

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EUTQUIANO DE LOS SANTOS ET AL., DEFENDANTS, EUTQUIANO DE
LOS SANTOS AND ALBERTO BERNARDINO, DEFENDANTS AND
APPELLANTS.**

G. R. No. L-4880. May 18, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Bulacan finding defendants-appellants Eutiquiano de los Santos and Alberto Bernardino, and Norberto Gojo Cruz, who had not appealed from the judgment, guilty of the crime of robbery in band with homicide, with the aggravating circumstances of nocturnity, treachery, and abuse of superior strength, and the mitigating circumstance of voluntary surrender on the part of defendant-appellant Alberto Bernardino, and sentencing the said defendants-appellants Eutiquiano de los Santos and Alberto Bernardino to suffer the penalty of death, to indemnify the heirs of the deceased victims Pedro Pineda and Maximino Pineda in the sum of P6,000 for each, and to pay a proportionate part of the costs.

In the evening of January 13, 1950, the spouses Pedro Pineda and Rufina Bernardo were living in a country house belonging to them in the barrio of Lambakin, municipality of Marilao, province of Bulacan. With them lived a son by the name of Isaac Pineda, single, and another son by the name of Maximino Pineda, married to Teofila Manalaysay, with whom he had a small child. At about 9:00 o'clock that evening the whole household had already retired to bed, all of them asleep, with the exception of Rufina Bernardo who was awake looking for hanib among the pillows, for which purpose she was using a small kerosene lamp, the body of which is two inches in diameter and provided with a big wick. At that time she was in the caida (an extension of the hall), where she had retired with her husband Pedro Pineda and their son Isaac. Her son Maximino Pineda was in the hall, together with his wife and child. Between 9:00 and 10:00 o'clock that evening Rufina Bernardo's attention was called to the barking of dogs, so she took the lamp in her hand and brought it out to find out the cause of the barking of the dogs. People below, however, ordered her not to illumine them, and so she withdrew. She placed the kerosene lamp on the wardrobe and awakened her husband. Thereupon, three men, armed with firearms, came up. They had six companions, some also armed, who were left below as guards. From the stairs the intruders passed the caida, accompanied by Rufina and Pedro, and once in the hall they pointed their guns at and ordered the men to lie flat on the floor face downwards. Teofila Manalaysay also woke up, and the three individuals took away the mosquito net under which she and her family slept, and ordered her husband also to lie flat on the floor face downwards. They tied the hands of Pedro Pineda at the back, and after that they began to ransack the wardrobe. The three individuals were each provided with long firearms, and they took away from the wardrobe cash in the amount of P500, more or less, three necklaces valued at P84, two rings costing P200, one pocket watch valued at P50, one earring valued at P70, and about 20 pieces of cloth belonging to Maximino Pineda. When they had taken these things, they saw a sack of palay; they put the palay away and then placed the valuables they had taken inside the sack. After they had gathered all the things that they wanted, they began firing at Pedro Pineda and his son

Maximino, who were lying flat on the floor, in obedience to instructions given them. Both father and son asked that their lives be spared, but their request was not heeded. They were fired at many times until they were dead. When the intruders knew that their victims were already dead, they announced it to their companions, and one of them fired shots in the air, afterwards bringing along with them the sack in which they had placed the articles and valuables they had taken from the wardrobe.

That same night, or at early dawn, the chief of police and the municipal mayor went to the house where the robbery had been committed, and they found in the house a fatigue cap marked with the initials E. S., eight empty shells for garand, twelve empty shells for carbine, and one empty clip for garand ammunition. On the following day, at 10:15 in the morning, the president of the sanitary division examined the persons of the deceased victims and found that Pedro Pineda had eight gunshot wounds in the different parts of the body, and in the person of Maximino Pineda, one stab wound and six gunshot wounds in the neck and different parts of his body. (Exhibit A.)

