

**PEOPLE OF THE PHILIPPINES, PLAINTIFF and APPELLEE, VS.
ORLANDO TANIA ALIAS LORING, ET AL., DEFENDANTS and
APPELLANTS.**

G.R. No. L-18514. April 30, 1966

Ponente: REGALA, J.

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REGALA, J.:

Appeal from a judgment rendered by the Court of First Instance of Cagayan against Orlando Tania, Ricardo Tania, Teofilo de la Cruz and Servillano Mata, convicting them of the crime of robbery in band with homicide and sentencing them to suffer the penalty of reclusion perpetua.

The evidence for the prosecution shows that at about 2:00 o'clock in the early morning of August 15, 1959, while the spouses Gregorio Unida and Petronila Taloza were sleeping with their five children in their house at barrio Balza, municipality of Buguey, Cagayan province, they were awakened by some people demanding that they open their door. Upon being asked by Gregorio as to their identity, somebody among the group answered, "Just open it if you want to live." To make good this threat, the malefactors inserted the muzzles of two guns into the holes of the doorshutter. Feeling helpless and frightened, Gregorio opened the door. Whereupon, Servillano Mata and Orlando Tania, armed with guns, and Teofilo de la Cruz, holding a bolo, entered the house, while Ricardo Tania, also carrying a long bolo, guarded the door. Aiming their guns at Gregorio, Servillano Mata and Orlando Tania ordered him to lie down face downward. bling with fear, Petronila called for help but she was warned to keep quiet otherwise she would be killed. As Gregorio was lying on the floor, Petronila asked the intruders whether they would kill her husband but they said they would not, provided they were given some money Petronila then told them to just search anything in the house. They demanded for the place where the money was kept. Servillano Mata, with a small flashlight on hand ransacked the trunk found in the living room and took therefrom the sum of P60.00.

Hearing the screams of Petronila, Teofilo Unida, a neighbor and uncle of Gregorio, went to the scene of the robbery but was driven away by the malefactors. After Teofilo had left, Gregorio's father, Melecio Unida, also came posthaste and reaching the upper rung of the stairway, he was fired at five times by Orlando Tania. As a consequence, Melecio fell, Petronila rushed to his father-in-law who then lay prostrate but was still able to tell her that Loring Tania was the one who shot him. After the shooting, the culprits speedily ran through the stairway and escaped. The wounded Melecio who was in a serious condition was afterwards taken by relatives and neighbors to the house of Dr. Fortunato Tacuboy, Jr., in the poblacion of Buguey, where he expired ten minutes after arrival.

The postmortem examination report submitted by Dr. Tacuboy shows that Melecio Unida's death was caused by hemorrhage due to gunshot wounds found at the hypogastric region, at the left lower third of thigh, at left knee, at the upper third of left leg, and at the upper third of the right leg.

That same morning, Gregorio went to the police department of Buguey. He reported the incident to Chief of Police Mariano Foronda pointing to the accused herein as the perpetrators of the crime. Gregorio's wife also made

the same disclosure to the Chief of Police. The couple, however, were advised not to divulge the information to anyone so as not to give the assailants a chance to escape.

Gregorio Unida declared that subsequent to the date when he reported the incident to the Chief of Police, he was investigated by Sgt. Pastores and he told the latter that he knew the names of the robbers but did not disclose them in view of an instruction by the Police Chief to that effect. His affidavit about the incident was taken only on August 25, 1959 after the burial of his father and the termination of the novena prayers.

Chief of Police Foronda testified that after receiving the report about the killing and robbery, he, with two other members of the police force of Buguey went to barrio Balza, where the crime took place, for an ocular inspection of the premises thereof. He found four slugs in front of the house, four empty shells west of the house and bloodstains. He was then told by Petronila Taloza that the herein accused were the ones who committed the crime.

After the arrest of the accused, Foronda tried to investigate them but they told him they would just testify in court. The Police Chief also testified that despite the fact that he was told the names of the malefactors, he did not place them in the police blotter to prevent them from escaping.

