

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCOS LIERA, ANTONIO GUEVARA, AND CARLITO LARA,
ACCUSED, ANTONIO GUEVARA, DEFENDANT-APPELLANT.**

G.R. Nos. L-32147-49. March 17, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal from the judgment of the Circuit Criminal Court of Zamboanga del Sur finding the accused Antonio Guevara, alias "Nicolas Guevara", alias "Tata", alias "Colas", guilty of the crimes of robbery in band with homicide, and robbery in band on two counts, and sentenced, as follows:

"(a) In Criminal Case No. 3586, to suffer the penalty of RECLUSION PERPETUA, with all the accessories provided by law; to indemnify the heirs of the deceased Salvador Tindugan in the sum of P12,000.00, and the further sum of P1,080.00 representing the value of the articles robbed, without subsidiary imprisonment in case of insolvency; and to pay the costs.

"(b) In Criminal Cases Nos. 3587 and 3588, to suffer imprisonment for a period of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) day of Prision correccional to TEN (10) YEARS of Prision Mayor in each of said cases; to indemnify the offended parties Asuncion Gutang and Tabita Alviar in the sums of P4,140.00 and P125.00, respectively, representing the value of articles robbed from them, without subsidiary imprisonment in case of insolvency; and, to pay the corresponding costs."

It is not disputed that at about 11:00 o'clock in the evening of September 11, 1967, while Daniela Tindugan was sleeping in the bedroom of their house, located at barrio Bogo, Pagadian, Zamboanga del Sur, she was awakened by a very loud explosion close to her. Upon sitting up, she saw her husband, Salvador Tindugan, who was sleeping beside her, bleeding in the mouth and nose. She also saw three armed men, with flashlights, inside their bedroom, who demanded money from her. She opened her aparador and gave their money amounting to about P400.00, to the armed men. The malefactors demanded more, saying that Mr. and Mrs. Tindugan were operating three (3) passenger jeepneys and a rice and corn mill. Mrs. Tindugan pleaded that that was all the money left because she had already used some of it in paying the company to whom they were indebted. Not satisfied, the armed men ransacked the bedroom. In one corner, they found a shotgun, worth P500.00, which they appropriated. They also found a leather holster in the aparador so that the armed men demanded where the gun was. She pointed to the pillow underneath her husband's head. The gun, a cal. 32 revolver, worth about P500.00, was also taken by the armed men. The men also removed a watch from the wrist of her husband. The armed men then brought Mrs. Tindugan to the room occupied by her children where the said men took the wrist watch belonging to her eldest daughter, after which the armed men herded Mrs. Tindugan and her children to the sala downstairs where they were made to lie face downwards on the floor. Moments later, she saw the armed group go towards the house of

her sister, Tabita Alviar, located nearby. So, she brought her children to a bamboo thicket close by, lest the armed men come back and harm them. While in hiding, she heard several bursts of gunfire so that she and her children stayed there for hours.

From the house of Mrs. Tindugan, the armed men indeed went to the house of Tabita Alviar next door. Upon reaching the yard, the robbers ordered the occupants to come down, otherwise the house would be burned. The robbers fired several shots in the air to make it more convincing. Tabita Alviar, her husband Antonio, and their driver came out and were made to lie down on a pile of corn. The robbers then proceeded to ransack the house and store for valuables. The hands of Tabita were then tied and she was asked who among their neighbors had money. Tabita pointed to Asuncion Gutang. So, the armed men brought Tabita to the house of Asuncion and ordered her to call Asuncion. When Asuncion answered, the armed men replied by firing several shots. One of the armed men thereupon got hold of a crowbar and forcibly opened the door and entered the house of Asuncion. When Asuncion came to the door, a gun was poked at her and when she tried to escape, she was knocked down. Thereafter, the armed men ransacked the house for valuables. Paper bills in the amount of P2,000.00 which were hidden in the ceiling of their house, coins of various denominations amounting to P2,000.00 contained inside several piggy banks, as well as the earring and ring of the daughter of Mrs. Gutang were taken by the armed men.

After the robbers had left, Mrs. Daniela Tindugan returned to their house and found her husband, Salvador Tindugan, dead and their belongings scattered about. The robbers made off with P400.00 in cash; a shotgun worth P500.00; a revolver worth another P500.00; a wrist watch valued at P120.00; a ring worth P30.00; and a lady's wrist watch costing P30.00.

From Tabita Alviar, the robbers took money in the amount of P100.00 and a shirt costing P25.00.

Mrs. Asuncion Gutang lost cash in bills and coins amounting to P4,000.00; one gold ring worth P100.00; a pair of earrings worth P40.00; and one polo shirt.