The authors of the robbery were not known to the authorities for many months until about the end of May, 1950, when affidavits of various persons were taken, namely, of Eutiquiano de los Santos, Exhibit B, of Aquilino Emeterio and Mariano Emeterio, Exhibits C and D, of Norberto Gojo Cruz, Exhibit I, and of Dalmacio Alarcon, Exhibit J. Investigations were conducted by the Constabulary headed by Lieutenant Jovito M. Pesayco, who, on May 31, 1950, filed the complaint for double murder and robbery in band against defendants-appellants herein Eutiquiano de los Santos and Alberto Bernardino, and Domingo de la Cruz, Norberto Gojo Cruz, Clemente de la Cruz, Serapio Marcos, Dalmacio Alarcon, Fidel San Felipe, Aquilino Emeterio, and Mariano Emeterio. The Constabulary succeeded in getting Fidel San Felipe to testify for the prosecution. In the information filed in the Court of First Instance his name was omitted as one of the accused.

Most of the defendants denied having participated in the robbery, and presented the defense of alibi. The Court of First Instance, however found that the identity of the defendants-appellants Eutiquiano de los Santos and Alberto Bernardino, and Norberto Gojo Cruz was proved beyond reasonable doubt, and, therefore, found these three guilty, sentencing the first two as above indicated, and suspending the proceedings with respect to the defendant Norberto Gojo Cruz for the reason that he was below sixteen years of age at the time of the commission of the crime. The other accused were acquitted on the ground that their participation in the commission of the crime had not been proved beyond reasonable doubt.

Both defendants-appellants deny having anything to do with the commission of the robbery, and allege that they were not with the robbers because, according to Eutiquiano de los Santos, on the night of January 13, 1950, when the robbery took place, he was in the barrio of San Vicente, municipality of Sta. Maria, Bulacan, where he had gone the previous day, January 12, 1950, looking for chickens preparatory to transferring his residence from his place at Tabing Ilog, Marilao, Bulacan. For his part Alberto Bernardino declared that he was not present at the time of the commission of the crime, because he was at home, for at that time he was sick, having been ill for a month and a half prior to the robbery.

Therefore, the question which this Court is called upon to resolve is whether the evidence submitted by the prosecution is sufficient to establish the identity of the appellants as two of those who participated in the robbery on January 13, 1950, in view of their denials and the defenses of alibi presented by each of them.

Counsel for defendant-appellant Bernardino claims that because of the conditions of the light and the room where the robbery was committed, and the mental strain to which the two eyewitnesses, Rufina Bernardo and Teofila Manalaysay, were then subjected, it was impossible for them to have been able to obtain and retain in memory a correct mental picture of the intruders, to the extent of overcoming the presumption of innocence that the law

extends to the appellants. A careful analysis of the testimonies of said witnesses reveals otherwise. These are the conditions under which the witnesses observed the appellants: the wick of the kerosene lamp was not small, as counsel for appellants claim, but it was big. Rufina Bernardo described the lamp as a "small bottle lamp with a big wick." (t. s. n., Peralta, p. 21.) The light which a lamp furnishes does not depend upon the body of the lamp, but upon the size of its wick and the readiness or rapidity with which the oil flows through it to the flame. If the wick was big, the light must have been clear. Neither may the color of the flame affect witnesses' eyesights for they were accustomed to the light of the lamp.

The color of the flame of the lamp may affect visibility as to color, but certainly not as to the features of a man. Then the room where the robbery was perpetrated was not a big one. It was only five meters at the longest side, and the distances between the witnesses and the appellants were as near as two meters on some occasions. The stairs was only two meters away from the caida, and it was from the latter that Rufina saw the appellants come up, with the light from the lamp on the wardrobe illuminating appellants' faces.

Again, the opportunity for the witnesses to see the faces of appellants by the light of the lamp was full and complete. Thus, Rufina testified:

R. Uno de ellos llevaba la lampara y con la claridad de aquella lampara el otro secuestraba el contenido del aparador coma no podia reconocerles con la claridad de aquella lampara su cara era visible y Eutiquiano de los Santos estaba en la puerta vigilando con el arma de fuego. (t. s. n., Sanchez, p. 7.)

