimony of Fatima Akil. - At about midnight, she was awakened when she heard three gunshots. She saw two persons, who were not masked enter her room. She recognized them, although she did not know their names, because on previous occasions, they had been in their house, accompanied by her brother Abdul Samal, one of them a "big man", whom she pointed in court to be Jaime Capito, and the other a "small man", whom she pointed in court to be Celestino Collado.

Samat Akil declared that he knew Jaime Capito because together they worked in the construction of the national road in Polandoc, and the latter used to go to the house of his father to drink tuba.

Testimony of Mohamad Akil - He declared that he was awakened by three gunshots, and he saw two unmask-ed men, about two meters away from him, one of them "big", he did not know his name, but pointed to him in court to be Jaime Capito, and the other "small man", he did not know also his name, but pointed to him in court to be Tomas Supat. He recognized the "small man", because five days before the incident at bar, he met him alone on the road to Rizon.

The evidence is not disputed that four of the in-mates in the house had been tied with ropes. The pieces of rope were recovered the day after the rob-bery (exhibits G to G-7). Alejandro Bayo, a public school teacher in Lipakan, a friend of appellant Marata, declared that the rope recovered by the police, was the rope used for the flag pole in the public school of Lipakan. The school building was about two kilometers from the house of appellant Marata. He de-clared that about 7:00 o'clock in the evening of Feb-ruary 20, 1963, he heard the barking of dogs in the premises of the school. He went down and hid in the shop building of the school from which vantage place, he saw five persons whom he did not recognize, around the flag pole. Mamerto Baldomar declared that about 5:00 o'clock in the afternoon of February 20, 1963, while he was making copra, he saw appellant Marata, whom he already knew before that date, with two com-panions not known to him, talking among

themselves. He overheard Marata say to his companions that they will go to the school after the pupils have been dismissed from their classes. Marata denied the imputation of Baldomar; however, he admitted that he knew Baldomar and knows not of any reason why the latter would declare in the manner he did.

Appellants do not dispute the fact that no less than two prosecution witnesses have declared to have recognized and identified each of the appellants on the night in question, this they so admit in their brief, and we quote:

"Appellant Tomas Supat - of the aforementioned prosecution witnesses, only Amina Sapihi, wife of Hadji Nol Akil, and her son Mohamad Akil, allegedly recognized Tomas Supat." (p. 12 brief.)

"Appellant Celestino Collado - only prosecution witnesses Amina Sapihi and Fatima Akil, mother and daughter, have testified that appellant Celestino Collado was, in effect, among the persons who participated in the robbery-killing at the house of the victim Hadji Mohamad Nol Akil in the evening of February 20, 1962." (p. 15, brief.)

"Appellant Cesar Marata - among the persons in the house whereat the robbery-killing took place, only Abdul Salam and Latip Halid (also Amina Sapihi), son and son-in-law, respectively, of the spouses Hadji Mohamad Nol Akil and Amina Sapihi, claimed to have recognized Cesar Marata as one of the persons who took part in the commission of the aforesaid crime." (p. 17, brief.)

Appellants contend, however, that the testimonies of the prosecution witnesses with reference to their identity have not shown beyond reasonable doubt that they were the ones who participated in the commission of the crime.

Case against appellant Tomas Supat. - Counsel for the appellant argues that the testimony of Amina Sapihi is "highly improbable and inconsistent with human experience" because at the time of the robbery "she (Amina) did not know Tomas Supat", ignoring, however, what the witness had declared that "about a week before the incident in question, Tomas Supat came to their house, was given food, and had conversation with the victim to whom he offered to sell firearm", counsel reasoning thus: "It could only be, however, that she (Amina Sapihi) was not able to get so close a look at him at that moment as to enable her to negotiate (recognize) him on that evening, considering that, that was the first time (when Supat asked for food and offered to sell firearm, granting this to be true) when she first met him," and taking into account that the "three lamps by their nature could not brightly illumined the house", and "Amina Sapihi was sixty-six years old woman who by that age had blurred vision, especially during night", that Amina's testimony as to the identity of Supat, is unreliable. And with respect to the testimony of Mohamad Akil, this is what counsel say: "It is more in the natural course of things that two strangers meeting on a road casually would not recognize each other unless there is any reason for so doing," forgetting, however, what the witness had declared that this "small man", pointing to Supat, was the one who dragged him into the room of Fatima Akil where there was a lighted kerosene lamp, and he (Mohamad) recognized the fact of Supat who was not wearing a mask.

