

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FLOKENTINO ENGUERO, JOSE TARIMAN, NAZARIO NARVARTE AND DIONISIO BUENO, DEFENDANTS AND APPELLANTS.

G. R. Nos. L-8922-24. February 28, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

Florentino Enguero, Jose Tariman, Nazario Narvarte and Dionisio Bueno were charged with the crime of robbery in band in three separate informations and after a joint trial the Court of First Instance of Camarines Sur found them guilty as charged and sentenced them as follows:

(a) In Criminal Case No. 2714, Florentino Enguero is sentenced to suffer an indeterminate penalty which shall not be less than 8 years and 21 days of prision mayor nor more than 14 years, 10 months and 21 days of reclusidn temporal; Jose Tariman, Nazario Narvarte and Dionisio Bueno each to suffer an indeterminate penalty which shall not. be less than 4 years and 2 months of prision correctional nor more than 8 years and 21 days of prision mayor; and all of them to indemnify Florentina Ogarte de Binaday in the amount of P36.75 and to pay the costs;

(6) In Criminal Case No. 2715, Florentino Enguero is sentenced to suffer an indeterminate penalty which shall not be less than 8 years and 21 days of prision mayor nor more than 14 years, 10 months and 21 days of reclusion temporal; Jose Tariman, Nazario Narvarte and Bionisio Bueno each to suffer an indeterminate penalty which shall not be less than 4 years and 2 months of prision correctional or more than 8 years and 21 days of prision mayor; and all of them to indemnify Cresenciano Magistrado and Juan Margarte in the amount of P38.88 and P17.80 respectively, and to pay the cost; and

(c) In Crminal Case No. 2716, Florentino Enguero is sentenced to suffer an indeterminate penalty which shall not be less than 8 years and 21 days of prision mayor nor more than 14 years, 10 months and 21 days of reclusion temporal; Jose" Tariman, Nazario Narvarte and Dionisio Bueno each to suffer an indeterminate penalty which shall not be less than 4 years and 2 months of prision correctional nor more than 8 years and 21 days of prision mayor; and all of them to indemnify Anatolia Bragais in the amount of P3 and to pay the cost. In the three cases, they shall not suffer subsidiary imprisonment in case, of insolvency on account of the nature of the principal penalty.

The one bottle of Siutong wine, Exh. B, shall be returned to Cresenciano Magistrado; the pair of red leather shoes; Exh. H; the Jacket, Exh. G; the blue pant, Exh. H; and the hammer, Exh. I to Anatolia Bragais; and the birthstone ring, Exh. E, to Juan Margarte. The balising Exh. M, and the bolo, Exh. C, and its scabbard Exh. C-I, are confiscated. The Pistol, Cal. 45, W/SM-394701, by decision of this Court in Criminal Case No. 2729, is already confiscated. The gray skin suit marked Exhs. K and K-I; the pair of tennis shoes Exh. D; the raincoat, Exh. L; and the flashlight, Exh. N, shall be retured to Florentino Enguero. The towel, Exh. O; the skin pant Exh. P, and the pair of shoes, black and white, Exh. Q» shall be returned to Nazario Narvarte.

They appealed. Jose Tariman withdrew his appeal. As no question of fact is raised, the only error assigned to have been committed by the trial court being the conviction and sentence of the defendants for three robberies in band

instead of only one, the Court of Appeals certified the appeal to this Court.

The trial court found the following:

