

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLES, VS.
BENIGNO VALENZONA, ET AL., DEFENDANTS, BENIGNO
VALENZONA, ANGEL TORION, FRANCISCO HINAMPAS AND DIONISIO
TOGONON, DEFENDANT...**

G.R. No. L-5386. May 28, 1954

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Under the original information in this case, charging robbery in band with homicide, the only defendants were Benigno Valenzona, Angel Torion, Francisco Hinampas and Dionisio Togonon. By an amended information, Giraico Olarte, Ariston Padel and Manuel Odron were included as defendants. Subsequently, Hanuel Odron was discharged from the information to be used as witness for the prosecution. In due course, decision was rendered by the Court of First Instance of Leyte, convicting Benigno Valenzona, Angel Torion, Francisco Hinampas and Dionisio Togonon, of the crime of robbery with homicide, and sentencing each to life imprisonment, with the accessory penalties provided by law, to indemnify the heirs of the deceased Tan Hi Ty in the sum of P6,400.90, and to pay the proportionate part of the costs? and acquitting defendants Ciriaco Olarte and Ariston Padel, upon the ground of Reasonable doubt, with the proportionate part of the costs de oficio Said convicted defendants have appealed from this decision.

The following facts have been duly established and are not denied: The deceased Tan Ni Ty had a store in Awayon, municipality of Silago, Province of Leyte, where he lived with his wife, Soledad Dy, their child Maximo Tan, a niece, Visitacion Dy, and the maid⁵ Teoctora Mafclling. In the evening of May 20-21, 1951, soon after midnight, they were awakened by the noise caused by several men, armed with rifles, who were trying to break into the house. Upon the advise of his wife, Tan started beating a can in order to attract the attention of their neighbors and get Some assistance from them, but, [forthwith, the malefactors replied with a volley of shots, evidently to discourage any intervention. As they persisted in entering the premises, Soledad escaped therefrom through the kitchen door and headed towards the house of the barrio lieutenant. Meanwhile, three members of the gang succeeded in getting into the house by making an opening in the door, whereupon they ransacked the premises—while a fourth man stood on guard outside - until they located Tan Ni Ty—hidden behind a pile of boxes in a small compartment near the kitchen—who, at the point of their guns, was compelled to reveal the whereabouts of his money, aggregating which was taken by the malefactors. Then, his hands were tied behind him and, with two cans of sardines costing P0.90, which the outlaws got from his store, he was placed on "board a "baroto" in the shore nearby. Thus Tan Ni Ty sailed away with three of the thieves, one of whose companions was left ashore. Nothing was heard about Tan until May 24, 1951, when his torso, devoid of both legs, the entire right upper extremity and a portion of the left upper extremity, was seen floating and recovered near the barrio of Bangcas, Hinunangan.

The only question for determination in this case is the identity of the culprits. It appears that, on May 20, 1951, the barrio of Awayon formed part of the municipality of Silago, which had been established only a few days

before and did not have, as yet," the facilities of the municipality of Hinunangan, to which thenceforth it had belonged. Hence, early in the morning of May 21, 1951, Hermenegildo Cabig, Mayor of Hinunangan was prevailed upon to repair to the scene of the occurrence, which came to his knowledge through information given by a barrio lieutenant, evidently because of the report of Soledad By. Upon arrival at the victim's house, Mayor Cabig investigated Soledad By (who had returned sometime before), Visitacion Dy and Teodora Makiling. Soledad declared that upon leaving the kitchen, she saw one of the thieves, whom she recognized as appellant Francisco Hinampas. Visitacion and Teodora, in turn, asserted, that, in addition to said defendant, they recognised, also, the other appellants, namely: Benigno Valenzona, Angel Torion and Dionisio Togonon. These statements were reiterated by said witnesses to F. Balagon, Municipal Mayor of Silago, who came soon later and before whom they made the affidavits Exhibits JJ, KK and LL (see translations Exhibits JJ-1, KK-1 and LL-1).

