

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVITO MERCADO, ET AL., DEFENDANTS-APPELLANTS.

G.R. No. L-39511. April 28, 1980

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PER CURIAM:

This case is before Us for the review of the decision of the Court of First Instance of Leyte, Branch II, in Criminal Cases Nos. 751, 1039 and 1229, dated December 10, 1973.

At about 7:30 in the evening of February 17, 1972, a robbery took place in the house of Antonio Moron, situated in Sitio Salvacion, Barrio Mag-aso, La Paz, Leyte, during which Antonio Moron suffered gunshot wounds. He was brought to the Leyte Provincial Hospital where he was confined and operated the following day but died seven days later, on February 25, 1972.

The medical certificate issued on August 21, 1972, by Dr. Alden C. Tabao of the Leyte Provincial Hospital, which was admitted as Exhibit A stated that Antonio Moron had been treated/confined in the hospital for the following injuries:

Wounds gunshot: (1) POE - 1/3 in diameter 2-1/2 inches below right nipple along mammary line. No powder burns. (2) POE-1/3 in diameter along anterior axillary line, 3 inches below wound No. 1; no powder burns.

Wound, POX-right lower back level of 2nd lumbar vertebrae 4 inches from mid-vertebral line 3/4 inch by 1/4 inch.

Lacerated wound, right frontal 1/2 inch long, scalp deep.

Operative findings: - wounds gunshot, pene-trating abdominal cavity, perforating small intestines thru and thru No. 8, ascending colon, thru and thru No. 1, mesentery No. 2, hemorrhage, severe, secondary, peritonities, generalized.

Patient was admitted and operated February 18, 1972. DIED February 25, 1972.

On July 24, 1972, Jovito Mercado alias Bitoy, Gregorio Silvio alias Gory and Estanislao Dedase alias Estan were accused of robbery in band with homicide in Criminal Case No. 751; on February 5, 1973, Jesus Mercado alias Dadoy was accused of the same crime in Criminal Case No. 1039; and on August 3, 1973, Teofilo Quimzon alias Baby was similarly accused in Crimi-nal Case No. 1229. The texts of the informations in all three cases are substantially the same and we quote that in Criminal Case No. 1229 as follows:

"That on or about the 17th day of February, 1972 in the Municipality of La Paz, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with JOVITO MERCADO alias "BITOY", GREGORIO SILVIO alias "GORY", and ESTANISLAO DEDASE alias "ESTAN" who have already been charged under Criminal Case No. 751 with the Court of First Instance of Leyte, which is presently pending therein, and one JESUS MERCADO alias "DADOY" who has already been likewise charged under Criminal Case No. 1039 in connection with this case with the Court of First Instance of Leyte, and one EDOC MERCADO alias "EDOC" and ROMING MERCADO alias

"ROMING" who are still at large and whose whereabouts are unknown and four (4) other John Does whose definite identities and whereabouts likewise unknown, and mutually helping one another, with deliberate intent and with intent of gain, did, then and there wilfully, unlawfully and feloniously enter the house of one ANTONIO MORON and thereafter, by means of threats, violence and intimidation and with the use of firearms which said accused had purposely provided themselves with took, stole and carried away cash money in the sum of P700.00, Philippine Currency, and other personal properties, to wit:

One (1) pair of trousers - - - - -

P 30.00

One (1) men's wrist watch - - - - -

150.00

One (1) ladies' wrist watch - - - - -

100.00

One (1) mosquito net - - - - -

35.00

Carpenter's tools - - - - -

200.00

Women's garments - - - - -

20.00

Five (5) gantas rice - - - - -

15.00

Two (2) chickens - - - - -

18.00

One (1) flashlight w/ four batteries - - - -

18.00

P586.00

in the total amount and value of P1,286.00 belonging to said Antonio Moron, against his will and without his consent and to his damage and prejudice in the aforementioned amount.

That during, and on the occasion of, the said robbery, the above-named accused, conspiring and confederating together with the same JOVITO MERCADO alias "BITOY", GREGORIO SILVIO alias "GORY" and ESTANISLAO DEDASE alias "ESTAN", under the criminal case number mentioned above, and EDOC MERCADO alias "EDOC", ROMING MERCADO alias "ROMING" and the same four (4) JOHN DOES already mentioned herein, and mutually helping one another, with deliberate intent and with intent to kill, did, then and there, wilfully, unlawfully and feloniously attack, assault and shoot the same ANTONIO MORON with the firearms with which said accused had provided themselves for the purpose, thereby causing and inflicting upon mentioned Antonio Moron injuries on the different parts of his body which caused his death."