At about 3:00 o'clock in the afternoon of July 9, 1952 the four defendants met at Yabo River, Lupi, Camarines Sur, after Florentino Enguero had previously provided himself with a pistol. From the river they went to the house of Enguero where they took their supper. After eating Enguero issued to Nazario Narvarte a bolo, to Jose Tariman a balisong and to Dionisio Bueno, a piece of hardwood, while he himself had the pistol. Thus armed they all started at about 7:00 in the evening for Jaloban, Pigbasagan Lupi, but before reaching the barrio itself, they passed at the house of Teodulo Banta where Enguero ordered him and his brother-in-law, Francisco Bugagao, at the point of his pistol to guide them to the barrio. At the instance of Enguero, their hands were tied behind their backs. With the two as guides, the group proceeded towards the barrio, and on the way they met Pedro Bragais by the stairs of his house. Pointing his pistol at him, Enguero had his hands tied behind his back and ordered him to go with them. They continued on their way and later they met again one Ernesto Belgado whose hands they also tied behind his back. They took him along with them too. They arrived in the barrio at about 8:00 in the evening and went directly to the store of Cresenciano Magistrado which adjoins his house. They made the four tied men sit on the ground in front of the store guarded by Narvarte who had the bolo in his hand, while Enguero entered the store. Pointing his pistol at Magistrado, Enguero demanded money from him. Fearing for his life, Magistrado ordered his wife who was in the house to give their money to them. Enguero, Bueno and Tariman then went up the House and took P4.80 from Magistrado's wife. And upon finding Juan Margate, the barrio school teacher who was lodging with the Magistrados, in one of the rooms of the house, Bueno, who had the open balisong in his hand brought him down to the ground and there tied his hands behind his back. Upon seeing a birthstone ring in Margate's finger, Bueno forcibly took it away from him. After a while Enguero and Tariman went down to the store and told Magistrado to give them wine which they drank. After drinking Enguero took the goods displayed in the store and passed them on to Bueno and Tariman who piled them on the ground in front of the store. The goods consisted of one dozen bottles of Coca-Cola worth P1.20; one dozen cans of Sardine worth P7.20; one dozen bottles of wine, Hochtung, worth P3; one dozen Sardine at P4.80; one dozen bottles Pomade worth P4.80; two pairs of gold earrings worth P10; one dozen cartons Purico, valued at P3; and one package of Matches worth P0.33. The total value of these articles together with the sum of P4.80 taken from the wife of Magistrado amounts to P39.13. The defendants also carried away the following articles belonging to Juan Margate; one birthstone ring worth P70; one pair of tennis shoes worth P5.50; one pair of sock worth P2; one cake of soap worth P.30; a medal and a crucifix worth P10, all with a total value of P87.80.

After having committed the acts narrated above and when it was about 10:00 in the evening, the four defendants, together with Magistrado, Margate whose hands were still tied behind his back and the four other tied individuals, all of whom they forced to go with them, went to the nearby house of Victorino Togno about 14 meters from the house of Magistrado (See Exh. R).

Upon arriving Florentino Enguero, Jose. Tariman and Clementino Carulla (this last one was originally accused with the four defendants, but the case against him was later dismissed upon motion of the Provincial Fiscal) went up the house, while their above-named companions remained on the ground guarded by Bueno and Narvarte. Anatolia Bragais, wife of Victorino Togno, and her son were in the house. Pointing at the neck of Anatolia a sharp instrument, Enguero demanded money from her. Carulla opened a trunk and took P3 from it. Enguero asked Anatolia where she kept the rest of her money, and to make her reveal it, he threatened to cut her throat with the sharp instrument. She told him that she had no other money. However, Enguero took and carried away from her house a pair of shoes worth P18, a jacket worth P12, a blue pant worth P12 and a hammer. These articles including the P3 in cash have a total value of P45. Then they left the house.

After committing the acts mentioned in the next preceding paragraph, the four accused and Carulla, together with Magistrado, Margate and the four tied men whom they again forced to go with them, proceeded to the house of Florentina Ogarte, wife of Ireneo Binday, located about 54 meters from the house of Cresenciano

Magistrado (See sketch, Exh. R). The time was about 11:00 o'clock in the evening. Upon arriving Enguero and Carulla went up the house while Tariman, Narvarte and Bueno again stood as guards on the ground. Enguero pointed his pistol at Florentina and ordered her to produce her money and jewels. She replied that she had none; but Enguero nonetheless searched her waistline. Not having found anything, he began to hold her private parts, but she begged for pity and said they could get instead the goods in her store. Enguero left her and took from the store 2 dozen cans of Sardine worth P8.20; 15 tins of Salmon worth P11.15; 14 tins of tinapa worth P4.20; 2 dozen bottles of Hochtung wine worth P8.40 besides money amounting to P4.80. He threw the goods to his co-defendants on the ground through the door. The value of the goods and money taken makes a total of P36.75. Enguero and Carulla then asked Florentina to provide them with empty sacks which she did. Bueno, Tariman and Narvarte gathered the goods and put them inside the sacks. They then left the house after cautioning Florentina not to report them to the authorities.