Inasmuch as appellants were personally known to Mayor Cabig, the latter and Mayor Balagon, with members of the police force, immediately apprehended said appellants in the barrio of Balagawan, Hinunangan—about a kilometer from Awayon—where, with the exception of Dionisio Togonon, who was there temporarily, they resided and were neighbors, for Mrs. Kinampas is a sister of appellant Valenzona, whose wife, in turn, is the aunt of Mrs. Torion, a grand-daughter of the father of appellant Hinampas. After their arrest, appellants were taken to the municipal jail of Hinunangan (there being none yet in Silago) where they signed the joint confession, Exhibit Y, in which it was revealed that, upon reaching the open sea, Tan Ni Ty was thrown into the water, with a stone or rock tied to his neck. On May 22, appellants were investigated by members of the constabulary, who, the next day, took Hinampas and Valenaona to their respective houses in Balagawan, where said peace officers confiscated the rifle, Exhibit N, and the shotgun, Exhibit N-1. Moreover, hidden in the trunk of a dead tree in the yard of Hinampas, near his house, they found, also, the carbine, Exhibit N-2, the shotgun, Exhibit N-3, and several bullets. Exhibits N-4 and N-5. On May 25, appellants were brought before the Justice of the Peace of Cabalian, Feliciano S. Nombrado, with their statements Exhibits Z, AA, BB and CC (see translations Exhibits Z-1, AA-1, BB-1 and CC-1) describing, in detail, how they committed the crime charged. The Justice of the Peace took them to the office of the municipal treasurer, where there were several employees and other persons transacting business, and bade the peace officers who escorted appellants to leave the room, which they did. After directing appellants to be attentive, he read said statements, sentence by sentence, and inquired about the truth of each, to which appellants answered in the affirmative¹. Likewise, Judge Nombrado inquired whether the statements had been freely made, with the same result. Thereupon, appellants subscribed said statements under oath. Later that same day, they were taken first to Balagawan and then to the scene of the crime, which they reenacted in the presence of several persons. Pictures of said reenactment were taken and introduced as Exhibits E, F, HH, HH, 00 and 7.

On June 5, Togonon made an affidavit (Exh, EE) implicating, also, Giriaco Olarte and two others. This led to the apprehension and investigation of Giriaco Olarte, Ariston Padel and Manuel Odrón and to the filing of the amended information including them as defendants. As above stated, Odrón turned state witness, and, accordingly, was discharged from the inf orraation, whereas Olarte. and Pad el were acquitted for insufficiency of the evidence, none of the members of the family of the deceased Tan Ni Ny, who were eye-witnesses to the commission of the crime, having implicated said defendants immediately after the occurrence or at any time thereafter.

Referring now particularly to the issue involved in this appeal, it is not claimed that the witnesses for the prosecution or the peace officers who participated in the investigation of the case had any particular motive to falsely incriminate appellants herein. Upon the other hand, Soledad Dy, Visitacion Dy and Teodora Makiling could not have been mistaken in identifying appellants herein for:

1) Appellants were well-known to them. Togonon was a resident of Awayon. Again, Valenzona and Torion had resided therein prior to the occurrence. Besides, Torion was an old customer of Tan Hi Ty. In front of the store of the latter, there was another store, where Hinampas used to deliver tuba, apart from the fact that he played volley ball in Awayon, on Sundays. Togonon used to eat in the store of Tan Mi Ty and even to cut his hair. He was, furthermore, a "compadre" of Teodora Makiling's father, who, in turn, was a friend of Valenzona.

2) Although the culprits wore masks, the same consisted merely of carbon papers, which covered poorly the lower part only of their respective faces.

3) Before sailing away "with Tan Ni Ty in the evening of the occurrence, the malefactors took off their masks and Visitacion Dy, who followed them to the seashore, saw their uncovered faces by the light of the full moon which was shining brightly at that time.