All five accused pleaded not guilty upon arraignment and were tried jointly. After trial, the court rendered a decision as aforesaid, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring accused Jovito Mercado, Gregorio Silvio, Estanislao Dedase (in Criminal Case No. 751), Jesus Mercado (in Criminal Case No. 1039), and Teofilo Quimzon (in Criminal Case No. 1229) guilty beyond reasonable doubt of the special complex offense of robbery with homicide, with the attendance of two aggravating circumstances, not offset by any mitigating and each of them is sentenced to suffer the supreme penalty of DEATH.

"The Court further orders the above-named accused to jointly and severally indemnify the heirs of deceased Antonio Moron in the amount of 12,000.00 and to also jointly and severally pay to said heirs the sum of 1,286.00, value of the stolen properties.

"Accused Jovito Mercado, Gregorio Silvio and Estanislao Dedase are finally sentenced to proportionately pay the costs in Criminal Case No. 751; accused Jovito Mercado is ordered to pay the costs in Criminal Case No. 1039 and accused Teofilo Quimzon is ordered to pay the costs in Criminal Case No. 1229."

The prosecution presented two witnesses who both claimed to be eye-witnesses to the perpetration of the crime: Remedios Lozada Moron, the 27-year old widow of the deceased Antonio Moron, and Matilde Elias, a 63-year old widow residing in La Paz, Leyte, who was in the house of the Morons at the time of the incident.

Remedios Moron testified that at about 7:30 in the evening of February 17, 1972, she was washing dishes in the kitchen of their house when she heard someone calling, "Mano Tony, Mano Tony, the caretaker of your abaca machine was wounded." With her in the house was her husband, Antonio Moron, who was at that time lying down in the living room, her four children, and Matilde Elias who was by the door of the bedroom. Matilde Elias had been fetched by her husband from the poblacion at about 4:00 o'clock in the afternoon to treat her as she had a relapse from her last childbirth.

She left the kitchen and entered the living room where she saw her husband open the door which was suddenly pushed from outside by Jovito Mercado and Jesus Mercado followed by Edoc Mercado, Gregorio Silvio known to her as Gory, Teofilo Quimzon known to her as Baby Quimzon and Roming Mercado. All six persons were armed.

Jesus, Jovito and Edoc Mercado were armed with guns; Gregorio Silvio and Roming Mercado were armed with long bolos tucked to their waists while Teofilo Quimzon had a small bolo called "pisao". There were four other persons she did not recognize; two were at the door of the kitchen while two were at the sala.

Upon entering the house Jesus Mercado pointed his gun at Antonio Moron saying: "Don't move or else I will kill you." Jovito Mercado, on the other hand, pointed his gun at Remedios and ordered her to hold her children so she gathered them, while Edoc Mercado, Teofilo Quimzon, Gregorio Silvio and Roming Mercado entered the bedroom. She became aware of the presence of Estanislao Dedase only when one of her children called her attention, saying, "Mother, there is a man in the kitchen." When she turned towards the kitchen she saw Estanislao Dedase putting a can of salmon inside a sack. Like the six persons who entered the house through the main door she noticed that Estanislao Dedase was also armed with a small bolo. She recognized very well the persons she mentioned because the whole house was lighted by two Petromax lamps, one in the living room and the other one in the kitchen.

It was Jesus Mercado who shot Antonio Moron twice, both shots hitting the stomach. When Jesus Mercado also pointed his gun at her and the children, Antonio Moron who was now lying on his side after being hit in the stomach fired back at Jesus Mercado but was unable to hit the latter. Confusion ensued afterwards. She saw that her husband was no longer inside the house. Then she heard somebody shout, "You come down now because Tony is already down."

Everybody left through the kitchen. The children began to panic and started to cry so she took hold of them and they left for the house of her father, Dalmacio Lozada, about 200 meters away from her own house. There she found her husband, Antonio Moron, wounded and lying down. She told her father that they were robbed and gave the names of the robbers whom she recognized, namely: Jesus Mercado, Jovito Mercado, Teofilo Quimzon, Gregorio Silvio, Estanislao Dedase, Edoc Mercado and Roming Mercado. Her father then looked for persons to carry her wounded husband to her brother-in-law's house at the poblacion so that he could be brought to the Leyte Provincial Hospital.

The robbers made off with the following, none of which were recovered: a pair of pants costing P30.00; a men's watch valued at P150.00; a lady's watch worth P100.00; a mosquito net valued at P35.00; carpentry tools valued at P200.00; women's clothes valued at P20.00; five gantas of rice worth P15.00; 2 hens valued at P18.00; a flash light with four batteries valued at P18.00; and cash in the amount of P700.00.