The accused set up alibi as their defense. The lower court has clearly summarized the evidence for each of the accused, as follows:

"Defendant Orlando Tania denied the charge imputed to him. Testifying in his defense, he declared that on August 15, 1959, he was in Sinigpit, Gonzaga, with his father, mother, brother Ricardo Tania and Alberto Ponce. He commended to live in Sinigpit in 1958 when he occupied a public land which he, his parents and brother cleared. According to Orlando Tania, Sinigpit is accessible to the national road by a trail and one has to cross several rivers and travel a distance of less than 10 kilometers before reaching the national road. He testified also that he went to Buguey for the last time on August 9, 1959. On August 27, 1959, Sgt. Urbina with two members of the police force of Buguey went to Sinigpit to confiscate his .22 caliber rifle. He was brought to the PC detachment in Aparri with his brother Ricardo. On arriving at the PC detachment, Sgt. Pastores told Sgt. Ursulum that he was one of the robbers that entered the house of Gregorio Unida but on hearing what Sgt. Pastores said, he denied having entered the house of Gregorio on the night of August 15, 1959. When he was brought to Buguey, for arraignment on September 9, 1959, his co-defendant Teofilo de la Cruz told him that he heard Chief of Police Mariano Foronda instructing Petronila Taloza to indicate him as one of the robbers that entered the house of Gregorio Unida on August 15, 1959. He could not, however, give any reason why Chief of Police Foronda implicated him in the robbery as he said that his relation with the Chief of Police Foronda is cordial and friendly. Defendant Orlando Tania testified also that he was born in Dalaya Norte and has grown up in that place and that Dalaya Norte is an adjoining barrio of Balza.

"Defendant Ricardo Tania similarly denied the charge against him. Testifying in his behalf, he said that on the night of August 15, 1959, he slept in their house at Sinigpit, Gonzaga, where he began to live since he arrived from Manila in April, 1958. On August 15, 1959, he woke up at 4:00 o'clock to cook food. He slept in the annex of their house with Orlando Tania and Alberto Ponce while his parents and sisters slept in the main building. According to him, the barrio of Sinigpit, Gonzaga, Cagayan, is about 10 kilometers from the national road and one has to cross several rivers before reaching the national road and from the national road to Balza, the distance is 30 kilometers. On August 27, 1959, Sgt. Urbina and two members of the police force of Buguey went to their house and took him and his brother Orlando and the .22 caliber rifle licensed in the name of Orlando. They went with Sgto Urbina and the two policemen as they were threatened if they did not go with them. At night time, they slept in the house of barrio lieutenant of Mag-rafil, Gonzaga, and, on the following day, they took their breakfast in the house of Mayor Costales of Buguey where they took their lunch. From the house of the Mayor, they were brought to the PC detachment in Aparri where they were investigated about the robbery in Balza, Buguey, but they denied having gone to the house of Gregorio Unida. He denied also having had in his possession any gun and that the .22 caliber rifle that Sgt. Urbina and the two policemen of Buguey

took from their house is licensed in the name of his brother Orlando.

"Defendant Teofilo de la Cruz, testifying in his defense, declared that on the night of August 14, 1959, he slept in his house in Dalaya Norte with the members of his family. In the morning of August 15, 1959, he was arrested and brought to the municipal building of Buguey because of a charge against him for qualified theft. After he pleaded guilty, he was sentenced to 7 days imprisonment and he was released after serving the sentence. On August 24, 1959, he and Servillano Mata saw the Chief of Police of Buguey. In fact, he went to the office of the Chief of Police to find out why he was needed. On August 25, 1959, at about 2 o'clock in the afternoon, he and Servillano Mata were asked to line up with 4 detainees, to G. R. No. L-18514 wit: Feliciano Arellano, Gil Arellano, Ruben Arellano and Crisostomo Abella in front of the stairway of the municipal building of Buguey. After they lined up, Chief of Police Foronda called Petronila Taloza and another woman to identify them but Petronila and her companion were not able to identify anyone of them. Even then, he and Servillano Mata were asked to wait for the Chief of Police. While he was waiting in the municipal building, he overheard the Chief of Police tell Petronila Taloza to indicate him and Servillano Mata as the companions of the Tania brothers who robbed the house of Petronila. Then, Chief of Police Foronda, Petronila Taloza and another woman went westward apparently proceeding to the house of Atty. Agustin Re-ininajes or Judge Federico C. Labio of Buguey. As a motive why the Chief of Police told Petronila Taloza to indicate him as one of the robbers, he said that Chief of Police Foronda had a grudge against him because Chief of Police Foronda once asked him to let his wife sign a receipt of indebtedness in favor of Mrs. Talla but he did not comply with the request. The testimony of the defendant Teofilo de la Cruz is that he did not leave their house on the night of August 14, is corroborated by his wife Eusebia Doniego.