4) The testimony of the witnesses for the prosecution is confirmed by appellants' joint confession, Exhibit Y, made in the municipality of Hinunangan; by their individual confessions Exhibits Z, AA, BB and CC, sworn to before the Justice of the Peace of Cabalian; by the reenactment of the crime made, in the scene thereof, on May 25, 1951; and by the plea of guilty entered by them in the course of the preliminary Investigation before the Justice of the Peace Court (see Exhibit NN, pp. 52-52, Record of Exhibits).

By way of defense, appellants set up their respective alibis. Moreover, appellants declared that nothing was written on Exhibit Y when they signed thereon and that their affidavits, Exhibits 2, AA, BB and CC? had been obtained through duress.

Said alibis were carefully analyzed in the decision appealed from, in the following language:

"Los acusados Francisco Hinampas y Benigno Valenzona alegaron que ambos estuvieron en sus respectivas casas en toda la noche del 20 de Mayo y no salieron de ellas, y fueron presentadas para corroborar este hecho solo sus respectivas esposas Feliza Valenzona y Maxima Jualo.

"Angle Torion dijo que mientras estaba en su casa en las primeras horas de la noche del 20 de Mayo fue llamado por su amigo y vecino Porfirio Ganot porque la esposa de este iba a dar a luz y por tal motivo el y su esposa fueron a casa de Ganot a eso de las ocho de la noche y allí se quedaron. A eso de las 12 de la noche Porfirio Ganot salió de la casa para llamar a una comadrona y su mujer dio a luz a eso de las 2 de la madrugada y el acusado Torion y su esposa prepararon comida para la esposa de Ganot y después se acostaron en la casa de este y solo salieron al despertarse a eso de las 5:00 de la mañana para ir a casa de sus suegros y después a su trabajo en el campo. Porfirio Ganot declaró corroborando la coartada del acusado Torion. Prescindiendo ya de que el acusado Torion y su testigo Porfirio Ganot son amigos y vecinos, notamos en los testimonios de ambos ciertos detalles que crean fuertes dudas en cuanto a su veracidad. Según Ganot y el acusado Torion, el primero llamó al segundo para que fuera con su esposa a casa de Ganot a eso de las 8:00 de la noche porque la esposa de este ya sentía en aquella hora los dolores previos al parto. Sin embargo, ambos admitieron que Ganot solo fue a llamar a la comadrona que iba de asistir al parto a eso de las 12 de la noche, y esto resulta increíble ya que lo primero que un esposo debe hacer cuando su esposa está sintiendo los dolores previos al parto es llamar inmediatamente a la comadrona que ha de asistir al parto? sobre todo cuando la comadrona vive algo lejos, como en este caso en que, según el testigo Ganot, él tuvo que emplear una hora desde que salió de su casa hasta que volvió con la comadrona. Además, después del parto y de haber preparado la comida para la parturienta, el acusado Torion y su esposa se quedaron aun en la casa de los Ganot para dormir cuando su casa solo estaba unos 15 metros y ya no había necesidad de su presencia porque el parto fue feliz.

"Debe llamarse la atención también que el testigo Porfirio Ganot declaró en repreguntas que los acusados Francisco Hinampas y Benigno Valenzona, que son también vecinos suyos, pues las casas de ambos solo distan de la suya 20 y 25 metros respectivamente, estuvieron también en casa del testigo Ganot en la noche del 20 de visita permaneciendo por bastante tiempo. Esta declaración de Ganot contradice la coartada de los acusados Hinampas y Valenzona de que no salieron en toda la noche del 20 de sus respectivas casas, ni mencionaron del

parto.