It will thus be observed that the impeachment of the credibility of the prosecution witnesses against Supat is merely on conjecture. There is no showing that the eye-sight of Amina was either blurred, weak or defective, and taking account of the undisputed fact that the rooms were well lighted, the size of each room was 3 x 5 square meters, the appellant Supat was not wearing mask and about a week before the robbery, Supat had been in the house of the victim, partook of the meal in the house, and had conversation with the deceased offering firearm for sale, the conjecture pales to nothingness in the light of so clear and positive evidence as to the identification of Tomas Supat. If Amina did not really recognize Supat, there is no reason or motive why the former would foist a grave accusation against the latter and pinpointing Supat as one of the robbers. The same observation may be made with respect to the attack on the credibility of Mohamad Akil.

The testimonies of the prosecution witnesses de-serve full faith and credit, considering that the defense of alibi interposed by the appellant Supat, as we shall presently show, is unbelievable.

To sustain the plea of alibi, appellant Supat pre-sented his wife, Florentina Supat, policeman Marcelo Gimang, and Reynaldo Sator.

Tomas Supat denied having participated in the commission of the crime. He claimed that from noontime on February 20, 1963, until morning of the next day, he, together with his wife Florentina Supat and their small child, was in Dipolog.

Florentina Supat declared that they have seven children, the youngest was one year old. At noontime on February 20, 1963, her husband and herself with their youngest child, left their house at Bacongan, leaving their six children, to go to the house of her father-in-law in Dipolog. They took a bus and arrived at about 3:00 o'clock in the afternoon in Dipolog. Be-ing asked why they had to go to Dipolog, she said that a certain Magdaleno Cuenca who lives in Dipolog, owed her husband P300.00, the unpaid balance of P2,000.00, the value of a car which Supat sold to Cuenca (exhibit 7), and Cuenca promised to pay P50.00 on that day, so they had to go to Dipolog to collect that amount; ano-ther reason given was, because they were building a house in Bacongan "x x x I was the one who urged him (husband) to come with me to Dipolog because I did not know what is the measurement of the nails he will buy." Florentina said that Cuenca paid P50.00 that day. "Q.- In effect, did you receive the P50.00 from Magdaleno Cuenca? A.- Yes, sir." Magdaleno Cuenca, was not presented as witness. On this point, the trial court said:

"But this document, Exhibit 7, refutes Supat's claim, for it po-sitively states that he received from Cuenca the P2,000.00 therein specified in cash on the date of its execution. Supat cannot re-pudiate with mere words his writ-ten admission in Exhibit 7 that he had been paid in cash by Cuenca upon the execution thereof."

Assuming, on the other hand, that Cuenca promised to pay P50.00 on February 20, 1963, following the argu-ment of appellant, it is "highly improbable and inconsistent with human experience" that the wife bringing with her their youngest child, leaving their six child-ren alone in the house, and having to travel three hours to reach Dipolog, that she should have to accom-pany her husband just to collect the small sum of P50.00, when her husband, who was the party who sold the car, could very well do the errand; what is more incredible is her testimony that because her husband did not know the measurement of the nails he will buy, she had to urge him to go with her to Dipolog just for that purpose. It is a matter of common knowledge that nails are of the standard size and length which a child could buy by just mentioning its inch-length.

The attempt of the wife to distort the truth just to be able to corroborate the alibi of her husband may be gleaned from the following testimony given by her.