"Defendant Servillano Mata denied also the charge imputed to him testifying in his behalf, he said that on August 14, 1959, he was arrested in Dalaya Norte by Placido Tabag and Pablo Taba-co. At the time he was arrested, the policemen did not show to him a warrant of arrest. He was brought to the house of David Rates where he saw Teofilo de la Cruz and another policeman. He and Teofilo de la Cruz were brought to Centro Buguey arriving in the municipal building at about 4:00 o'clock in the afternoon. When he was arrested, Policeman Tabag told him that the Chief of Police sent Policeman Tabag and Tabaco to fetch him as the Chief of Police wanted to talk to him about his case for frustrated murder. When they arrived in the municipal building, they waited for the Chief of Police but they were not able to see the Chief of Police so they passed the night in the municipal building. On the following day between 7:00 o'clock and 8:00 o'clock in the morning, they saw the Chief of Police whom they asked why they were called but the Chief of Police advised them to wait on the same day, Teofilo de la Cruz left for Aparri and he in turn went to the house of Eustaquio Sala. At 2:00 o'clock in the afternoon, the Chief of Police arrived in the municipal building. He ordered 4 detainees to line up with him and Teofilo de la Cruz. When they have lined up, the Chief of Police asked Petronila Taloza to identify among those who lined up the robbers that entered their house but Petronila said that not one of them went to her house to rob on the night of August 14, 1959, as according to Petronila, she could not recognize anyone of the six persons that lined up. Thereafter, the four detainees were returned to jail while he and Teofilo de la Cruz sat on a bench found near the door of the office of the Chief of Police. The two women when the Chief of Police asked to identify the robbers among the six persons "entered the office of the Chief of Police and Servillano Mata heard the Chief of Police instruct Petronila to indicate two persons as the companions of the other two whom they were going to take as the robbers that entered the house of Petronila but Petronila said that she could not identify them. However, the Chief of Police said that Petronila should not worry as he was supporting her. Then the two women with the Chief of Police left and proceeded westward. On the same afternoon of August 25, 1959, Servillano Mata saw Mayor Felimon Costales investigating Benito Doniego about the robbery but he was not able to know the result of the investigation as he went home hurriedly. According to Servillano Mata, he was charged with robbery by the Chief of Police as he was not able to pay in full the amount he promised to give the Chief of Police in connection with the case filed against Casimiro Pascua in 1953 which was investigated by the Chief of Police jointly with Sgt. Eusebio Pastores. In fact, when the Chief of Police tried to collect the balance of P50.00, as he was only able to give P50.00, he said that he could not pay that amount and the Chief of Police became angry and insulted him. He

said that he could not have committed the robbery at the early dawn of August 14, 1959, as he was in his house.

The above exculpatory declarations were corroborated by other witnesses.

Marcela Doniego, mother of Orlando and Ricardo Tania confirmed the declaration of her sons that they all slept in their house at Sinigpit, Gonzaga, Cagayan, on the nights of August 14 and 15, 1959. As pointed out by the Solicitor General, this witness, however, admitted that their house in the barrio of Sinigpit is more or less temporary and that their land in said barrio is hardly tillable. She admitted further that their house in Dalaya Norte (a barrio contiguous to Balza where the crime was committed) is made of strong materials—galvanized roofing and wooden wall.

