

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PAQUITO DE LEON ALIAS ITO, ET AL., DEFENDANTS. ELINO
MALLARE, DEFENDANT AND APPELLANT.**

G.R. No. L-13384. June 30, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

In the court of first instance of Nueva Ecija, twelve persons were charged with robbery in band with homicide.

One of them (Ismael Lastimosa) was subsequently discharged to testify for the prosecution. Another (Alfonso Mendoza) pleaded guilty. Only three were tried (Paquito de Leon, Elino Mallare and Bening Apolonio) because the others had not been arrested.

After the trial, Bening Apolonio was acquitted, even as De Leon and Mallare were convicted and sentenced to life imprisonment and to indemnify the 4 heirs of the deceased Alejo Natividad in the sum of P6,000.00.

This appeal concerns Mallare only. Paquito de Leon also appealed, but he withdrew later on.

According to the Hon. Jose N. Leuterio, Judge, in the night of March 5, 1957, one Jog Sarenas visited Ismael Lastimosa in Llanera, Nueva Ecija, to invite him to go to a gambling place. "They went to the house of Jog Sarenas, also in Bonifacio Street, arriving there at about 8 o'clock in the evening, where Ismael Lastimosa saw about 15 persons, among whom were the accused Elino Mallare, Paquito de Leon, Bening Apolonio, Alfonso Mendoza, and Paniong Ronquillo. After these men had eaten their supper in the kitchen, they entered the house of Jog Sarenas, and the latter told them to get ready because they were leaving. Paniong Ronquillo asked if they could have something in that mission, and Jog Sarenas answered that the least they could get from that house was P1,000.00. Paquito de Leon and Elino Mallare remarked that it was good if they could have something because they had had no money for a long time. Paquito de Leon and Mallare then produced a Thompson, Exhibit G, and a short carbine, Exhibit H, and a long carbine, Exhibit I, from a burlap sack. * * * Paquito de Leon gave the Thompson, Exhibit G, to a certain Erling, and the short carbine, Exhibit H, to a man from Bulacan, and the long carbine, Exhibit I, to Faustino Pili. The group went down and passed by the river west of Andres Bonifacio Street, then proceeded northward until they arrived in the barrio of Caridad, also of the municipality of Llanera, at about 10:15 o'clock in the evening, and Jog Sarenas said that was the place. The house turned out to be of Victoriano Natividad. Natividad's house is about 25 meters from the road. There was a fence in front with two gates, and two guards were posted on either gate. Ismael Lastimosa and Jog Sarenas were assigned at the southern gate, and Bening Apolonio, Paniong Ronquillo, and Alfonso Mendoza at the other gate. Jog Sarenas then ordered the others to enter the yard of Victoriano Natividad. Paquito de Leon, Elino Mallare, and the others entered the yard and called to the persons who were inside the house. At that time, Victoriano Natividad and his wife, Leonora Pentecosta, and their children were still awake. Upon hearing the words "tao po," Leonora Pentecosta, at the behest of her husband, asked who they were. One answered that they were P. C.'s and requested that they be accompanied to the house of the barrio lieutenant. Victoriano Natividad told them to go along because the house