Matilde Elias, the other prosecution witness, testified that she was in the Moron house on the night of February 17, 1973, because she was fetched by Antonio Moron from the poblacion at about 4:00 o'clock in the afternoon to give relief to Remedios Moron who had a relapse from the delivery of her last child. Inside the house with her that night were Antonio Moron, Remedios Moron, and their four children. At about 7:30 in the evening she heard somebody calling, "Mano Tony, your worker of the abaca stripping machine was wounded." Antonio Moron who was then lying down answered, "I do not care. Wait until tomorrow." However, as he was called again, Antonio Moron opened the main door which was pushed at once from outside and Jesus Mercado, Jovito Mercado, Jose Silvio, Edoc Mercado, Gregorio Silvio, Teofilo Quimzon and Roming Mercado entered the house. Jesus Mercado pointed his gun at once at Antonio Moron who was then at the main door of the house, saying "Do not move." Jovito Mercado also pointed his gun at her and Remedios Moron who was by the door of the kitchen. Jose Silvio, Edoc Mercado, Gregorio Silvio, Teofilo Quimzon and Roming Mercado went inside the room of the house. When one of the children said that there was another man in the kitchen, she turned around and saw Estanislao Dedase in the kitchen putting a can of salmon in a sack. There were four other persons whom she did not recognize, two by the main door and two by the door to the kitchen. Except for the last four whom she did not really know, she recognized very well the persons who entered the house because the place was lighted by two Petromax lamps,

one hanging by the living room and the other one hanging from the ceiling of the kitchen.

While Jesus Mercado was pointing his gun at Antonio Moron, the latter said, "Why do you do this to me, Tadoy, we are friends?" Then somebody downstairs said, "You shoot him. Tadoy, as you are recognized and we are in danger." At this point Jesus Mercado fired his gun twice at Antonio Moron who fell on the floor. However, Antonio Moron fired back at Jesus Mercado and then jumped to the ground. She then heard somebody downstairs saying "You come down as Antonio Moron is armed" and all the robbers went down carrying with them many things.

After the robbers had left she jumped from the house through the kitchen. She proceeded to the house of Dalmacio Lozada, father of Remedios Moron, which was 200 meters away. She found Remedios Moron and her children already there and Antonio Moron lying on a mat, bleeding profusely.

On the other hand, the defense endeavored to show that while a robbery occurred in the house of Antonio Moron at Sitio Salvacion, Barrio Mag-aso, La Paz, Leyte, the accused had nothing to do with it. Each of them put up the defense of alibi.

Jesus Mercado, 26 years old, single, farmer and a resident of Barrio Caabangan, La Paz, Leyte, claimed that he left Caabangan for Tacloban on January 31, 1972, because he accompanied his aunt, Maxima Caindoy, who was leaving for Manila due to some differences between her and his uncle, Demetrio Mercado, over a piece of land left by his mother. He stayed in Tacloban up to about 1:00 o'clock in the afternoon of January 30, 1972, from where he proceeded to Limbohan, Tanauan, Leyte, to look for a friend, Guillermo Lancha, with whom he stayed up to May 23, 1972. While there he helped Guillermo Lancha in cutting grasses, plowing the field, planting palay, harvesting and sometimes making copra. He never returned to Caabangan for fear of his uncle, Demetrio Mercado, who was angry with him over a piece of land belonging to his mother left in the care of said uncle.

He recounted that on February 17, 1972, he was in the house of Guillermo Lancha. At about 5:00 o'clock in the afternoon he was told to chop wood and at about 6:00 o'clock he was helping Lancha cook as it was the second evening of prayers for the deceased parents of the latter. At about 6:30 in the evening he was still cooking and at about 7:00 o'clock he was washing dishes. At about 6:00 o'clock he ate supper after which he drank tuba with the persons who joined in the prayers. He slept alone in the hut where Guillermo Lancha kept his palay. He denied robbing a house in Sitio Salvacion, Barrio Mag-aso, La Paz, Leyte, with Gregorio Silvio and the other accused because he and Gregorio Silvio were not on friendly terms. He was hacked once on the forehead, left arm and right wrist by Gregorio Silvio for which he was confined in the Leyte Provincial Hospital from January 29, 1965, to February 4, 1965, as evidenced by a medical certificate issued by the hospital (Exhibit 5.)

Guillermo Lancha corroborated Jesus Mercado's testimony as to the latter's whereabouts on February 17, 1972.

Jovito Mercado, 30 years old, single, laborer and a resident of Barrio Caabangan, La Paz, Leyte, testified that on February 17, 1972, he was in the house of his brother-in-law, Jose Encina, at Del Pilar Street, Tacloban City, 50 kilometers away from La Paz. He was staying in the house of his brother-in-law while waiting for a vacancy at the Tacloban Electric and Ice Plants (TEIPCO) where his brother-in-law was working. On that particular date Jose Encina asked him to take charge of the house as the former would be delayed in going home. There were rumors that the TEIPCO was to be bombed by demonstrators. At about 5:00 o'clock in the afternoon, Segundino Villablanca, a neighbor of Jose Encina came over to inquire whether his brother-in-law, had already arrived from work. Villablanca stayed at Encina's place up to past 7:00 o'clock p.m.