"Q. - Now, when were you asked to be a witness by your husband? A.- When my husband was arrested that was the time when I looked for the persons who were in the house asking them to testify. Q.- You volunteered to testify? A.- When I was looking for Tomas when I was not able to go home on Good Friday, that was the time I looked for the persons in the house to ask them to test-ify. Q.- Did you not volunteer the information that you were with your husband Tomas Supat in Dipolog on Feb-ruary 20, 1963? A.- I did not. Q.- So when were you asked to be a witness for the first time? A.- I was already informed by our lawyer that I can testify be-cause I was with my husband that day. Q.- When this case was called for trial, were you already asked to be a witness in this case? A.- Yes, sir. Q.- But your name was not mentioned as one of the witnesses when your counsel was asked to name the persons to be a wit-ness? A.- I was only informed in the month of July that I will be one of the witnesses. Q.- You mean to say this month of July, 1964? A.- Yes, sir. Q.- So, until the month of July 1964, you did not know that you are going to be a witness in this case? A.- We have not known that I will be a witness in this case."

The next witness presented to corroborate the alibi of appellant Supat was Marcelo Gimang, policeman of Sin-dangan, who declared that at noon-time on February 20, 1963, he rode in a ZAMTRANCO bus bound for Dipolog, and while he was in the bus, he noticed on the road a parked Sevilla truck with engine trouble, with many passengers on board, and one among them was Tomas Supat. That Supat transferred to his bus, and they arrived in Dipolog at 3:00 o'clock in the afternoon, and did not see Supat anymore. That at 10:00 o'clock in the morning of the next day, February 21, he saw Supat standing near San Vicente drug store in Dipolog.

Of the testimony of Gimang, the trial court said: "On the other hand, Gimang did not say that he saw Supat's wife transfer to the other truck when Supat transferred to it. If only Supat had changed bus, obviously, he and his wife and their child could not have arrived in Dipolog at the same time, but both Supat and his wife declared they arrived in Dipolog with their child at the same time.

"But, granting for the sake of argument, the truth of Gimang's testimony, yet it is a fact that the robbery and killing of Hadji Mohamad Nol Akil took place at mid-night of February 20, 1963, and Gimang merely said that he saw Supat in Dipolog at 3:00 o'clock in the after-noon of that day and at 10:00 o'clock in the morning of February 21, 1963. There is, therefore, the probability that after 3:00 o'clock in the afternoon of February 20, 1963, Supat went to Polandoc in time to be in the house thereat of Nano Akil and after the commission of the offense, subject of the instant case, he returned to Dipolog with still sufficient time to rest, and then showed up near Botica San Vicente at 10:00 o'clock in the morning of February 21, 1963, to be seen by Gimang. The distance from Dipolog to Polandoc is a little over 100 kilometers. Between the two places, the road is good and wide enough for two motor vehicles, coming from the opposite sides, to pass by each other; it has asphalted portions in Katipunan, Manukan and Sindangan. It can be negotiated in less than 3 hours by car or by bus running continuously even at moderate speed."

It is of record that Tomas Supat was convicted of the crime of robbery in a decision dated April 6, 1956 in Criminal Case No. 2052 of the Court of First Instance of Zamboanga del Norte. His conviction is not denied by him.

Case against Appellant Celestino Collado. - Counsel for this appellant argues that the testimonies of Amina Sapihi and Fatima Akil, both having declared that they recognized the herein appellant as one of the robbers on the night in question, are unreliable. The credibility of Amina Sapihi is assailed in this wise: "Amina Sapihi cannot be relied upon in her averments that she recognized the man who held her and tied her and then took the lamp and brought it to the room of Fatima to be Celestino Collado because she did not yet know Celestino Collado before the subject incident, and it is more in accord with the natural course of things that she could not have well formed and retained a picture of the face of the man she pointed in court as Celestino Collado, taking into account that her sight of the man carrying the lamp could only be fleeting, that the face of a man hit by the rays of a kerosene lamp at night would become shiny and his face would look different at daytime; that she, being a woman of sixty-six years old, surely had a failing eye-sight, and that she could be mistaken in making her identification of Celestino Collado for the events attendant to the robbery-killing in question happened very fast and this could possibly affect her perception adversely." (pp. 15-16, brief) Of the credibility of Fatima Akil, because this witness admitted that Jaime Capito pointed a pistol at her and asked where the money and the pistol of her father were being kept, counsel argues thus:

"Naturally, her attention was then focused on the big man (Capito) and she could not have looked well at the small man (Collado). Her identification, therefore, of the small man as Celestino Collado is unreliable, especially in the light of her declaration that she noticed that the small man also went to their house before the incident (p. 29, Markela), whereas all of those also living in the said house never declared that that small man (whom she allegedly recognized as Celestino Collado) went to their house before the subject robbery-killing."