was only nearby. Then somebody ordered Victoriano Natividad to wake his "manugang" or son-in-law, referring to Valeriano Agustin. Then they said that they were screening documents of carabaos, and finally they asked if they had wine for sale. Natividad said they had none and they asked for coca-cola in a harsh manner. Victoriano Natividad told his wife to give them coca-cola because they might be angry. Leonora Pentecosta lighted a small petroleum lamp and placed it by the window of the store which was annexed to the house. Victoriano Natividad was behind Leonora, less than a meter. Leonora Pentecosta and Victoriano Natividad recognized two callers, namely the accused Paquito de Leon and Elino Mallare, whom they had seen several times prior to the incident, as Paquito de Leon was formerly a policeman of Llanera and Elino Mallare used to go to the cockpit. After putting the lamp by the window, Leonora Pentecosta gave the men 8 bottles of coca-cola. After they had received the coca-cola, some of the men went by the side and some under the house, while others remained in the same place. Victoriano Natividad became apprehensive, and he told his wife to go to the kitchen while he got his .22 Cal. rifle. When Victoriano Natividad was already in the kitchen, Leonora, upon instruction of Victoriano Natividad called to his compadre Allong, or Braulio Ventura. Not long after, Braulio Ventura came with a bolo in his hand, in front of the kitchen. Braulio asked his compadre where were the persons. At that moment, a man came from under the house with a revolver and pointed it at Braulio Ventura and held him by the shirt. Ventura grabbed the barrel of the gun and they grappled with each other. A second man again came from under the house, went behind Braulio Ventura, and shot him, hitting him below the thoracic vertebrae, left. * * * Victoriano Natividad then shouted to Braulio to seek cover for he would fire. Braulio Ventura wrested the gun from the man with whom he was grappling, pushed him, and sought cover. Victoriano Natividad then fired, and the man was evidently hit, for he rested and fell on his back. Ventura heard him say "Cosio don't leave me, you get me." After the man had fallen, Braulio Ventura called to Valeriano Agustin, so that they could bolo the man. Valeriano Agustin came, and he and Braulio Ventura then struck the man with their bolos. Agustin and Ventura heard a volley of shots, and they ran to the carabao shed, about seven extended arm-lengths from where the man had fallen. Then Braulio Ventura became unconscious after Agustin had left him. At the first volley of shots Victoriano Natividad, who was still in the kitchen, was hit on the thigh and he dropped on the floor. This was followed by a second volley, and the man took the wounded man away with them. When Victoriano Natividad has observed that the men had left he went down. His daughter, Narcisa, whose house is nearby, called him, and told him that his son, Alejo had been shot dead in front of the house of Braulio Ventura. Victoriano Natividad went to the place and found, his son Alejo Natividad, dead. While there, a Jaime Ventura, son of Braulio Ventura, handed to him the revolver, Exhibit C, which had been wrested by Braulio Ventura from the man with whom he had grappled. Prior thereto, Braulio Ventura had recovered consciousness, and he called to his son Jaime. Jaime went to the carabao shed, and found his father wounded, but still holding the gun, Exhibit C. Jaime Ventura brought his father to his house. Thereafter, Victoriano Natividad came and the gun, Exhibit C, was handed to him by Jaime, and Victoriano Natividad brought his dead son to his house.

"In the meantime, the armed men had rescued their fallen comrade and brought him to the gate. Upon instruction of Jog Sarenas, Ismael Lastimosa, Bening Apolonio, and four men from Bulacan brought the wounded man with them to a safe place until they reached a hut in the barrio of Mabini. Ismael Lastimosa and Jog Sarenas then left for their respective houses in Bonifacio Street, leaving the men from Bulacan and the wounded. The others among whom were Paquito de Leon and Elino Mallare, were left in the yard of Victoriano Natividad. Paquito de Leon and Elino Mallare, according to Lastimosa declared that they would not leave the place without the loot or they would burn the neighborhood. Evidently they changed their minds for they left without having accomplished their purpose.

"That same early morning, Victoriano Natividad, Braulio Ventura, and some companions left for Cabanatuan via San Jose. In San Jose, they were given first aid and investigated by the chief of police to whom Victoriano Natividad turned over the revolver, Exhibit C. From San Jose, they proceeded to the Provincial Hospital in

Cabanatuan City, where Victoriano Natividad was treated for gunshot wound, thru and thru, on the thigh. He, however, left that same day but treatment was continued in Llanera. Braulio Ventura had a gunshot wound below the 1st thoracic vertebrae, left, penetrating the abdomen, without exit. He was operated on, and the bullet removed from the anterior abdominal wall. He stayed in the hospital for about a month."

