

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAROYA ALIAS TELESFORO, AND EUSEBIO ABRIO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-4586. August 30, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from the judgment of the Court of First Instance of Leyte, finding the appellants Proculo (Telesforo) Maroya and Eusebio abrio guilty of the crime of robbery in band with homicide, and sentencing them to reclusion perpetua, with legal accessories, to pay jointly and several to Martin Lumbre the sum of P564.00, the amount of stolen including a Chinese gold ring, to indemnify jointly and severally the heirs of the deceased Pablo Lumbre in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.

The evidence for the prosecution tends to show that in the late afternoon of August 25, 1950, while Emeterio Lumbre and his son-in-law Andres Dafon were returning to their home in barrio Causwagan, municipality of Abuyog, province of Leyte, after Emeterio Lumbre had sold one sack of copra in barrio Bugho of the same municipality, they passed by the house of Emeterio's uncle, Martin Lumbre, in the barrio of Taisayan. The house of Martin Lumbre was situated about 300 meters from the vecinal road and about 250 meters from the nearest house, and surrounded by abaca and banana plants and coconut trees, Martin's companions in his house at the time were his grandchildren Eufructo, aged 8, and Feliciano, aged 7, Martin's wife being then in Mac Arthur to buy clothes. At the invitation of Martin, Emeterio and Andres ate their supper in the house of Martin. Between nine and ten o'clock in the evening, while Martin and his guests were conversing, six armed men entered the house through the main door. As the house was lighted by two kerosene lamps in the sala, Martin, Emeterio and Andres readily recognized the two appellants with whom they were formerly acquainted. Appellants Proculo Maroya and Eusebio Abrio First entered in succession with their bare faces, followed by their four companions whose faces were partly covered with handkerchiefs. With the pistols and revolvers of the intruders pointed at the inmates of the house, appellants Maroya bound the hands of Martin Lumbre and Andres Dafon behind thier backs, while appellant Abrio bound the hands of Emeterio Lumbers behind his back. Replying to the demand of appellant Abrio, Martin Lumbre stated that he had no money, whereupon appellant Abrio threatened Martin with death. Martin Lumbre had to admit that he had money in the pocket of his sweater inside the trunk lying in the corner of the sala. Appellant Abrio proceeded to open the trunk, brought out the sweater, and took therefrom P500.00 in cash and a Chinese gold ring valued at P50.00. Thereafter the appellant and their four companions left, but on their way out of the house they met another grandson of Martin Lumbre, named Pablo Lumbre, aged 21. Appellant Maroya coruptly fired two shots at Pablo, hitting him on the left arm and on the left side. As Pablo was lying with face downward, appellant Abrio shot him on the left buttocks, whereupon the appellants and their companions sped away.

After the hands of Emeterio Lumbre had been untied by the small grandson of Martin Lumbre, Emeterio in turn

untied the hands of Martin Lumbre and Andres Dafon. Pablo Lumbre, who was then in a dying condition, asked Martin Lumbre to rush to the hospital. Martin, however, desisted from doing so, for fear that the malefactors were still around and might shoot him, with the result that Pablo Lumbre died from hemorrhage four hours later. The next morning Martin Lumbre took the empty shells to the barrio lieutenant, and the two reported the incident to the chief of Abuyog who, with five policemen and the sanitary inspector Rufino Balaga, proceeded to barrio Talisayan. Upon reaching barrio Bugho, however, the chief of police desisted from going further by reason of his boil in the armpit. The policemen and the sanitary inspector, therefore, alone made the investigation. Martin Lumbre did not specify the names of the appellants to the chief of police. As the investigation made by the policemen had not brought any result, Martin Lumbre and Emeterio Lumbre reported the matter on September 11, 1950, to Sgt. Apolinario Bantilan of the Constabulary detachment stationed at Burauen, Leyte, revealing to the latter that the two appellants were among those who robbed Martin's house and killed Pablo Lumbre in the night of August 25, 1950. Sgt. Bantilan filed the corresponding criminal complaint with the justice of the peace court of Abuyog on September 19, 1950.

The appellants set up the defense of alibi. Appellant alleged that he was at a dance in barrio Bugho in the evening of August 26, 1950, while appellant Abrio alleged that in the same evening he was watching a game of "hantak" in the house of his father-in-law in barrio Picasnorte, Abuyog until 3:00 o'clock of the following morning.

The trial court found no error in weighing the evidence and convicting the appellants. Martin Lumbre, Emeterio Lumbre and Andres Dafon had known the two appellants before the occasion in question, and as there was sufficient light in Martin's house, they could positively identify the two appellants. There is no pretense that the three, who testified for the prosecution, had any motive for falsely incriminating the two appellants. Appellants' contention that the crime was imputed to them only because Pablo Lumbre, before he died, stated that the persons who shot him were some "bogoy" (meaning ruffians), a word which rhymes with the appellants' nicknames "Baludoy" and "Iboy", is patently untenable.

The theory of the prosecution is assailed vigorously, on the ground that if the appellants are the real culprits, the three prosecution witnesses, Martin Lumbre, Emeterio Lumbre and Andres Dafon, would have immediately revealed their identities to the chief of police when the incident was first reported in the morning of August 26, 1950. The failure to do so has, however, been satisfactorily explained by the facts that Martin Lumbre was at first apprehensive about reprisals in case he would tell appellants' names; that Emeterio Lumbre was dissatisfied with the failure of the chief of police to proceed to the scene of the crime and with the lack of interest on the part of the police force of Abuyog in proceeding with the investigation and was furthermore, still gathering evidence on the identity of the four masked robbers; and that Andres Dafon thought that Martin Lumbre had already revealed appellants' names.

Appellants claim that it is incredible that they would expose their faces, while their four companions had their faces covered with handkerchiefs. Although there is some sense in this contention, it is not decisive in appellants' favor. Criminals have heretofore been and will hereafter be caught because of some imperfection in their plans or in the execution thereof, and because their experience or lack thereof necessarily affects the skill with which they accomplish their criminal mission.

Appellants' defense of alibi cannot negate the positive evidence of the prosecution. Moreover, even admitting that appellant Maroya was present in a dance in barrio Bugho, it was not impossible for him momentarily to be at the scene of the crime, since the distance between barrio Bugho and barrio Talisayan is only one and one-half kilometers.

The theory of the prosecution is reinforced by the circumstance that, about three days prior to August 25, 1950,

Martin Lumbre sold copra in barrio Bugho and received therefore the sum of P280.00 in the presence of some people in the store in Chinaman, Weakoa, among whom were the two appellants.

The crime committed is robbery in band with homicide, punishable with reclusion perpetua to death, to be imposed in its maximum period, pursuant to article 294 in relation to articles 295 and 296 of the Revised Penal Code. For lack of necessary majority in favor of the imposition of the death penalty, however, the appellants will be sentenced only to reclusion perpetua, the penalty imposed by the court below. Wherefore, the appealed judgment is affirmed and it is so ordered with costs against the appellants.

Pablo, Bengzon, Padilla, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

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