From this last house the four defendants, together with those whom they forced to follow then, returned to the store of Magistrado. Upon arriving they gathered the other stolen goods and put them inside the sacks. Then they looked for some one who could carry the goods for them. They found Glicerio Buensalida and Absalon Medrano, after which they untied the hands of Margate, Bragais, Belgado, Banta and Bugagao. After warning them not to report to the authorities, the four defendants left and went away with the stolen goods carried by Buensalida and Medrano.

After a few days the defendants were apprehended pursuant to a warrant of arrest issued by the Justice of the Peace Court of Lupi on July 16, 1952. After their arrest Enguero and Tariman were investigated by Capt. Dominador M. Gutierrez of the 1st Camarines Sur PC Company, and Narvarte and Bueno by First Lieut. Jaope Nobleza of the same company. The investigation was made in question and answer form and reduced to writing which later was subscribed and sworn to by the defendants before Mamerto M. Bonot, Justice of the Peace of Lupi. Exhibit S is the sworn statement of Enguero, Exhibit T of Bueno, Exhibit U of Narvarte and Exhibit V of Tariman. In these exhibits the four accused have admitted and confessed among other statements, their respective participation in the three different robberies, pointing to the investigators the whereabouts of some of the stolen articles.

Following the lead in the written confessions, Sgt. Fernando Narvaez took the defendants to their respective houses on July 22, 1952 and recovered from them some of the goods and arms used, during the robberies. From Florentino Enguero the following were recovered:

- 1 suit, skin gray, Exhibits K and K-l
- 1 bottle of Siu Tung wine, Exhibit B
- 1 pair of Tennis shoes (Elpo), Exhibit D
- 1 raincoat, rubber, used during the robbery, Exhibit L
- 1 knife (balisong) used during the robbery, Exhibit M
- 1 Flashlight used during the robbery, Exhibit N
- 1 Pistol, Cal. 45 WSN-394701 with one magazine and one ammunition used during the robbery.

From Nazario Narvarte, the following were recovered:

- 1 towel (white), Exhibit O
- 1 pant skin (Ceniza), Exhibit T
- 1 pair shoes, black and white, Exhibit Q
- 1 hammer (Steel) Exhibit I

From Dionisio Bueno, the following were recovered:

- 1 ring, birthstone, Exhibit E.
- 1 pant skin (blue), Exhibit H
- 1 jacket, skin, light green, Exhibit G.

One pair of leather shoes (Red), Exhibit F, was recovered from Jos Tariman.

The above articles are listed in an inventory, Exhibit J, prepared by Sgt. Narvaez, in Which all the four defendants certified that the goods were taken from their custody. As evidence of this fact, each and everyone of them signed Exhibit J below the articles recovered respectively from them (Exhibits J-1, J-2, J-3 and J-4).

Counsel de oficio argues that the appellants are guilty of one crime only citing in support of his contention the case of *People vs. de Leon*, 49 Phil., 437. The contention is without merit. In the case cited by counsel the defendant entered the yard of a house where he found two fighting cocks belonging to different persons and took them. In this case, after committing the first crime of robbery in band the appellants went to another house where they committed the second and after committing it they proceeded to another house where they committed the third. Obviously, the rule in the case cited cannot be invoked and applied to the present.

The crime committed is robbery in band punished in article 294, paragraph 5, of the Revised Penal Code, as amended by Republic Act No. 18, in connection with article 295 of the same Code, as amended by Republic Act No. 373, with prison correctional in its maximum period to prison mayor in its medium period. As the robbery was committed in band, the penalty to be imposed is the maximum period of the proper penalty, which is prison mayor in its medium period, or from 3 years and 1 day to 10 years. The second paragraph of article 295 of the Revised Penal Code which imposes the penalty next higher in degree upon the leader of the band has been left out by Republic Act No. 373, amending further article 295 of the Revised Penal Code.

Pursuant to the Indeterminate Sentence Law, the penalty to be imposed upon each of the appellants is the next lower to that prescribed by the Revised Penal Code for the offense, or 4 months and 1 day of arresto mayor, as minimum, and 8 years and 1 day of prison mayor, as maximum, in each of the three crimes committed, and the accessories of the law.

Modified as to the penalty to be imposed upon each of the three appellants, the rest of the judgment appealed from is affirmed, with proportionate costs in each case against the appellants.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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