It will thus be observed that the force of the argument is also based on conjecture, a *modus argumenti* that was also resorted to in attempting to destroy the credibility of the witnesses for the prosecution against the appellant Tomas Supat. In this respect, may We add to what already has been said, that the victims of atrocities have a peculiar aptness and capability of identifying their tormentors goaded by a feeling of anger, hatred and suffering. In the case at bar, considering the established fact that the house was well lighted, appellant Collado was not wearing mask, and the witnesses were near to the robbers, and in the case of witness Fatima Akil, she said that she recognized appellant Collado because at one time she saw said appellant in the house of her father; under those circumstances the identification of Celestino Collado can not be doubted. The contention that because other prosecution witnesses did not declare that they saw Collado on that occasion when the latter was in the house of the victim, and at which time he was seen by Fatima Akil, appellant argues that Fatima Akil should not be believed. The contention is so devoid of reason and logic that it deserves little consideration. Let it be remembered that the opportunity of the other members of the household to see or not to have seen a visitor in the house, depended much on so many factors which, most probably, were not present to them at the time, for they may not have been in the house then, which opportunity, however, was available only to Fatima Akil.

Appellant Celestino Collado declared that in the morning of February 20, 1963, he was in his house in Lopoc, Labason; in the afternoon, he was feeding hogs and chickens; his wife is Elsa Parillo, daughter of Inocencio Parillo, and they have five children; his house was only 5 meters away from the house of his father-in-law; at 9:00 o'clock in the evening, he was in his house taking care of his sick child; during that evening, the persons who were in his house were his wife, his parents-in-law, Apolonio Parillo, the uncle of his wife, and himself; at about 9:00 o'clock in the evening, his father-in-law called for Antonio Maglente to request the latter to call for a doctor in town; Maglente arrived, however, the doctor was not called anymore, because the sick child got well; Maglente went home at 1:00 o'clock; he (Celestino) did not leave the house the whole evening; he was arrested on February 26, 1963; at 6:00 o'clock in the morning of February 27, 1963, he, with other prisoners, were lined-up, and were made to put on their hats and masks covering their faces leaving an opening for the eyes, and then the chief of police called the muslim women, and were asked if they recognized anyone of us; the muslim women took time before they could answer, and then said: "that we were the robbers."

Antonio Maglente was presented to corroborate appellant Collado's alibi. He declared that he was 40 years old, with five children, and his house was near the house of appellant Collado. On February 20, 1963, he was in the house of Inocencio Parillo, father-in-law of appellant Collado, doing some carpentry work. At 8:00 o'clock in the evening of that day, he was called to the house of appellant Collado; he responded to the call, and found the child, of appellant Collado, sick; he went home at about 11:00 o'clock that evening; two hours later, he was again called to the house of appellant Collado to go to the poblacion to call for a doctor, but the doctor was not called anymore because after the first aid treatment, the child got well; this time, he left the house of appellant at 1:00 o'clock in the morning of February 21, 1963.

On cross-examination, he said that the name of his wife is Cristina Parillo, and he believes she is related to appellant Collado's father-in-law whose name is Inocencio Parillo. From morning of that day, February 20, until 11:30 o'clock in the evening, he was in the house of Inocencio Parillo.

"Q.- You mean that from the early morning of February 20, 1963, up to 11:00 o'clock in the evening, you did not go home to see your family?

A.- I returned home.

Q.- What time?

A.- About 11:30 in the evening."