"Dionisio Togonon aseguro que en las primeras 4 de la noche del 20 de Mayo el asistio a la procesion de la Santa Cruz del barrio de Bancas A donde se encontraba entonces dirigiendo un drama titulado 'Walingwaling' para la fiesta del barrio que iba de celebrarse el 27 del mismo mes; que despues de la procesion, llamo a los partipinantes deidrama y ensayo el drama durando el ensayo hasta las 12 de la noche y despues se retiro a casa de su madre Ana Ilip;an donde se hospedaba, pues residla entonces en el barrio de Awayon y su esposa y familiase habia quedado en este barrio, y se echo dormir sin salir de la casa hasta la manana siguiente. La madre del acusado, Ana Iligan, trato de corroborar a su hi jo.: Sin embargo, el testigo Paulino Gamolo presehtado por el acusado Togonon para corroborar so coartada atestiguo que el y el acusado Togonon acompañaron a la procesion religiosa que termino a eso de las 8:30 de la noche y despues comenzo el ensayo del drama, siendo el testigo uno de los actores, que se termino una hora despnes porque el drama se ensayaba por partes, ya que no se habia terminado aun de oopiarse el original; y despues del ensayo todos se retiraron. La distancla entre la poblacion de Kinunangan y Balagawan es de 7 kilometres, segun el alcalde Gabig de Hinunangan, y Bancas A dista un kilometro y medio de la poblaoion de Himmangan, La ciistancia, por tanto, entre Bancas A y Balagawan es solo de unos 5 kilometros y se puede facilinente cubrir a pie en un poco mas de una hora. De modo que el acusado Dionisio Togonon tenla tiempo mas que suficisnte para llegar a Balagawan antes de la me-dianoche del 20 de Kayo para reunirse con sus coacusados.

"La coartacla apoyada por pruebas orales, sobre todo cuando la soportan meramente testimonies de parientes y amigos, debe recibirse con riucha cautela, pues la prueba oral facilmente se fabrica, y la prueba de la coartada debe ser clara, satisfactoria y convincente. La coartada no puede prevalocer soUre testimonios terzninantes y claros de los testigos de cargo merecedores de entero credito. Tales son las repetidas cioctrinas do nuestro Tribunal Supremo." (Record, pp. 45-47)

Needless to say, we fully agree with the conclusions thus reached by His Honor, the Trial Judge.

As regards the allegation of duress, suffice it for us to quote from the pertinent portion of said decision, which we adopt as ours:

"Es bastante dificil de creer en la version de los acusados, pues si efectivamente fueron" castigados tan dura y cruelmente como relataron, habrian tenido que guardar cama por algun tiempo o sufrido lesiones mucho mas serias que meras contusiones e inflamaciones y no pudieron haber tenido fuerzas bastantes para hacer la que, segun ellos, fueron obligados a ejecutar eni el viaje del 26 de Kayo para la investigacion preliminar y, segun el teniente Margate, reconstitucion del crimen. Cuando comparecieron ante el juez Nombrado para firmar y jurar sus respectivas declaraciones juradas Exhibitos Z, AA, BB y CC estarian aun patentes las huellas de los castigos y hubieren sldo notadas por el referido cues de pas, y este aseguro que no vio nada en las facciones de los cuatro acusados. Cuesta creer que la palma de coco, teniendo en cuenta su consistencia, se desmenuzara de modo que apareciera oomo una escoba debido a los golpes dados a los acusados, pues para que tal ocurriera, los efectos de los golpes habrian necesariamente sldo mas serios. Ademas, si los acusados Hinarapas y Valenzona tenlan sus caras bastante hinchadas, los constabularios no habrian permitido que las personas, incluyendo las esposas de los citados acusados, les vieran al salir del dispensario publico, pues el que inflige tales castigos procura ocultarlos." (Record, p. 49)

In view of the foregoing, we are of the opinion, and so hold, that the lower court has not erred in accepting the theory of the prosecution and in finding that appellants' guilt has been established beyond reasonable doubt.

Although the commission of the crime charged was attended by several aggravating circumstances (nocturnity, dwelling, assistance of armed men, and killing in an uninhabited place) which would legally warrant the Imposition of the extreme penalty, the same cannot be meted out owing to the lack of the number of votes necessary therefor.

With the only modification that appellants shall be jointly and severally liable for the payment of the indemnity provided for in the decision appealed from, the same is hereby affirmed, therefore, in all other respects, with costs against the appellants.

IT IS SO ORDERED

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador JJ., concur.

Mr. Justice Padilla took no part.

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