If one of the intruders took the lamp, his face must have been clearly lighted, and as the light of the lamp was used for the other who ransacked the wardrobe, to light the inside and its contents, the face of the latter must also have been lighted. If the latter was able to pick up the jewels (very small objects indeed) from their places in the wardrobe, it must have been because the lamp was clear and near him. It was by this same light that he used that the inmates could observe his face and features. It is also to be remembered that the taking of the valuables and the loot must have taken place many minutes (thirty, according to the witnesses). During all that time the witnesses had full opportunity to see the faces of the witnesses, and thereafter retain a mental picture thereof.

The positions and conditions of the witnesses were not such that their view of the intruders could not have been full and complete either. Aside from seeing appellants as they came up, Rufina was seated during all the time that the wardrobe was ransacked, until the time that the intruders had taken their loot and before they fired at the men. Teofila was lying down on one side, her face towards the intruders as the latter ransacked the wardrobe. At that time Teofila was not yet affected by any fear at all (t. s. n., Sanchez, p. 15), for it was only when the firing began that fear possessed her. It is thus seen that there can be no reason for the contention that the appellants were not sufficiently scrutinized in their faces and persons and under such conditions as to insure the correctness of their identities as retained by Rufina and Teofila.

Again, Teofila readily recognized Alberto Bernardino at the Constabulary barracks soon after the latter's surrender. She declared:

R. Cuando llegue alli como yo reconoci al acusado yo pregunte y me dijeron que el nombre era Alberto Bernardino.

* * * * *

R. No, señor, cuando el subio a nuestra casa le conocimos de cara. (t. s. n., Sanchez, p. 22.)

But the identification of Bernardino is not by the two witnesses alone. He was also seen by witness Fidel San Felipe as one of the five whom they met at (the libis) a lower place leese the Sta. Maria School. At that place the companions of San Felipe talked to the five, one of whom was Bernardino, and thereafter they walked together to

Lambakin. San Felipe declared that it was the three, De los Santos, Gojo Cruz, and Bernardino, who went up the house (t. s. n., Sanchez, p. 51). This testimony clearly corroborates the identification of appellants by Rufina and Teofila, and all together they prove to a moral certainty the identity of the appellants.

On behalf of appellant Eutiquiano de los Santos, his counsel contends that the failure of Rufina Bernardo to disclose his name to the officers of the law soon after the robbery, in spite of the fact that said appellant was well known to her for a long time before the said robbery, creates doubt about her assertion that she recognized said appellant. But it is believed that satisfactory explanation for her failure to make disclosure can be found in her fear of reprisal should she do so and in the conditions of the times (in January, 1950, the Huks were at the height of their power in the province of Bulacan, and fear of their attacks was general among the population). Rufina, however, positively testified that she told the chief of police and her children that she knew the robbers, but that she could not tell the names for fear that they would come back and kill them (t. s. n., Peralta, p. 18). If we take into account the ruthlessness with which her husband and son were riddled with shots, it is not unreasonable to believe that it was her fear of the robbers that cowed her into her silence. But even without Rufina's testimony the identification by Teofila and San Felipe is still satisfactory and sufficient, especially in view of the inherent weakness of the evidence submitted by him to prove his defense (of alibi).

The defenses of alibi interposed by the appellants are, as above-stated, so weak and incoherent that we are further persuaded of the truthfulness of the witnesses for the prosecution who testified as to appellants' identity. In the face of an air-tight alibi, testified to by witnesses whose credibility is apparent and positive, doubt may be engendered to an extent favorable to the accused; but when proof thereof is too general, improbable, and incoherent, the result is otherwise, the evidence for the prosecution is reaffirmed and strengthened, and the truth of its theory assured beyond moral certainty. This last situation is the one that obtains in the case at bar, in relation to the defense of alibi interposed by both appellants.