Jovito Mercado presented two witnesses to corroborate his testimony, namely: Segundino Villablanca and Jose Encina. Segundino Villablanca, 45 years old, married, farmer, and re-siding at 190 M. H. del Pilar, Tacloban

City, testified that before the declaration of martial law he was a correspondence clerk, filing news service, a radio announcer and newspaper reporter. On February 17, 1972, he was at home early for supper between 5:00 and 6:00 o'clock because he wanted to talk with his compadre, Jose Encina, to get information regarding the demonstration that took place in front of the TEIPCO. He noticed the presence of Jovito Mercado in the Encina home and inquired from him when Encina would come home. He stayed at his own house between 10:00 to 11:00 o'clock in the evening waiting for Jose Encina while all that time Jovito Mercado was in sight. He particularly remembered the date, February 17, 1972, because he was assigned to cover the news of the TEIPCO demonstration. Since he could not enter the compound he had to get information from Jose Encina who was a ranking official of TEIPCO.

Jose Encina, 46 years old, married, property custodian and personnel officer of TEIPCO, Tacloban City, testified that Jovito Mercado had been staying with his family since 1971. He worked as a casual laborer with TEIPCO during the months of August, September and November 1971. He recalled Jovito in 1972 but due to the demonstrations the manager did not authorize Jovito to resume work. Nevertheless, Jovito, who is a brother-in-law, continued to live with his family so that he would help in the routine work at home in the absence of a maid. On February 17, 1972, Jovito Mercado stayed the whole day at home. He particularly remembers the date because of the TEIPCO demonstration. He usually went home from work at about 6:00 o'clock in the afternoon but on that particular day he stayed in the office from 6:00 o'clock a.m. to 10:00 o'clock p.m. because the manager of TEIPCO requested him to do so. He was surprised to learn that Jovito Mercado was involved in the case because from January to February 27, 1972, Jovito had been staying with his family in Tacloban City until he was arrested.

Teofilo Quimzon, 20 years old, single, farmer and a resident of Barrio Caabangan, La Paz, Leyte, testified that he was acquainted with Antonio Moron but met Remedios Moron only in La Paz. On February 17, 1972, he was at Ogisan, MacArthur, Leyte, where he had been residing since 1971, working in his three-hectare land planted with abaca and coconuts. In the evening of February 17, 1972, he was in the house of Luis Olveron, a grand uncle with whom he resided in Ogisan. He came to know of his implication in the case only on June 3, 1973, where he was arrested in Barrio Balinsasayao in connection with the killing of a PC soldier in Ogisan. He got acquainted with Jovito Mercado and Jesus Mercado when he was still living in Barrio Caabangan but he came to know Gregorio Silvio and Estanislao Dedase only in the Provincial Jail.

Testifying for Teofilo Quimzon was Luis Olveron, 60 years old, married, farmer and resident of Ogisan, MacArthur, Leyte, who confirmed the presence of Teofilo Quimzon in Ogisan on February 17, 1972. He said that Teofilo Quimzon had been staying with him at Ogisan since May 1971, and that at about 7:30 in the evening of February 17, 1972, Teofilo Quimzon was at home sleeping.

Gregorio Silvio, 24 years old, married, farmer and a resident of Barrio Mag-aso, La Paz, Leyte, testified that since February 10, 1972, he and his wife had been staying in the house of his mother-in-law at Barrio Bungtod, La Paz, Leyte, where they helped in making copra. On February 17, 1972, at about 7:30 in the evening, he was in the house of Elpidio Badion. Badion had invited him at about 10:00 o'clock in the morning to celebrate Badion's winning in the barrio elections as councilor and the first bath of his wife after delivery of their latest child. He ate his lunch in the house of Badion and drank tuba with his host and the other guests, Dadis Come, Yoyong Nirza and Casing Metra up to 10:00 o'clock in the evening. When he went home to the house of his in-laws he went straight to bed as he was drunk. He only learned of the case on March 5, 1972, when he was arrested.

Elpidio Badion was presented to corroborate the testimony of Gregorio Silvio. Elpidio Badion, 38 years old, married, farmer and a resident of Barrio Bungtod, La Paz, Leyte, testified that he had known Gregorio Silvio for about four years because the latter is married to Luz Avelilla who is from Bungtod and used to work in the land of his in-laws on Bungtod adjoining his own land. On February 17, 1972, he invited Gregorio Silvio to his house

to celebrate the first bath of his wife who had just delivered their 9th child. Gregorio Silvio accepted his invitation and came at 12:00 o'clock noon. They had lunch and after lunch started to drink tuba with the other guests. Gregorio Silvio left for about 5 minutes but returned until 10:30 in the evening when he went home.