(t.s.n. p. 60, Markela)

Being asked why he was in the house of appellant Collado:

"A.- I was requested to boil water needed in the treatment of the sick child."

and although during that whole evening, as declared by appellant Collado, his visitors were his parents-in-law, Apolonio Parillo, uncle of appellant's wife, and him-self, yet Maglente stayed in the house until 11:30 in the evening just to boil water for the sick child. Being asked what was the name of the sick child:

"A.- I do not know.

Q.- Up to this time (January 17, 1964, date of trial) you do not know the name of that sick child of Celestino Collado?

A.- I do not know." (t.s.n. p. 60 Markela.)

Being further asked why he did not go home after his work, instead stayed in the house of appellant Collado until 11:00 or 11:30 o'clock in the evening:

"A.- I did not go home because we were telling stories and after that, I helped them attend to the sick child." (t.s.n. p. 62, Markela.)

In connection with the testimonies of appellant Collado and Maglente, the trial court said:

"The alibi of accused Collado cannot stand scrutiny. x x x Collado declared that at 9:00 o'clock in the evening of February 20, 1963, he was in the house, and the persons present thereat were his mother-in-law, his father-in-law, his wife, and Apolonio Parillo, the uncle of his wife. They were listening to a drama broadcast in the ra-dio and at the same time, they were also helping him take care of his sick child; that at about midnight, he requested his fa-ther-in-law to go to the house of Antonio Maglente to tell him to call a doctor in the town, but he was not able to do so be-cause the child got well after he and his family gave a first aid treatment. x x x."

"There is nothing in Colla-do's statement, Exhibit 3-Colla-do, that Antonio Maglente was ever in his house at any time in the evening of February 20, 1963, to do any errand or work for his sick child. On the witness chair, Collado declared that it was only at about midnight of that day that he sent for Antonio Maglente, through his father-in-law, to fetch a doctor to treat his sick child, Tessi, contrary to the testimony of Maglente that he went to Collado's house twice; first, at about 9:00 o'clock, and then, at about 11:30 o'clock in the eve-ning in the same day."

But, Maglente cannot be believed:

"Q.- Notwithstanding the fact that you were a family man and have several children, on February 20, 1963, and notwithstanding the fact that you have finished your job in the house of Inocen-cio Parillo, why did you not go home at 6:00 o'clock but stayed up to 11:00 o'clock in the evening?

A.- I DID NOT GO HOME BECAUSE WE WERE YET TELLING STORIES AND AFTER THAT I HELPED THEM ATTEND TO THE SICK CHILD.

Q.- What time did you go home?

A.- About 11:30 in the evening be-cause I was again called."

(t.s.n. p. 62, Markela.)

Quoting from the decision, the Court said:

"That Maglente had never gone to Collado's house at anytime on the night of February 20, 1963, is further evident in that even as he said he is a neighbor of Collado, he had never come to know the name of the latter's child who was sick, and in that, at first, he declared that the first time that he went to Collado's house was at 9:00 o'clock and two hours later, he returned to Collado's house in the evening of February 20, 1963, yet Collado declared that the first time Maglente was called to his house was 'about midnights'."

In view of the self-contradiction of Maglente, and the contradiction between the testimonies of appellant Collado and Maglente on material facts, the trial court did not accord merit to the defense of alibi, and We find no reason to disturb the finding of the trial court.

Case Against Cesar Marata. - Appellant Marata de-clared that on February 20, 1963, he was in his house in Lipakan; he was not feeling well because he was suffering from "stomach trouble, backache and headache"; he stayed in the house from "six o'clock p.m. to six of clock a.m. the following morning," and did not leave the house. On the morning of February 21, 1963, he, alone, went to Dipolog to the house of his father, Jose Marata, to be treated there of his sickness. His father bought some tablets for his ailment. In June 1963, he was ar-rested in Dipolog. He denied ever having gone to the house of Hadji Akil, nor having played basketball because he was sickly and of ill-health, which testimony, however, was contradicted by his witness, Paterno Lu-baton, who said that - "A.- Before he was committed to jail, he was alright, x x x." He denies that he was ever called "Loloy", or ever had a "gold tooth", but he did not deny that he has a mole on his face, as tes-tified to by Latip Halid. To prove that he has no "gold tooth", he exhibited at the trial his open mouth, and the court really did not see any "gold tooth", however, the court made the following observation:

"x x x but when he was asked in court to open his mouth, there was really a gap on his upper teeth. It is possible that he had the "gold tooth" removed after the commission of the offense, subject of the in-stant case, before his arrest, considering his own admission that he cannot remember how many teeth had been pulled out."