Thus the supposed presence of appellant Eutiquiano de los Santos at Moson, San Jose del Monte, on January 13, 1950, is improbable and difficult to believe. Chickens are raised in every home or farm. Why De los Santos had to go away that far (one day's walk to Moson) just to ask for chickens, is out of the ordinary course of human conduct. Again, the witness Monico Nieto, who testified thereto, could not directly tell the date when appellant De los Santos supposedly went for the chickens. When he was asked why he remembered January 13, he explained:

A. I came to know that date because when he was charged I recalled that date and so I knew that date January 13. (t. s. n., Peralta, p. 116.)

From this we may infer that he learned of the said date only from the filing of the information, which was about June, 1950, not from the date of the occurrence itself. The witness Antonio Flores, with whose testimony it is sought to corroborate the supposed going of De los Santos to Moson, is just as difficult to believe. That he remembers it was January 14th when De los Santos supposedly passed by, is not shown. For one to remember a date without reason or connection with some event is impossible to believe.

But there is still another positive evidence of De los Santos' guilt, his confession, Exhibit B. The trial court did not give credit to this appellant's claim that the confession was obtained by force and violence, because of the absence of corroboration of the alleged maltreatment received by him. We are not prepared, after a review of the evidence, to disturb this finding. Neither are we prepared to believe that the appellant signed his confession without having read the same, in view of the testimony of the officer before whom the confession was signed and sworn to, that at the time of the signing appellant admitted knowing its contents. But there is still another reason why the confession must be accepted as evidence against the appellant. Neither the appellant nor his counsel has ever claimed that the confession is false. A confession, to be repudiated, must not only be proved to have been

obtained by force and violence, but also that it is false or untrue, for the law rejects the confession when, by force or violence or intimidation, the accused is compelled against his will to tell a falsehood, not when by such force and violence he is compelled to tell the truth. This is in consonance with the principle that the admissibility of evidence is not affected by the illegality of the means with which it was secured. (*Moncado vs. People's Court, et al.*, 80 Phil. 254.)

The defense of alibi presented by appellant Bernardino did not impress the trial court; neither does it convince us. The testimony of the physician, who could have been believed, is not clear and positive as to appellant's period of supposed illness. He did not issue a medical certificate at the time he rendered his professional services. Neither could he specify the date when the fiesta of Sta. Maria, prior to which the medical examination was supposedly made, took place in 1950. The fiesta could have been long after January 13, 1950, the date of the robbery. But in the face of the positive testimony of Fidel San Felipe, a very close relative of appellant (uncle, cousin of appellant's mother), to the effect that this appellant was seen by the witness from the time the robbers gathered beside the school, and was also seen going up the house—evidence which is corroborated by the assertion of the two women who positively identified him as one of the three accused who went up the house, ransacked the wardrobe, and killed their husbands—the weak and doubtful evidence supporting appellant's alibi becomes ineffective and unavailing.

In resume, we feel morally certain, after a consideration of the evidence, that the two appellants Eutiquiano de los Santos and Alberto Bernardino were among the three persons who went up the house of Pedro Pineda and Rufino Bernardo on the night of January 13, 1950, and who, after robbing the said spouses of cash, jewels, and clothes amounting in value to P904, shot and killed Pedro Pineda and his son Maximino Pineda. We also find that as the three went up, their companions, numbering six, most of them also armed, stood guard below and surrounded the house. The crime committed is, therefore, that of robbery in band, attended by the aggravating circumstances of nocturnity and treachery, but with the mitigating circumstance of voluntary surrender in favor of appellant Bernardino. In accordance with the provisions of article 294, paragraph 1, of the Revised Penal Code, the defendants-appellants should receive the maximum penalty of death. Considering, however, that the two appellants had grown up in a period of moral decadence occasioned by the last war and had just reached the age of majority, and were not fully mature to understand the consequences of their acts, some members of the Court are not disposed to impose the supreme penalty of death upon them, and a sufficient majority in favor of imposing this penalty is, therefore, lacking.

The penalty imposed upon each of the appellants, Eutiquiano de los Santos and Alberto Bernardino, is, therefore, hereby reduced to reclusion perpetua. They are further sentenced to indemnify, jointly and severally, the offended parties in the sum of P904. In all other respects the judgment appealed from is affirmed, with costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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