

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUANITO DASIG, BALBINO GABUNI AND MARCELINO DAYAO, DEFENDANTS AND APPELLANTS.

*G.R. No. L-5275. August 25, 1953*

Ponente: LABRADOR, J.

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### LABRADOR, J.:

Defendants in the above-entitled case appeal from a judgment of the Court of First Instance of Isabela, finding them guilty of the crime of robbery with homicide, and sentencing them to reclusion perpetua, to indemnify jointly and severally the heirs of Norberto Ramil, in the sum of P4,000, and the complaint, Jacinta Galasinao, in the sum of P190, and to pay the costs of the prosecution.

The record discloses that in the evening of December 23, 1949, at about midnight, while Nomberto Ramil and his wife, Jacinta Galasinao, and their daughter and son, Segunda and Domingo, respectively, were sleeping in their house situated not far away from the municipal building of Antatet (now Luna), Province of Isabela, the said spouses were suddenly awakened by the barking of dogs and the grunting of pigs. Ramil got up and walked quietly towards a window, to find out what the dogs were barking at, but just then two persons who had entered the house faced him. The wife heard these persons talking in whispers and saw them in front. She lighted a lamp, and as she did so the two intruders levelled their guns at her husband and demanded from him to produce his pistol. As the husband could not produce any pistol and said he had none at all, they fired at him. He used his two hands to protect himself, but to no avail. As he received the shots, he fell down in a stooping position and then slumped on the floor, face downwards. The wife and her two children, who had already been awakened, cried for help, but the intruders levelled their guns at them, commanding them to keep quiet and threatening to kill if they did not do so. For fear, they had to stop. The intruders then went inside the bedroom and ransacked the contents of the trunk which contained their valuables. P10 in cash and jewels worth P180 were taken away.

The Chief of Police of Antatet, who lived around twenty meters away from the house of Ramil, heard three pistol shots, so he repaired to the municipal building to fetch one of his policemen, then they passed by the house of the Mayor, and together with him they proceeded to the house of Ramil. When they reached it the robbers were already gone. They found Ramil already dead with gunshot wounds on the left eye, in the right breast, at the back, and at the left index finger. They questioned the wife, who recounted to them what had happened. The chief of police found a fired bullet, caliber .32, inside the trunk, four empty .32 caliber shells, one near the broken box inside the bedroom and the other two five meters from the house of the deceased, and three .45 caliber empty shells under the house just below the dead body. The following day, a physician of Antatet performed an autopsy on the dead body of Ramil and he found four gunshot wounds in the places already indicated above. When he opened the chest cavity, he discovered a .22 caliber slug right at the heart.

The above facts are not contradicted. The evidence, upon which the judgment of conviction is based, consists of the testimony of one, Jose Mallillin, that of Andres Bumanglag, which in part corroborates Mallillin's testimony,

and the findings of a ballistic expert of the Philippine Constabulary to the effect that the empty .32 caliber cartridges found under the house of Ramil had been fired from the Llama auto-pistol possessed by, and licensed in the name of, Mallillin, and that the .32 caliber slug, Exhibit C, which was found inside the trunk, had also been fired therefrom. These findings were based on the fact that the striations found in the said bullet are identical with and congruent to those which he fired from the same Llama auto-pistol, and the pin marks at the empty .32 caliber cartridges are identical with and congruent to that found at an empty cartridge fired from the same pistol.

Mallillin was formerly a school teacher of Antatet and had resided there, but on the date of the robbery he was living in a contiguous town, Cauayan. He testified as follows: On the evening in question, while he was on his way home, he saw four persons near a checkpoint, and as he passed by, two of them got hold of him and a third snatched his pistol away and compelled him to follow them. The four were later recognized by him to be the defendants Balbino Gabuni, Juanito Dasig and Marcelino Dayao, and Sergio Eduardo. They boarded a jeep, which was parked near the road and in which there were two others whom Mallillin did not recognize, and then they drove to the junction of the Cabatuan-Antatet roads. Here they all went down and walked towards Antatet.

When the party was around 100 meters from the municipal building, he saw his companions talking to Andres Bumanglag. Taking Bumanglag aside, he informed the latter that he had been held up. Upon Mallillin's suggestion, his companions asked Bumanglag how the house of Ramil could be entered, and the latter answered that it could be done through a window near the well. They also asked further information from him, and thereafter he was allowed to go away, but with the warning that if he would squeal, he would be put to death.

