

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
HIPOLITO TONDO, EDUAEDO PAKALLON AND RUFU ELNAS,
DEFENDANTS. HIPOLITO TONDO AND EDUARDO PAKALLON,
DEFENDANTS AND APPEL...**

G.R. No. L-9131. July 31, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Hipolito Tondo, Eduardo Parallon and Rufo Elnas were charged with the crime of robbery with homicide in the Court of First Instance of Zamboanga. Upon arraignment, they entered a plea of not guilty. After trial the Court found Hipolito Tondo and Eduardo Parallon guilty as charged and sentenced each of—

* * * them to suffer the penalty of reclusion perpetua; to indemnify the heirs of the deceased, Ting Boon Tee, in the sum of P6,000.00; to return the cash and stolen articles or in the alternative to pay its value in the total sum of P1,600.00; with the accessory penalties prescribed by law and to pay two thirds (2/3) of the costs of these proceedings. (Crim. case No. 1794.)

Rufo Elnas was acquitted for insufficiency of evidence to support his conviction.

The convicted defendants have appealed.

At about 5:55 o'clock in the morning of 21 August 1953 a telephone report was received at the headquarters of the Zamboanga City Police Department to the effect that the Chinese owner of a sari-sari store at San Jose Interior, Zamboanga City, had failed to answer the calls of a bread delivery man to open his store to get the bread to be sold for the day. Detectives Pedro Francisco and Leonardo Eijansantos and plainclothesman Enrique Manuel repaired to the place. Upon arrival at the store they found the two front doors locked (Exhibits A-2 and A-3) and the side door closed but not, locked (Exhibit A-1). They opened the unlocked door and entered the store. Inside the store, they found merchandise and articles like salmon and sardines cans and candles scattered on the floor and the tables and drawers in disarray. In the hall leading to the kitchen they found a blanket and a mat. When they lifted them they found the body of a dead man. Ting Kim Pong, who arrived at the scene, identified the dead man as his father Ting Boon Tee. The police officers called up their chief, the chief of the secret service, the medical health officer and a photographer. The photographer took pictures of the cadaver in the very position it was found (Exhibits B & C) and in another showing the wound inflicted (Exhibit D). Thereafter the body was transferred to the morgue where Dr. Filomeno Pecson, medical health officer, performed an autopsy. Dr. Pecson found a wound on the left chest penetrating the heart two inches deep, which was fatal (Exhibits D & D-1).

The police officers continued the investigation of the crime in a nearby bijon (noodle) factory owned by Ong Tao where the deceased was last seen alive in the evening of the previous day and there they saw a white underwear with yellow stains hanging on a bamboo clothesline at the back of the factory (Exhibits E & E-1). Asked to whom the underwear belonged, no one among the ten laborers working in the factory owned it. Upon further investigation, they found in the trunk of Hipolito Tondo a sharkskin pants with red stains on it (Exhibits O, 0-1,

0-2 & 0-5). Hipolito Tondo admitted ownership of the pants. The ten laborers working in the factory, including Eduardo Parallon and Hipolito Tondo, were brought to the police headquarters and the underwear (Exhibit E) and the sharkskin pants (Exhibit O) to Justino Ganda, bacteriologist and chemist of the Zamboanga General Hospital, for chemical test to determine whether the stains were of human blood. At the police headquarters Eduardo Parallon broke down and admitted ownership of the underwear, and later on confessed that he was with Hipolito Tondo in the evening of 20 August 1953 when the latter killed Ting Boon Tee for the purpose of robbing him (Exhibits L & L-1), Hipolito Tondo also confessed that he killed the victim for the purpose of robbing him (Exhibits M, M-1 & M-2). Rufo Elnas signed an affidavit declaring that although he was with Eduardo Parallon and Hipolito Tondo in the evening of 20 August 1953 when Ting Boon Tee was killed, he was not inside the store at the time of the incident (Exhibits N & N-1). The weapon used in killing the victim, a dagger (Exhibit P), was recovered from Marcos Parallon, brother of Eduardo, and taken to Justino Canda for chemical examination.