Estanislao Dedase, 23 years old, married, abaca stripper, and a resident of Sitio Patag, Barrio Mag-aso, La Paz, Leyte, testified that on February 17, 1972, he was in the house of Anacrito Villeza located in Sa-id, Barrio Luneta, La Paz, Leyte. He worked for Villeza as an abaca stripper. He and Alfredo Parado spent the day gathering abaca stalks and then from 5:00 o'clock p.m. they worked the whole night stripping the abaca until 6:00 o'clock in the morning of February 18, 1972, after which they dried the abaca. They had to work the whole evening because abaca had to be stripped immediately otherwise it became yellowish and brought a lower price. On February 18, 1972, they dried the abaca and then slept. He said that he did not know any of his co-accused. He came to know Jesus Mercado and Teofilo Quimzon only in the Provincial Jail, and Jovito Mercado and Gregorio Silvio, only in the Municipal Jail of La Paz, after he was arrested on March 4, 1972. He did not know Antonio Moron nor Remedios Moron.

Estanislao Dedase had two witnesses to corroborate his testimony, namely: Anacrito Villeza and Alfredo Parado. Anacrito Villeza, 42 years old, married, farmer, and residing at sitio Sa-id, Barrio Luneta, La Paz, Leyte, testified that Estanislao Dedase worked for him as an abaca stripper from February 16, to 19, 1972, together with another laborer, Alfredo Parado. He confirmed the testimony of Estanislao Dedase that on February 17, 1972, both Alfredo Parado and Estanislao Dedase worked the whole night stripping abaca because there was only one stripping machine in the barrio, the one owned by him, and there were other plantation owners wanting to use the machine.

Alfredo Parado, 44 years old, married, farmer, and a resident of sitio Sa-id, Barrio Luneta, La Paz, Leyte, corroborated further the evidence given by Estanislao Dedase and Anacrito Villeza. He said that he helped Estanislao Dedase strip abaca from the plantation of Anacrito Villeza and in the four days that they worked together, February 16 to 19, 1972, there was never an instance when Estanislao Dedase left his work.

Cpl. Clemente Mario one of two policemen who investigated the case, was presented as a defense witness. He was originally listed as one of the witnesses for the prosecution but was not called to the witness stand for he was not an eyewitness to the incident. The defense tried to present him as a hostile witness but the trial court rejected the attempt for failure to show any hostility. Mario testified that on February 17, 1972, he was directed by the Chief of Police of La Paz, Leyte, to investigate the robbery case at Mag-aso, together with Patrolman Teopisto Lanante. Mag-aso is about 4 kilometers away from the poblacion and it took them 40 minutes to reach the place on foot. On their way they met the persons who carried the wounded Antonio Moron to the poblacion. These persons accompanied them to Mag-aso. There were five of them but he was only able to identify Jose Burawis and Enyong, father of Gregorio Silvio. He asked them whether they heard shots or whether they were still awake when the incident happened and they answered in the affirmative. He also asked them whether persons passed their houses and whether they heard dogs barking but they averred no knowledge.

Upon reaching Barrio Mag-aso, they proceeded to the place where the incident happened. They found the house ransacked, the walls of the house destroyed and a bullet hole on the shutters of the door. He investigated the surroundings and asked questions from the neighbors. Nobody answered when asked if anyone had seen the perpetrators of the crime for they appeared to be afraid.

Not finding Remedios Moron at home where the incident happened he presumed that she was at her father's house. He found her there with her father, mother, sisters, other relatives and other persons whose identity he could no longer remember. He found her crying. When asked what time the robbery was committed, what things

the robbers took and the names of the robbers in case she knew them, she did not answer as she was confused at that time. Even the other persons present could not tell the names of the perpetrators of the crime when he interro-gated them. He asked them what route the robbers took and was told that they took the trail leading to Caabangan. He followed the route, walking for about three kilometers. There he met a certain person named Modesto. Asked if he heard persons passing by his house, Modesto answered, "yes" and that he believed they were the same persons who passed by their house before the robbery happened that night. Mario mentioned that he followed other leads. On February 19, 1972, two days after the robbery, he picked up two persons, Prudencio Bignotea and Felipe Bignotea as suspects in the robbery because they were also suspects in another robbery case. They were brought to the municipal jail for Remedios Moron to identify. She said that they were not the ones who committed the crime so they were released by the Chief of Police.

When recalled to the witness stand on behalf of accused Estanislao Dedase, Mario further testified that when he interro-gated Remedios Moron at her father's house on the night of the robbery her answers were not quite clear. She kept crying and when asked about the robbers she said she knew some of them and those she did not know she would recognize if she saw them again. He insisted that she tell him the names of the robbers but she said she was afraid because she was warned that they would be killed if the names of the robbers were mentioned. She gave a description of one or two of the robbers and on the basis of the description given he attempted to arrest persons fitting the des-cription but failed to do so because the whereabouts of the persons could not be ascertained.

