

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE,
VS LEOPOLDO ARNOCO, ET AL., DEFENDANTS. LEOPOLDO ARNOCO,
DEFENDANT AND APPELLANT.**

G. R. No. L-3782. August 31, 1951

Ponente: REYES, J.

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REYES, J.:

In the evening of November 19, 1949, an armed band raided a house in barrio Bonacan, municipality of San Isidro, province of Leyte, shot and killed its owner, Andres Pontillas, and robbed him of P260. For this crime an information for robbery in band with homicide was filed against Leopoldo Arnoco, Marciano Arnoco, Ireneo Estancia, Eusebio Estancia, Isidoro Estancia, Genaro Cabias, and Nicasio (alias Naro). But only the first two were tried, for the other five were not apprehended. For insufficiency of evidence the case was dismissed as to Marciano Arnoco. But Leopoldo Arnoco was found guilty of robbery with homicide and sentenced to life imprisonment, accessories of the law, indemnity of P4,260 and proportionate costs. From this sentence he has appealed.

The perpetration of the crime charged is not denied. Only appellant's participation therein is in question. The evidence shows that on August 4, 1949, three of appellant's co-accused, referred to in the record as the Estancia brothers, assaulted and robbed one Carlos Gaspar in barrio Taglawigan, San Isidro, Leyte. Gaspar filed a complaint for robbery against his assailants but later dropped the case at the request of appellant, who gave him a horse and P60 in cash to make good his loss.

Some three months later, or in the morning of November 19, the Estancia brothers, who were from the said barrio of Taglawigan, came with two companions to sitio Bonacan in the same municipality of San Isidro. Their purpose was to rob, and according to the affidavit of their co-accused Marciano Arnoco they had "an understanding and an agreement" with his uncle Leopoldo Arnoco, the appellant herein. Taking particular notice of a big house which Marciano told them belonged to Andres Pontillas, they made for that house when night came after they had gathered in appellant's yard where they were seen late in the afternoon by the witness Dominador Arnoco, appellant's own nephew. With them also went appellant and the accused Marciano Arnoco. All carried deadly weapons, among them a rifle and a .45-caliber pistol. As they neared Pontillas' house they met Marciano Cator. Obviously as a matter of precaution, they made him a captive, tied his hands and took him along. In Pontillas' yard they came upon Pastor Ilagan. They also had him bound. They then went up into the house, taking their captive Marciano Cator with them but leaving the appellant and another companion downstairs apparently to guard Pastor Ilagan and at the same time act as lookouts.

Upstairs the raiders found Andres Pontillas lying on the floor. One of them shot him in the neck. Badly wounded, Pontillas died the following day. Another raider seized Primo Cator, tied his hands and made him sit on a bench. Thereafter, Pastor Ilagan was brought upstairs, still with his hands tied. And then with appellant posted outside the door and another raider pointing a pistol at Pastor Ilagan and Primo Cator, the others searched the house and

helped themselves to all the money they could find, which totalled P260, including what they took from Andres Pontillas' belt.

After the raid, the Estancia brothers and their companions followed appellant to his house, taking along with them one of their bound captives, Marciano Cator. The other two, Primo Cator and Pastor Ilagan, were able to escape.

That same night appellant woke up his nephew Dominador Arnoco and one Santos Siozon and had them show the Estancia brothers and their companions the way to barrio Villalon, himself going with them for a short distance. Upon striking the trail leading to that barrio, Dominador and Santos were allowed to go home. But Marciano Cator was not released, and he has not since then been heard from.

The following morning appellant went to the house of Andres Pontillas and searched the latter's dead body which was lying on the floor, and having found near it a .45-caliber empty shell, he picked it up and put it in his pocket.

Expecting arrest, appellant later surrendered to a municipal councilor a .45-caliber pistol, which at the trial was identified by Primo Cator and Pastor Ilagan as the very gun which was pointed at them by one of the robbers in the house of Andres Pontillas.

Appellant denied having participated in the raid and said that all he did was to furnish the raiders a guide when they woke him up in his house that night and asked him to show them the way to the crossing to Villalon. His defense is planted on the proposition that there is not enough evidence to connect him with the crime charged.

This proposition cannot stand in the face of the damaging evidence given by the witnesses for the prosecution and confirmed in part by appellant's admissions.

By the testimony of witnesses Primo Cator and Pastor Ilagan, who knew appellant well and bore him no grudge, it has been established that appellant was in the group that raided the house of Andres Pontillas. The fact that he remained at the door of the house as a guard or lookout while his companions robbed and killed upstairs does not make him any the less a co-author of the crime (U. S. vs. Diris, 26 Phil., 133).

His tie-up with the Estancia brothers may also be deduced from the admitted fact that some three months before he had saved them from the toils of the law by making restitution for what they had robbed; from the testimony of his own nephew, Dominador Arnoco, that he saw the Estancia brothers and their companions in appellant's yard both before and after the raid; and from the affidavit of his other nephew and co-accused, Marciano

Arnoco (presented as evidence by the defense) to the effect that the Estancia brothers had come to Bonacan to rob and that they had "an understanding and agreement" with the appellant.

Appellant also admits having gone to the house of Pontillas the day following the raid and picked up an empty shell of a .45-caliber bullet near the cadaver of the victim. And while he claims that he later dropped the shell out of the window, those present on that occasion were positive in their testimony that he put the shell in his pocket. Already damaging as betraying the natural desire of a criminal to eliminate all evidence of his crime, this incident acquires additional importance when it is considered that the shell is of the same caliber as the pistol which appellant surrendered sometime after the raid and which was identified at the trial as the very gun which was pointed at Primo Cator and Pastor Ilagan by one of the raiders.

The defense claims that appellant could not have been capable of committing a robbery, considering that he was well-to-do, being the owner of 70 hectares of farm land. But as the trial court observes, it is not the poor alone that succumb to the impulse to rob, and, besides, appellant appears to be a heavy gambler, for he admitted having on one occasion lost about P1,000 in a cockpit.

The defense also contends that the testimony of Primo Cator and Pastor Ilagan that appellant was with the raiders

should not be believed because those witnesses also declared that while the other members of the band had their faces partially covered by the brims of their hats, appellant made no attempt to cover his face notwithstanding the fact that he was well known to the inmates of the house. But then this may well be the reason why appellant remained downstairs instead of going up the house and run the risk of being recognized.

The defense calls attention to some contradictions or inconsistencies in the testimony of the prosecution witnesses. But these contradictions only refer to minor matters and do not detract from the probative value of the testimony as a whole.

During the pendency of this appeal appellant has filed a motion for new trial on the ground of newly discovered evidence on the strength of an affidavit subscribed by Eusebio Estancia, who is apparently undergoing detention in connection with this crime, to the effect that he was with the band that raided the house of Andres Pontillas, having been forced to do so by Nicasio Cabias and Genaro (alias Naro), and that the appellant Leopoldo Arnoco was not with them and did not have anything to do with the crime. An affidavit of this nature hardly merits consideration and, even if admitted in evidence, cannot change the conclusion which we have already reached.

The crime committed is robbery in band with homicide for which reason the Solicitor General recommends the imposition of the extreme penalty. For lack of sufficient votes, however, for the imposition of such penalty, the sentence imposed by the lower court need not be disturbed except that, as recommended by the Solicitor General, the indemnity to be paid by the appellant should be raised to P6,000.

Wherefore, modified as to the qualification of the crime and as to the amount of indemnity to be paid, the sentence below is affirmed with costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason and Jugo, JJ., concur.

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