The incident was reported to the police and Lt. Silvestre Roda of the Pagadian Police Department immediately took steps to apprehend the armed robbers upon learning that a blue jeep was used in the commission of the crime. But, he was not able to intercept the robbers that same night. The following day, Lt. Roda and his men saw the suspected vehicle in Kumalarang and apprehended Marcos Liera, the operator of the jeep and Carlito Lara, the driver.

Initial investigations showed that the said jeep was hired by one Leo Ramos, Jr., and two men, one of whom was called "Tata", in order to go to Bogo, from the poblacion of Pagadian. Carlito Lara was requested by Marcos Liera to drive the jeep. Near the campus of the Southern Mindanao Colleges, three men boarded the jeep.[1] Thence, they proceeded towards Bogo and stopped near the house of Daniela Tindugan where the passengers alighted.

It was also disclosed that Leo Ramos, Jr., and his companions were staying in the house of one Fortunato Kagampang at Lumbia, Pagadian. Losing no time, Lt. Roda and his men went to the said house with the daughter of Marcos Liera as their guide. While the policemen were near the house, however, somebody sounded the horn of their jeep. Believing that the robbers had been alerted, Lt. Roda and his men refrained from proceeding. The next day, Lt. Roda came back with more men. Leo Ramos, Jr. was not there, but in the premises of the house of Kagampang, Lt. Roda recovered several coins of various denominations strewn around, and other personal belongings like clothes, pliers, auger bits, screw driver, and the blue polo shirt taken from the house of Mrs. Asuncion Gutang.[2] The shotgun of Salvador Tindugan was recovered near the jeep of Mrs. Gutang which was used by the robbers in going away from Bogo and dumped in front of the house of one Mr. Mariano.[3]

As a consequence, complaints for robbery in band with homicide and robbery in band on two counts were filed

against Marcos Liera, Antonio Guevara, Leo Ramos, Jr., Tata Doe, Romy Doe, Peter Doe, Richard Doe, Pablo Pacot alias "Boy", alias "Pabling", alias "Bata", Renato Digal, Mike Doe, Carlito Lara, and Jose Doe before the Municipal Court of Pagadian, Zamboanga del Sur. Only Marcos Liera, Tata Doe, later identified as Antonio Guevara, Carlito Lara, and Pablo Pacot were arrested. Pablo Pacot, however, escaped while under detention^[4] and never recaptured, so that the informations included Marcos Liera, Antonio Guevara, and Carlito Lara only. These three cases were tried jointly. However, the said cases against Marcos Liera were subsequently dismissed for insufficiency of evidence,^[5] while Carlito Lara was discharged to be utilized as a state witness.^[6]

Antonio Guevara, also known as Nicolas Guevara, denied complicity in the commission of the crimes and claims that he was somewhere else when the crimes were committed. He stated that he worked as a tailor in the shop of Mr. Juan Lador from September 1, 1967 to September 18, 1967 when he was separated by reason of business reverses. In the evening of September 11, 1967, he was in the house of his uncle Gregorio Ibañez at Tukuran, Pagadian, where he was living, arriving thereat at about 6:00 o'clock in the evening. Afterwards, he helped his uncle prepare their supper. After eating supper at about 7:30 o'clock, he went to sleep. At about midnight, he was awakened by his uncle to boil some rice (lugaw) for a sick child, after which he went back to sleep and rose at early dawn.

Gregorio Ibañez was presented to corroborate the defendant's claim, and one Cpl. Bienvenido Capistrano of the 461st PC Company stationed in Pagadian was offered as a character witness.

The trial court, however, discounted the appellant's alibi in view of the positive identification made by Daniela Tindugan and Carlito Lara who stated that the accused Antonio Guevara was one of the armed men who robbed and killed Salvador Tindugan, and robbed Tabita Alviar and Asuncion Gutang in Bogo, Pagadian on September 11, 1967, and the absence of any reason why these persons should falsely implicate the accused in the commission thereof.

Daniela Tindugan declared that she recognized the accused, whose face is familiar to her having seen him often in the "paradahan" for jeepneys, when the handkerchief used by the accused to cover his face slipped and fell as the said accused was taking away the polo shirt of her husband from their aparador, thus exposing his face.^[7] Carlito Lara, for his part, testified that the accused Antonio Guevara was with Leo Ramos, Jr., when they hired the jeep of Marcos Liera in going to Bogo, Pagadian in the evening of September 11, 1967.^[8]

In this appeal, the accused assails the trial court for finding him guilty of the crimes charged and in believing Daniela Tindugan and Carlito Lara despite the inherent improbability of their testimony. Counsel de oficio argues that Daniela Tindugan is not entitled to faith and credence in view of her failure to point the accused to the investigators immediately after the incident notwithstanding her claim that the appellant is familiar to her.^[9]

Appellant's contention is without merit. The fact that Daniela Tindugan did not immediately name the appellant as one of the malefactors is understandable. She was then in a state of shock and could not immediately associate faces with their names. She explained, as follows:

"COURT

"Q Did you tell the authorities at the time when you were investigated that you knew one of the robbers and that you used to see him in the parking place? Here in Pagadian, Zamboanga del Sur?