Apprehensive perhaps of his testimony of having admitted that on February 20, 1963, he was in his house in Lipakan, which was about three kilometers distance to barrio Polandoc, scene of the robbery, in the succeeding questions to him by his counsel, he denied that he was in Lipakan on February 20, 1963, and affirmed that until February 21, 1963, he was in Dipolog in the house of his father. To quote from his testimony:

"Q.- When did you get married?

A.- In 1959.

Q.- When you got married, where did you reside with your wife?

A.- In Sindangan first, and after that, we came to Dipolog.

Q.- You said you have a house in Dipolog?

A.- That was I think in 1962.

Q.- And from that time on in the year 1962 up to this time (June 1964, date of trial), with the exception when you used to come down to Dipolog particularly in February 21, 1963, where did you stay?

A.- In the house of my father in Dipolog." (t.s.n. p. 68.)

But on cross-examination, he said differently:

"Q.- Now, when did you start living in Lipakan?

A.- In 1962.

Q.- Up to what time?

A.- 1963.

Q.- You and your wife stayed in Lipakan?

A.- Yes, sir." (t.s.n. p. 72.)

His house was only four kilometers to the scene of the robbery.

"Q.- That place where your house was located is not far from the provincial road, is that correct?

A.- More than a kilometer from the road.

Q.- Do you know that place known as Polandoc?

A.- I know that place but I have not stayed there.

Q.- You always pass thru that place in going to your place in Lipakan coming from Sindangan?

A.- Yes, sir.

Q.- And you were acquainted with the place Polandoc?

A.- I am not well acquainted because I live in the interior.

Q.- But you know that place?

A.- Yes, sir, because I usually pass by it.

Q.- About how far, more or less, is Polandoc to your place?

A.- Four kilometers, more or less." (t.s.n. pp. 71-72.)

He admitted that he was a friend of Tomas Supat and had met him many times; he knows Jaime Capito and he also knows Celestino Collado because he is also from Dipolog, and they have met many times. (t.s.n. p. 72)

Jose Marata, father of appellant Marata, declared that he resides in Dipolog, and his son Cesar Marata arrived in his house on February 21, 1963. On February 20, 1963, his son was in Lipakan. His son reached first year high school in Roxas College, and he never played basketball because he has always been weak and sickly.

Bonifacia Lomarda, wife of appellant Marata, declared that on February 20, 1963, her husband was in the house because he was sick, and the next day, he left for Dipolog.

The evidence of the prosecution has shown that appellant Marata was recognized and identified as one of the persons who robbed the house of Hadji Akil, by no less than three witnesses, Abdul Salam Akil, Latip Akil and Amina Sapihi. Their identification of the appellant was clear and positive. Appellant was known to Latip Akil because the former lived in Lipakan, and his house was only a kilometer distant to the house of Latip Akil, and oftentimes, they rode together in a bus. Latip Akil was positive that, on the night in question, he saw appellant Marata in their house, and he recognized him because the room was well lighted, he had no mask, and he noticed the mole on his face, the presence of which has not been denied by the appellant for he could not obviously deny the presence of such mole on his face, because it could not easily be removed, except thru surgical operation, unlike the "gold tooth" which, although at the trial in June 1964, he had no "gold tooth" in his mouth, however, as aptly observed by the trial court - "there was really a gap in his upper teeth. It is probable that he had the 'gold tooth' removed, x x x," which observation of the court, in our mind, is not unfounded, because Latip Halid declared that even at the preliminary investigation of the case before the justice of the peace, he saw the gold

tooth in appellant Marata's denture.

