

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RODRIGO DEREJE ALIAS LODRING, LICERIO PARTIDA ALIAS
TOMAS, ALBERTO MENDONES ALIAS BERTING, AVELINO PASAMIC
ALIAS FELIN...**

G.R. No. L-31155. April 22, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Rodrigo Dereje and Licerio Partida appealed from the decision of the Court of First Instance of Pangasinan, convicting them of robbery with homicide, sentencing them "to suffer life imprisonment and to indemnify the offended party in the sum of P116" and to pay six thousand pesos to the heirs of Tomas Macadangdang. Alberto Mendones, Avelino Pasamic and Celestino Partida were acquitted on the ground of reasonable doubt. (Criminal Case No. T-1049).

The facts supporting the judgment of conviction are as follows:

At about ten o'clock in the evening of December 10, 1962, Tomas Macadangdang and his family, composed of three children with ages ranging from seven months to three years and his wife, Estefania Camacho, were resting in their hut at Barrio Abot Molina, Umingan, Pangasinan. The hut was only about one meter above the ground. Its door was made of buri palm. It could be opened anytime. The ladder, made of bamboo splits, had three steps. Another hut about five meters away was occupied by Claudio Camacho, the father of Estefania. It was also about a meter above the ground and was walled with buri leaves.

Macadangdang and his wife, who were lying on the floor about a meter from the door, heard the barking of their dog. He stood up and went near the door or ladder to investigate. He was followed by Estefania. As Macadangdang stood by the door, he encountered a burst of gunfire. He fell on the floor, saying: "I am dying, my God" (Matayac con Apo).

Then, a man with a long gun, went up the hut, looked down on the prostrate Macadangdang and picked up his bolo. The intruder was Rodrigo Dereje alias Lodring. He was looking for a Thompson submachine gun. He told Estefania in Tagalog: "Ilabas mo ang baril mong Thompson. Kung hindi, papatayin kita". She replied that she did not possess any gun.

Dereje (Lodring) took a lamp, lighted it and searched the hut. He opened the trunk and took the clothes therein and also the clothes on the hanger. He went down and took the chickens and eggs. The loot had a total value of P116.

Estefania saw Licerio Partida, alias Tomas, near the ladder of the hut. She had known Lodring and Tomas before the incident. They used to frequent their hut. Licerio Partida was the "best friend" of her husband.

The thirty-four year old victim died from hemorrhage resulting from the bullet wounds described below:

- Gunshot wound with rounded lips, 1/2 inch in diameter located at left groin or pubis.
- Gunshot wound with irregular lips, 3/4 inch in diameter located at right thigh; through and through No. 1, around 8 inches long.
- Gunshot wound located at left thigh, upper third, 3/4 inch wide, with rounded lips.
- Gunshot wound, with irregular everted lips, 3/4 inch wide, located at left thigh, upper third, lateral side, four inches long. (Exh. A).

Wound No. 1 exited in wound No. 2 while wound No. 3 exited in wound No. 4. Because the sizes of the wounds of entry (first and third wounds) are different, may be two kinds of firearms were used.

The police investigated the shooting. Four days after the incident or on December 14th, the Chief of Police took down the statement (Exh. E) of Francisco de la Cruz, a twenty-four-year old farmer, whose hut was about one hundred meters from Macadangdang's hut. De la Cruz said that at about nine o'clock in the evening of December 10, 1962 Tomas (Licerio) Partida went to his hut and invited him to join Partida's gang in taking Macadangdang's Thompson submachine gun. He rejected the invitation. Tomas Partida said that he would not force De la Cruz to go with him but he warned the latter that, if he squealed, he would be shot. Tomas Partida was accompanied by Berting Mendones, Lodring Dereje, Felino Pasamic and Tenong Partida, the son of Catalino Partida, all residents of Abot Molina.

De la Cruz said that Dereje was armed with a shotgun called gibrang while Tomas Partida was armed with a gun which was shorter than the gibrang. Sometime after the gang had left the hut of De la Cruz, he heard gunshots. He was informed by his neighbors that Macadangdang was shot. He accompanied Claudio Camacho, the father-in-law of Macadangdang, to the barrio captain. De la Cruz was certain that Macadangdang was shot by Tomas Partida and his gang because they told him that, if Macadangdang would not yield his Thompson automatic weapon, he would be shot.

Even before the incident, Tomas Partida and his gang had asked De la Cruz to join them in stealing carabaos and palay. He refused to participate in their depredations (Exh. E).