"WITNESS

"A I was not able to state that because my head was still dizzy and my mind was confused."[10]

The appellant points to an apparent conflict between the testimony of Carlito Lara and Lt. Silvestre Roda of the Pagadian Police Department regarding the identification of the accused as one of the armed robbers, in that Carlito Lara stated that the accused was one of the three men who hired the jeep of Marcos Liera on September 11, 1967 in going to Bogo, whereas Lt. Roda declared that Carlito Lara never told him, in the course of his investigation, that the accused was one of the armed robbers.

This conflict is a minor detail which does not affect the credibility of said witnesses. Such fact might have slipped the mind of the witnesses. The fact remains that Lt. Roda was informed of the participation of the accused in the robbery so that he was investigated in connection with these cases and subsequently charged in court.

Counsel de oficio also contends that the appellant cannot be found guilty of having robbed Tabita Alviar and Asuncion Gutang in the absence of evidence that the appellant participated in its commission. Counsel makes capital of the testimony of Tabita Alviar and Asuncion Gutang that they did not recognize any of the armed men who robbed them on September 11, 1967; much less point to the accused as one of the malefactors during the trial.

Indeed, Tabita Alviar and Asuncion Gutang stated during the trial of the case that they did not recognize any of the armed men who robbed them on September 11, 1967.[11] Nor did they point to the accused as one of the malefactors. The record shows, however, that a conspiracy existed and the crimes were committed simultaneously one after the other and were perpetrated by the same group of armed men so that the identification made by Carlito Lara and Daniela Tindugan that the appellant was one of the robbers is sufficient. While evidence of another crime is, as a rule, not admissible in a prosecution for robbery, it is admissible when it is otherwise relevant, as where it tends to identify the defendant as the perpetrator of the robbery charged, or tends to show his presence at the scene or in the vicinity of the crime at the time charged, or when it is evidence of a circumstance connected with the crime.[12]

Passing upon the defense interposed, We find that the alibi of the appellant does not deserve credence. It has been held that to establish an alibi, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place.[13] Needless to state, alibi must be proved by positive, clear and satisfactory evidence. In the instant case, Tukuran, the place where the appellant is claimed to have been when the crimes were committed, and Bogo, where the crimes were committed, are within the municipality of Pagadian, both accessible to motor vehicles.[14] In view of the proximity, We are inclined to agree with the Solicitor General that the defense of alibi is ineffectual especially when considered in conjunction with the positive identification given by two prosecution witnesses.

The penalty for robbery under Article 294, paragraph no. 5, is prision correccional in its maximum period to prision mayor in its medium period. The penalty lower by one degree is arresto mayor in its maximum period to prision correccional in its medium period. The indeterminate penalty imposed on the accused should therefore be a minimum of FOUR (4) YEARS and TWO (2) MONTHS only.

WHEREFORE, modified as thus indicated, the judgment appealed from should be, as it is hereby, affirmed. Costs against the appellant.

SO ORDERED.

Fernando, J., (Chairman), Barredo, Aquino, and Santos, JJ., concur.

Antonio, J., did not take part.

[1] At the trial Carlito Lara identified these men as members of the Pagadian Police Department, so that the trial court ordered a reinvestigation of the cases. (pp. 73-77, tsn). A reinvestigation was conducted by the Fiscal (See Exhs. 7 and 8, pp. 96 et seq., Original Record) but the result of said reinvestigation does not appear in the record.

[2] p. 114, tsn.

[3] p. 117, tsn.

[4] p. 94, Original Record.

[5] p. 135, Original Record.

[6] pp. 66-67, tsn.

[7] pp. 21, 22, 25, tsn.

[8] pp. 72, 73, tsn.

[9] pp. 17, 29, tsn.

[10] p. 29, tsn.

[11] pp. 151-A, 155, tsn.

[12] People vs. Irang, 64 Phil. 285, 291, citing 16 C.J. 610, 611, sec. 1196.

[13] U.S. vs. Oxiles, 29 Phil. 587.

[14] pp. 188-189, t.s.n.

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