The above statement fairly represents the evidence submitted at the trial, principally the testimony of Ismael Lastimosa (30), of the spouses Victoriano Natividad (54), and Leonora Pentecosta (53), and of Braulio Ventura (47), the neighbor who bravely helped to repel the would-be robbers. These witnesses had no unworthy motives to include Mallare among the raiders of that evening. In fact, on March 18, 1957, the spouses pointed to him as one of the malefactors, when he was lined up with other civilians in the municipal building. And six days after the crime, some operatives of the Constabulary proceeded to his house pretending to be purchasers of firearms, and having persuaded him to sell, he showed them the two carbines, Exhibit H and I and the Thompson, Exh. G, which he dug from a nearby creek. There after, a technical examination of the empty shells found on the scene of the crime showed that some of them had been fired from those firearms.

Elmo Mallare tried to prove he was sick since March 3, 1957, in the home of his aunt Paciencia de los Ama in Barrio Mabini, Llanera, where he was treated by Dr. Manuel Padilla. But his Honor, the trial judge, discredited such defense in view of positive identification by three eye-witnesses, corroborated by the slugs and empty shells discovered in Natividad's premises, which had been fired from the guns in Mallare's possession. It is true, Dr. Padilla swore to having treated Mallare of broncho-pneumonia in the house of Paciencia; but the judge doubted the accuracy of his memory because in the record of the dispensary, Exh. AA, Mallare does not appear as one of those who had been treated on March 3, 1957. This is one point on which appellant's counsel de-officio dwells. However, we see no sufficient reasons to overrule the trial judge, what with the number of eye-witnesses who saw Mallare taking part in the crime, and what with the unsatisfactory answers the physician had returned to the searching questions made by the said judge concerning his failure to list Mallare among the patients treated on March 3. At first, he said he did not record treatments made on Sunday, (March 3 was a Sunday.) But later, he had to admit, when shown other patients listed on Sundays that he "forgot" to make the listing.

Probably aware of the weakness of the defendant's alibi, counsel de-officio took the trouble of scrutinizing the transcript of the stenographic notes to indicate several alleged contradications in the statements of the Natividad spouses. We have read them; they are either unimportant or capable of satisfactory explanation.

Of the other prosecution witness Ismael Lastimosa, counsel argues it was error to discharge him and allow him to testify inasmuch as (a) he had pleaded guilty to the crime; and (b) his testimony was not necessary, there being other direct evidence to support the prosecution's case. He alluded to the provisions of Rule 115, sec. 9(b) and (d). However, the mere fact that Lastimosa pleaded guilty, does not violate the rule that the discharge defendant must not "appear to be the most guilty." And as to the necessity of Lastimosa's testimony, he was the only one who could declare as to the vicious motives of the defendants in proceeding to the abode of Victoriano Natividad. At any rate, we have time and again held that even if the witness should lack some of the qualifications enumerated by the aforesaid section and Rule, his testimony will not, for that reason alone, be discarded or disregarded.[1]

On the other hand, after a review of the record, we discover no good grounds to question the factual findings of the court a quo. Wherefore we have to affirm the declaration that Elino Mallare, in conspiracy with the other accused particularly Paquito de Leon and Alfonso Mendoza, entered the house of Victoriano Natividad with the intention to rob, and in the course thereof, seriously wounded the latter and Braulio Ventura, even as they shot and killed Alejo Natividad, seventeen-year old son of Victoriano.

The offense[2] is punished with reclusion temporal in its maximum period to reclusion perpetua, (Art. 297, Revised Penal Code) which penalty must be imposed in its maximum, because there were several aggravating

circumstances, such as nocturnity, dwelling and band. The appealed judgment is, consequently, affirmed with costs. It should be noted, however, as observed by the Solicitor-General, that appellant's civil liability must be deemed solidary with the other convicts, De Leon and Mendoza (Art. 110, Revised Penal Code).

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, and Gutierrez David, JJ., concur.

[1] U. S. vs. Abanzado, 37 Phil., 658; U. S. vs. Alabot, 38 Phil., 698; People vs. Badilla, 48 Phil., 718; People vs. Castañeda, 63 Phil., 480.

[2] People vs. Manuel, 44 Phil., 833; People vs. Castañeda, 63 Phil., 48; People vs. Galang and de Guzman, 73 Phil., 184; People vs. Gellamos, 61 Phil., 884.

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