After consideration of all the evidence presented, and relying on the testimonies of eyewitnesses Remedios Moron and Matilde Elias, the trial court disregarded the alibi inter-posed by all of the accused and convicted them of the special complex crime of robbery with homicide. And, finding the existence of two aggravating circumstances (namely, band and dwelling), without any mitigating circumstance to offset the same, said court imposed upon all of the accused the supreme penalty of death. Thus, this automatic review of the decision.

The only defense raised by all of the accused-appellants is alibi.

The trial court correctly ruled that, alibi is a weak defense not only because it is easy to fabricate (People v. Zapatero, L-31960, August 15, 1974, 58 SCRA 450; People v. Dereje, L--31155, April 22, 1974, 56 SCRA 554; People v. Mori, L-23511 and L-23512, January 31, 1974, 55 SCRA 382; People v. Ragas, L-29393, March 29, 1972, 44 SCRA 152.) but also because human memory on dates or days is frail, and unless the day is an extra-ordinary or unusual one for the witness, there is no reasonable assurance of its correctness. (People v. Dasig, 93 Phil. 618 [1953]) Furthermore, for alibi to prosper, it is not enough to prove that the accused were somewhere else when the crime was committed but it must likewise be demonstrated that it was physically impossible for them to have been at the scene of said crime at the time of its commission. (People v. Dueño, L-31102, May 5, 1979, 90 SCRA 23; People v. Cortez, L-31106, May 31, 1974, 57 SCRA 308; People v. Baylon, L-35785, May 29, 1974, 57 SCRA 114; People v. Turalba, L-29118, February 28, 1974, 55 SCRA 697; People v. Diaz, L-24002, January 21, 1974, 55 SCRA 178; People v. Esmael, L-28533, February 24, 1971, 37 SCRA 601.)

But apart from the foregoing weaknesses which inhere in the defense of alibi, its inability to exculpate the herein accused-appellants from the crime of which they stand charged basically emanates from the applicability to the case at bar of the funda-mental juridical dictum that the defense of alibi cannot prevail over the positive identification of the accused by credible witnesses as the authors of the crime. (People v. Artieda, L-38725, May 15, 1979, 90 SCRA 144; People v. Caoile, L-31104, November 15, 1974, 61 SCRA 73; People v. Sudoy, L-33572, October 10, 1974, 60 SCRA 174; People v. Abletes, L-33304, July 31, 1974, 58 SCRA 241; People v. Aquino, L-27184, May 21, 1974, 57 SCRA 43; People v. Diaz, L-24002, January 21, 1974, 55 SCRA 178; People v. Dorico, L-31568, November 29, 1973, 54 SCRA 172; People v. Carandang, L-31012, August 15, 1973, 52

SCRA 259; *People v. Herila*, L-32785, May 21, 1973, 51 SCRA 31; *People v. Olden*, L-27570 and L-27571, September 20, 1972, 47 SCRA 45; *People v. Tanjalali Gajali*, L-28534, July 31, 1972, 46 SCRA 130; *People v. Kipte*, L-26662, October 30, 1971, 42 SCRA 198; *People v. Cuaton*, L-31570, August 30, 1971, 40 SCRA 386; *People v. Bagasala*, L-26182, May 31, 1971, 39 SCRA 236; *People v. Mercado*, L-30298, March 30, 1971 38 SCRA 168; *People v. Esmael*, L-28533, February 24, 1971, 37 SCRA 601.) Here, two eyewitnesses, namely, Remedios Moron and Matilde Elias, corroborated each other in positively and categorically identifying all of the accused as the perpetrators of the crime. They have supplied the trial court with a clear and complete account of how the accused-appellants, acting in cons-piracy, staged the robbery in the house of the Morons and how Jesus Mercado, one of the conspirators, shot Antonio Moron on the occasion of such robbery, subsequently causing his death. Their testimonies have, thus, established accused-appellants' guilt beyond reasonable doubt, and, unless it is shown that said testimonies should not be relied upon, the conviction of the appel-lants of the crime charged should be affirmed. What is crucial then in this review of the judgment of the trial court is the issue of credibility of said witnesses.

We have held in a long line of cases that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, considering that it is in a better position to decide the question, having heard the wit-nesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case (*People v. Garcia*, L-44364, April 27, 1979, 89 SCRA 440; *People v. Gargoles*, L-40885, May 18, 1978, 83 SCRA 282; *People v. Pascual*, L-27569, October 28, 1977, 80 SCRA 1; *People v. Ancheta*, L-29581-82, October 30, 1974, 60 SCRA 333; *People v. Boduso*, L-30450-51, September 30, 1974, 60 SCRA 60; *People v. Cardenas*, L-29090, April 29, 1974, 56 SCRA 631; *People v. Carandang*, L-31012, August 15, 1973, 52 SCRA 259; *People v. Espejo*, L-27708, December 19, 1970, 36 SCRA 400.) Thus, it is incumbent upon the accused-appellants to satisfy this Court that the trial court, in giving full faith and credence to the testimonies of eyewitnesses Remedios Moron and Matilde Elias, has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.