In the afternoon of 21 August, the trio were brought to the scene of the crime, and in the presence of police authorities reenacted the way the crime was committed. Photographs of the various stages of the crime were taken (Exhibits G, H, I & J). A sketch of the scene, the positions taken by each and every one of them, and the trail traversed by them in coming to and from the store, were made by detective Daniel Zamora (Exhibit F).

The result of the chemical examination of the stains in the underwear owned by Eduardo Parallon (Exhibits E & E-1), the sharkskin pants owned by Hipolito Tondo (Exhibits O, 0-1, 0-2 & 0-3) and the dagger (Exhibit P) was positive for human blood (Exhibits T & U).

At the trial the appellants repudiated their respective sworn statements where they admitted the commission of the crime, and claimed that they were maltreated and forced by the police authorities to sign the written confessions prepared by them for their signature (Exhibits L, L-1, M, M-1 & M-2). The repudiation by them of their sworn confessions is not sufficient to overcome the certification of Municipal Judge Edmundo S. Piñga, before whom they appeared and swore to the truth of the contents of the affidavits, typewritten at the foot of the sworn statement of Eduardo Parallon, as follows:

This is to certify that the declarant's identity has been duly verified; that when he was examined before this Court of the contents of this affidavit, he voluntarily declared in Visayan dialect; that he voluntarily declared before the investigating officer and who were not present in Court when declarant was examined before me; that he has never been forced to declare by the officers concerned, and that he was not promised of any remuneration to give his testimony. * * * (Exhibit L-1)

and of Hipolito Tondo, as follows:

This is to certify that declarant Hipolito Tondo has been duly verified; that upon examination of the contents of this affidavit before this Court, declarant declared in Visayan which was interpreted by the undersigned; that what he declared in this affidavit according to declarant are all the truth and nothing but the truth that the one who investigated him was not found in Court when examined of the contents Hereof, * * *. (Exhibit M-2)

which the Municipal Judge reaffirmed at the trial of the case when he took the witness stand. The fact that the appellants did not repudiate their respective confessions and inform the Municipal Judge that they were maltreated and forced to sign the prepared statements by the police authorities, when they appeared before him, shows that the confessions were voluntary. Their respective confessions were corroborated by the result of the chemical examination of the stains in the underwear owned by Eduardo Parallon, the sharkskin pants owned by Hipolito Tondo and the dagger, all of which were positive for human blood.

The appellants assail the expert testimony of Justino Canda who submitted the report on his test (Exhibits T & U) and testified that the stains found in the underwear of Eduardo Parallon, the sharkskin pants of Hipolito Tondo

and the dagger used in killing the victim were of human blood, claiming that the "Precipitin Test" was the proper one and that the "Teichman's Test," the one used by him, Was not conclusive. The fact that the witness had been a bacteriologist and chemist and connected with the Zamboanga General Hospital in that capacity for 40 years; and that he had varied experience in the use of the "Teichman's Test" to determine the presence of human blood, is sufficient to qualify him as an expert upon whose opinion the Court may rely. Moreover, this part of the evidence for the prosecution is merely corroborative and is not the only evidence relied upon by the Court in arriving at the conclusion it did.

The evidence for the prosecution does not establish that robbery was consummated but it establishes that robbery was attempted by the appellants. The crime committed falls under the provisions of article 297 of the Revised Penal Code, which provides that —

When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.

As the aggravating circumstances of dwelling and nighttime were present in the commission of the crime, the penalty should be imposed in its maximum period, which is reclusion perpetua.

With the pronouncement that the crime committed is that provided and punished in article 297 of the Revised Penal Code and the striking out of that part of the judgment appealed from ordering restitution of the cash and stolen articles or in the alternative payment of its value in the total sum of P1,600, because there is no satisfactory evidence that the appellants had taken money "or goods from their victim's store, the judgment appealed from is affirmed, with the proportionate costs against the appellants.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrerra, JJ., concur.

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