Abdul Salam Akil also declared that when he was being dragged into the room of Fatima Akil, the mask of the man who responded to the call for help fell down to his neck, leaving his face uncovered, and Abdul was able to recognize him to be Cesar Marata: Appellant Marata was known to Abdul because they use to play basketball on opposite camps. Of course, appellant Marata and his father both denied that the former ever played basketball because he was sickly, but as the trial court had observed, "x x x it is incomprehensible why not even once was Cesar Marata treated by a physician during all the long years, he had been living with his father," and both father and son could not mention a kind of medicine bought for his ailment.

Alibi as a defense must be received with utmost caution because of the facility with which it may be concocted and fabricated, and in order that such defense may be successful, it must be proved by convincing evidence which reasonably satisfies the court of the truth of such defense, and unless it meets this requirement, it cannot prevail against the clear and positive identification of the accused by witnesses of the prosecution who had no motive to testify against the persons charge of a crime; although, it is also a settled rule that it is not of the weakness of the defense of alibi that his conviction lies. It behooves the prosecution to show his guilt beyond the shadow of a doubt.

Two questions, therefore, confront the court in the solution of the case. First, has the prosecution 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?

That the house of Hadji Akil had been robbed on the night of February 20, 1963, and he was the victim of foul assault which snuffed his life, is not debated. Neither is it disputed that the small house of the victim, with at least three rooms, the size of each room is 3 x 5 square meters, was well lighted with big kerosene lamps with one lamp in each room. The inmates in the house, with the aid of clear light, had full opportunity to observe the movements and personal characteristics of the intruders, they being familiar with their faces: as to appellant Tomas Supat, who was not wearing mask, he was not only an acquaintance but a friend who was allowed to share the food with the family of the victim; as to appellant Celestino Collado, he was not wearing mask when he was recognized by Fatima Akil, and already known to the latter because on previous occasions, he had been in the victim's house in the company of Abdul Samal, a son of the deceased, who also recognized Collado on the night in question; as to appellant Cesar Marata, he was the one who planned to steal the rope of the flag pole which was used to tie the victims, and the pieces of rope were recovered the day after the robbery, and he was recognized by no less than three of the inmates in the house. Oral evidence of alibi is so easily manufactured that it must be examined with utmost caution, and when the defendants are identified by witnesses for the prosecution by clear, explicit and positive testimonies, the alibi can not be accepted, especially when the evidence resorted to established the same, are unreliable.

Tomas Supat and Celestino Collado had been convicted of the crime of robbery, and although unrelated to the crime now charged against them, nevertheless, such evidence of the commission of identical crime infuse persuasive influence in the over-all appreciation of the facts, for they tend to show habit, or a design to commit a series of like crimes.

Examining as a whole the evidence of the appellants relating to their defense of alibi, and analyzing them in connection with each particular appellant, one cannot but note flaws and inconsistencies as pointed hereinabove which created in the mind a serious doubt as to their trustworthiness. Their material contradictions clearly reflect against the credibility of the witness.

The conspiracy among the appellants is evident. Direct proof is not essential to show conspiracy. In the case at

bar, the acts of the appellants, collectively and individually executed, as shown by the evidence, have clearly demonstrated the existence of a common design towards the accomplishment of the same unlawful purpose and objective. The killing of Hadji Akil although perpetrated by only two of the intruders, bears a direct relation and intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former, for the element of conspiracy having been clearly established, it is unquestionable that the complex special crime of robbery with homicide, has been consummated and all the appellants are liable therefor.

WHEREFORE, there being no mitigating circumstance to offset the aggravating circumstance of recidivism as to the appellants Tomas Supat and Celestino Collado, the writer of this opinion is of the belief that they should be meted with the supreme penalty of death; but for lack of the necessary number of votes among the members of the Court, the penalty of reclusion perpetua is hereby imposed. Decision of the lower court is hereby affirmed in all other respects as against the appellants Tomas Supat, Celestino Collado and Cesar Marata, with proportionate costs among them.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.
Concepcion, C.J., on official leave of absence.

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