In assailing the credibility of eyewitness Remedios Moron, the accused-appellants contend, firstly, that said witness had made two palpably contradictory statements under oath on a material point because while she mentioned in her court testimony that she told her father on the night of the robbery that they were robbed by Jesus Mercado, Jovito Mercado, Edoc Mercado, Gory Silvio, Baby Quimzon, Reming Mercado and Estanislao Dedase, she however testified during the preliminary investigation of the case that during the one week that she stayed with her husband at the Leyte Provincial Hospital, she did not tell anybody, not even her father, that she recognized the perpetrators of the robbery.

There can be no contradiction between the two statements of eyewitness Remedios Moron as they refer to two different situations. In fact, each statement complements the other in such a way that the credibility of both is enhanced. Having pre-viously revealed to her father, on the night of the robbery, the names of the robbers, Remedios Moron cannot reasonably be expected to repeat said revelation to the very same person during her subsequent stay at the hospital. Any testimony to such effect would lend itself to the legitimate suspicion that the same is untrue and is intended merely to create the impression that said witness did, in fact, recognize the perpetrators of the crime. Thus, far from creating an inconsistency, the testimony of Remedios Moron that she did not reveal to her father the names of the robbers during her one week stay at the hospital had even rendered more credible her statement that she had already made such revelation to her father on the very night of the robbery.

Appellants next contend that Remedios Moron did not recog-nize with certainty the persons who perpetrated the robbery. According to them, if indeed Remedios Moron revealed to her father on the night of the robbery the

identities of the malefactors, she should have likewise revealed the same to Policeman Clemente Mario when the latter investigated the incident on that same night. They insist that the reason given by said witness for her failure to reveal the identities of the malefactors to Policeman Mario, namely, the threats made upon her family by said malefactors, is of doubtful veracity considering her claim that she had revealed the names of said malefactors to her father on the very night in question. Furthermore, taking note of the fact that the father of the witness has not been intimidated by the perpetrators of the crime, appellants contend that if Remedios Moron had indeed revealed to him the identities of the malefactors, the latter had no reason whatsoever to withhold their names from the police authorities; but, he in fact withheld their names when interrogated by Policeman Mario on the night of the robbery.

We entertain no doubt as to the veracity of Remedios Moron's testimony that she recognized the persons who committed the crime and that she had revealed the same to her father immediately after the robbery. Her failure to reveal the same to Policeman Mario on that same night does not militate against said claim since such failure has been sufficiently explained by the threats made upon her family by the malefactors. She made the revelation to her father because she knew that her father would not reveal the same to others and risk the life of her own daughter and that of her family. On the other hand, Remedios had all reasons to fear that to reveal the same to Policeman Mario would endanger her family since said policeman, in fulfillment of his duty, would certainly investigate the suspects who, consequently, may then make good their threat of killing her and her family.

Furthermore, it must be noted that even the neighbors of the Morons whom Patrolman Mario interrogated on the night of the robbery were afraid of the robbers. It is thus understandable for Remedios Moron, the direct object of the threats, to entertain the fear of reprisal by the brigands and to overcome such fear only upon the occurrence of an event which aroused in her a feeling more powerful than such fear or reprisal - namely, the death of her husband and her consequent desire to bring to justice the persons responsible therefor. This accounts for the fact that it was only on the day immediately following the death of her husband when Remedios Moron revealed to the police the names of the malefactors.

Appellants next question the credibility of the other eyewitness, Matilde Elias, alleging that: (1) she was not listed as a prosecution witness both in the complaint filed with the Municipal Court of La Paz and in the information filed before the Court of First Instance of Leyte; (2) she was not mentioned in the affidavit executed by Remedios Moron - Exhibit "1"; (3) Policeman Mario never mentioned the name of Matilde Elias as among the persons investigated by him although she was supposedly in the house of Antonio Moron during the incident and, thereafter, in the house of Remedios Moron's father; and (4) it is hard to believe that Matilde Elias was at the house of the Morons during the robbery because of a relapse suffered by Remedios, not only because four months have elapsed since Remedios' childbirth, but also because Remedios was even washing the dishes when the incident occurred.