On the basis of De la Cruz' statement, which was sworn to before the justice of the peace, the Chief of Police filed in the inferior court a complaint for robbery in band with homicide against Tomas Partida, Celestino Partida, Berting Mendones, Lodring Dereje and Felino Pasamic (Criminal Case No. 961).

After Ernesto Camacho, Claudio Camacho and Mrs. Macadangdang returned from San Carlos, where the victim was interred, the Chief of Police was able to investigate them. On December 17, 1962 they gave their statements.

Mrs. Macadangdang recounted in her statement that at about ten o'clock on December 10, 1962 her husband was shot in his house. After the shooting, a man whom she knew as Lodring because he used to frequent to their hut, entered it. He was looking for a Thompson gun. Another person, whom she had known as Tomas, stood near the ladder (Exh. C).

Ernesto Camacho executed a sworn statement wherein he affirmed that he saw Tomas Partida and Rodrigo Dereje as the persons who were in the premises of his sister's hut on the night of the killing and who also robbed them on that occasion (Exh. B).

Claudio Camacho executed a sworn statement on that same date, December 17th. He affirmed that Lodring (Dereje) was the person who thrust his gun through the buri wall of his hut and took the clothes hanging in the premises (p. 15 of the record).

Defendant Avelino Pasamic himself in his sworn statement taken while he was detained in jail said that Lodring Dereje and Tomas Partida (affiant's brother-in-law) invited him to join them in robbing and killing somebody (Exh. D). That circumstance, like the facts recounted in the affidavit of De la Cruz, obviously lends credibility to the case for the prosecution.

At the preliminary investigation Mrs. Macadangdang said that she was not able to tell immediately the Chief of Police that Lodring Dereje was the malefactor who entered her house because she was afraid that she might also be killed and she was not feeling well. She was nervous. She said that she recognized Tomas Partida as the person near the ladder of her hut (pages 66, 68 of the record).

As already stated, the trial court convicted Dereje and Licerio Partida and acquitted the other three defendants. In a separate decision, it dismissed, for insufficiency of evidence. Criminal Case No. T-1048 for robbery in band against the same five defendants wherein Claudio Camacho was the complainant (p. 2 of appellants' brief).

In this appeal, the appellants impugn the credibility of the prosecution witnesses and insist on their alibis. The case turns on factual issues which can best be resolved through a patient and assiduous perusal of the evidence.

The thirty-year old Dereje, a farmer with seven children, said that from seven o'clock in the evening of December 10, 1962, when the alleged robbery with homicide was perpetrated in Barrio Abot Molina, up to six o'clock in the morning of the following day, he was in the house of Marcelino Tualla in Barrio Salaan, Umingan, which was about a kilometer away from the scene of the crime. On that occasion, there was a wake for Tualla's deceased child. He was a member of Banda Siete which supplied the music for the wake. Tualla and Pedro Espiritu, a barrio captain, corroborated Dereje's testimony. When Dereje was arrested, Espiritu did not inform the Chief of Police that Dereje was with him in Tualla's house. That omission on Espiritu's part shows the fabricated character of Dereje's alibi.

Licerio Partida (Tomas) testified that on the night of December 10, 1962, when the robbery with homicide was committed, he was sleeping with his wife in his house in Barrio Abot Molina about two kilometers away from Macadangdang's house. His wife, Maria Pasamic (sister of defendant Avelino Pasamic), confirmed his alibi.

Appellants' counsel admits that an alibi is the "weakest of all defenses, easy to fabricate and difficult to disprove". The accused interposing an alibi must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*People vs. Lumantas*, G.R. No. L-28355, July 16, 1969, 28 SCRA 764; *People vs. Resayaga*, G.R. No. L-23234, December 26, 1973).

It is apparent that the distance of Macadangdang's hut from Tualla's house in Barrio Salaan and from Partida's abode in Barrio Abot Molina could not have precluded Dereje and Partida from perpetrating the robbery with homicide at about ten o'clock in the evening of December 10, 1962 and then going to those places shortly thereafter as if nothing had happened. Hence, their alibi cannot exculpate them.

Moreover, Dereje alias Lodring was positively identified as the intruder who entered the Macadangdang's hut, while Partida alias Tomas was recognized as the malefactor standing near the bamboo ladder of the hut. He was a co-conspirator of Dereje.

Appellants' assignment of errors cannot be sustained.

WHEREFORE, the judgment of the trial court is affirmed with the modification that the penalty imposed on each appellant should be designated as reclusion perpetua and that the indemnity of P6,000 to be paid solidarily by each of them is increased to P12,000. Costs against the appellants.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

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