Another corroborating witness, Eusebia Doniego, the wife of accused Teofilo de la Cruz, asserted that her husband was asleep in their house at Dalaya Norte during the occurrence.

Feliciano and Gil Arellano, detention prisoners in the municipal jail of Buguey, Cagayan, testified that they were among those made to line up with the accused-appellants Servillano Mata and Teofilo de la Cruz on August 25, 1959 and they heard Petronila Taloza and another woman say that the culprits they were looking for were not among those who formed the line. But these witnesses admitted on cross-examination that they were together with Mata and de la Cruz in the municipal and provincial jails, so that they must have been friends of the said accused.

Placido Tabag, a policeman, stated that he accompanied the Chief of Police to the scene of the crime but Gregorio Unida and Petronila Taloza therein declared that they could not identify the malefactors. He admits, however, that it was not he himself, but the Chief of Police, who interrogated the said inmates of the house about the crime.

Sgt. Pastores, a Philippine Constabulary soldier sent to assist the police authorities in investigating the crime, declared that the son and daughter-in-law of the deceased were not able to tell him the names of the assailants.

The lower court disbelieved the narrations of the witnesses supporting the common defense of alibi in view of the positive testimony made by Gregorio Unida and Petronila Taloza that these four accused were the ones who broke into their house in the early morning of August 15, 1959.

In this appeal, the attorney for the defense impugns the judgment of conviction pointing out to a number of errors committed by the lower court in its appreciation of the evidence.

Appellants first of all contends that the testimony of Dr. Tacuboy that the victim could not longer talk coherently at the time he received the gunshot wounds belies the claim of Petronila Taloza that her father-in-law was able to tell her who shot him. It should be remembered that the stricken man was examined by said doctor some three or four hours already after he received the wounds. The doctor's testimony, therefore, which is a mere opinion as to the ability of the victim to speak, would not conclusively disprove Petronila's statement.

Appellants also consider improbable for Petronila to have had the courage to go near the victim and talk to him after he was shot, while the latter's own son Gregorio could not do so. Again, we do not agree with the appellant, As aptly observed by the Solicitor General, it is not easy to draw a hard and fast rule as to how a person would react under such an unusual situation. While one might preserve his equanimity and perform what is expected of him, others might get frantic and powerless to move to the victim's rescue.

Appellants next contend that it is not in accordance with human nature to rob friends without the robbers concealing their identities. This argument suffers from some inaccuracy. There is no clear showing that the culprits were friends of the couple Gregorio and Petronila. And it is to be noted that after being told by Petronila to just search anything, and after asking her where the money was kept, the robbers put out the light. In other

words, the robbers later thought of darkening the place to cover their identities, using only a flashlight in locating the money that was kept inside the trunk.

Lastly, the accused appellants state that it took the couple a long time before they complained the matter to the authorities. This is not exactly true⁸ As earlier stated, Gregorio Unida, that very day of the killing and robbery, reported immediately to the Chief of Police but was, however, admonished by the latter not to spread the information to prevent the culprits from escaping. This must be the reason behind the testimony of the two constabulary men that when they interviewed the son and daughter-in-law of the deceased they did not mention the names of their assailants.

The rule is well established that where the issue in a case is the credibility of witnesses, appellate courts do not generally disturb the findings of the trial court, the judge thereof being in a much better position to decide the question, having seen and heard the witnesses himself and observed their deportment and manner of testifying, unless it is shown that it has overlooked certain facts of substance and value that, if considered, might affect the result of the case. (People vs. Berganio, et al., G. R. No. L-10121, December 29, 1960, and cases therein cited)

In conclusion, We are convinced of the guilt of the accused. As pointed out by the Solicitor-General, we note further that the crime was aggravated by the circumstances of dwelling, night time and band, and there being no mitigating circumstance to offset them, the penalty prescribed under Article 294 of the Revised Penal Code—reclusion perpetua to death—would be imposed in its maximum. For lack of the sufficient votes for the imposition of the death penalty, however, We are hereby affirming the decision appealed from in all respects.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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