We find nothing in the record which would cast doubt on the credibility of eyewitness Matilde Elias. The non-inclusion of her name in the list of witnesses stated in the complaint or information is not material since Sec. 1, Rule 116 of the Revised Rules of Court allows the prosecution to call at the trial witnesses other than those named in the complaint or information. Likewise, the fact that her name was not mentioned in the affidavit of Remedios Moron (Exh. "1") is not significant because Remedios Moron executed said document on February 26, 1972 - the day immediately following her husband's death. Considering Remedios' state of mind then and the fact that Matilde Elias was not a regular member of her household, it is understandable why Remedios Moron failed to mention Matilde Elias as present when the incident occurred. As for the allegation that Policeman Mario never mentioned the name of Matilde Elias as among the persons investigated by him although she was supposedly in the house of Antonio Moron during the incident and, thereafter, in the house of Remedios Moron's

father, it must be stressed that when asked about the persons present in the house of Remedios Moron's father when he conducted the investigation, Policeman Mario replied: "Her father, mother and sisters and other relatives were there. I do not remember the other persons." (t.s.n. Mario, May 23, 1973, p. 31; underscoring supplied.) Thus, it is not reasonable to intimate that Matilde Elias was not present in the house of Remedios Moron's father when Policeman Mario conducted his investigation on the night of the robbery. Finally, the alleged improbability of Remedios Moron suffering a relapse four months after childbirth does not militate against the claim that Matilde Elias was at the house of the Morons on the night of the robbery because of the supposed re-lapse. For it must be noted that the appellants did not present expert evidence to show that such a relapse was medically impossible. Furthermore, even if such relapse was indeed medically impossible, the Morons could not reasonably be expected to be aware of such medical impossibility; so that any physical discomfort or any noticeable change in Remedios Moron's physical constitution could be mistaken by them as a relapse and reason enough for them to seek the services of Matilde Elias who was the one who assisted in Remedios' childbirth. And, as it appeared, the physical disturbance was such a minor one that Remedios Moron was even able to wash the dishes herself on that fateful night.

In view of the foregoing, We find no reason to doubt the credibility of eyewitnesses Remedios Moron and Matilde Elias. Accordingly, we sustain the trial court's complete reliance on their testimonies and its consequent conclusion that the accused-appellants are guilty beyond reasonable doubt of the crime of robbery with homicide.

The other point raised by the accused-appellants in their appeal brief pertains to the proper imposable penalty.

Appellants contend that the lower court erred in holding that the aggravating circumstances that the offense was committed by a band and in the dwelling house of the victim were present in the commission of the crime. They argue that even admitting that the crime in question was committed by a band, nevertheless, the trial court erred in appreciating this aggravating circumstance against the accused since the evidence, allegedly, did not clearly show that such circumstance facilitated the commission of the offense - as required by Article 14, No. 6 of the Revised Penal Code. As regards the aggravating circumstance that the crime was committed in the dwelling house of the offended party, appellants submit that the same is applicable only when it is in violation of the sanctity of the home by trespassing therein with violence or against the will of the owner. Appellants contend that in this particular case, there was no trespass to the dwelling of the offended party by means of violence or against his will since the deceased Antonio Moron voluntarily opened the door of the house thereby enabling the malefactors to enter his dwelling place without use of force or violence.

We find no merit in the foregoing contentions of the appellants.

The evidence on record clearly show that the crime was committed by at least seven armed men (three with guns, four with bolos) who forced themselves through the front door of the house of the Morons. Upon entering the house, two of them immediately pointed their guns at the spouses Antonio and Remedios Moron and ordered them not to move, while the others started ransacking the place. With guns pointed at him and at his wife and because of the intimidating presence of at least five other armed men, Antonio Moron could do nothing to prevent the robbery. This, despite the fact that he was then armed with a gun and could have prevented the robbery were it not for the fact that the same was perpetrated by a band. Clearly, then, the trial court did not err in appreciating said aggravating circumstance against the accused-appellants.

Likewise, the trial court correctly appreciated against accused-appellants the aggravating circumstance of dwelling since the crime of robbery with homicide can be committed without the necessity of transgressing the sanctity of the home. (People v. Lucero, G.R. No. L-28811, March 31, 1980; People v. Saguin, L-27903, December 26, 1969, 30 SCRA 834; People v. Mongado, L-24877, June 30, 1969, 28 SCRA 642; People v.

Apduhan, L-19491, August 30, 1968, 24 SCRA 798.) Appellants' contention that said aggravating circumstance exists only when there is trespass upon the dwelling of the offended party with the use of force or violence or against his will is clearly erroneous. For it is not the trespass which transgresses the sanctity of one's dwelling but the commission of the crime in said dwelling, regard-less of how the offender gained entrance to the same.

Since the crime of robbery with homicide was attended by two aggravating circumstances without any mitigating circumstance to offset the same, the trial court correctly imposed upon the accused-appellants the penalty of death. (Art. 63, second par., subpar. 1, in relation to Art. 294 (1) of the Revised Penal Code.)

WHEREFORE, the judgment appealed from is hereby affirmed in all respects. Costs de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J. and Antonio, J., took no part.

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