After Bumanglag had left, they went to a place around fifty meters from the house of Ramil, the intended victim. Here they waited till about midnight when they approached the house. Gabuni then ordered Mallillin to stay in a place beside the road. Dasig and Eduardo then gave him their shoes for him to keep, while the five, including the two unknown persons, approached the house, Dasig and Eduardo entered the house through the window, while Gabuni stayed at the door in front. Gabuni gave his carbine to Dayao and Mallillin's Llama pistol to Dasig, while Eduardo held a .22 caliber pistol.

Five minutes after the three had gone up the house, Mallillin heard three shots. Then he heard a voice calling for help. He got frightened, so he hurriedly went away bound for Cauayan. While still in Antatet, he heard the policeman of Antatet exchange shots with his companions. He arrived in Cauayan at about one o'clock. At around 4:30 that morning, Sergio Eduardo called at his house and asked for their shoes, and as he went away, he warned Mallillin not to squeal, otherwise he would be killed. Mallillin asked for his pistol and was informed that it was with Marcelino Dayao. That same morning he went to Dayao and got it from the latter. Juanito Dasig also called at his house that same morning, warning him that if he would squeal, he would be in a bad fix, informing him further that their two companions, whom Mallillin had not recognized, had gone to Manila to fetch some more of their companions until they reach as many as twenty.

The above is Mallillin's version. He was apprehended by the authorities on December 31, 1949. Four days before his arrest, he further said, he had decided, after consultation with his wife, to go to the chief of police of Cauayan to ask him to accompany him to Cabatuan, where he was going to relate all that had happened, but that it so happened that when he saw the chief of police, the latter had no time to hear him as he was going away and was then ready with his baggage to go to Manila.

When Mallillin was taken to the Constabulary barracks on December 31, 1949, he had a talk with Lieutenant Panis of the Constabulary. Panis promised him that he would be used as a state witness if he would disclose all that he knew about the robbery. With this promise Mallillin made a complete disclosure of the above facts to Lieutenant Panis. His statement was put in writing, although it was not sworn to before the justice of the peace

until January 3, 1950. His affidavit was introduced at the trial as Exhibit 4-Gabuni, Exhibit 3-Dasig-Dayao, and contains substantially the same facts testified to by him during the trial.

The testimony of Andres Bumanglag is to the effect that same evening, he had been playing guitar with two companions at the house of one Labog, and that when they went home and as they were approaching his house, he was suddenly held up by two persons. When brought to a group to which the two belonged, he recognized Mallillin, Gabuni, chief of police of Cauayan, and Dasig. He was asked about the number of policemen of Antatet, the arms that they had, the caliber of the arms, and the persons who had firearms. Finally, they asked him to draw a sketch of the house of Norberto Ramil and its position in relation to the house of the mayor, as well as the position of the window through which entrance could be gained into the house. Bumanglag was very much frightened because, at the beginning when he refused to answer the questions that they asked him, he was kicked and threatened by the group. Besides, Mallillin had informed him that he himself had been held up, and that he should tell what they asked him, otherwise both of them would be killed. After getting all the information that they desired, Bumanglag was allowed to go home. A few minutes after he went to bed he heard some shots, and stray bullets hit his house and a kapok tree nearby, so he and his family had to go down the house to seek shelter from stray bullets.

On January 3, 1950, Andres Bumanglag also made an affidavit before Lieutenant Panis, which was sworn to by him before the justice of the peace of Antatet. In this affidavit, Exhibit 5-Gabuni, he mentions the fact that before the robbery a group of persons, four of whom were armed, came and asked information from him about the house of Norberto Ramil, and that on that occasion he also saw Mallillin with them, who told him that he was also held up by the group.

The trial court gave credit to the testimonies of Mallillin and Bumanglag as above outlined, and together with the identification made by the wife of Ramil of one of the appellants by the latter's stature, and on the further ground that the cartridges and some of the bullets found in the premises had been fired from the Llama pistol of Mallillin, held that the crime of robbery with homicide had been committed by the accused-appellants herein, and sentenced them as above indicated.

In this court the attorneys for the appellants contend that inasmuch as Mallillin's confession was obtained by a promise made by Constabulary Lieutenant Panis that Mallillin would be excluded from the information and made a state witness, Mallillin's confession is not admissible against him and neither should it be admissible against the appellants herein. It is evident that counsel misunderstands the application of the principle in evidence that a confession secured through promise of immunity is not admissible. The evidence submitted against the appellants is not the confession made by Mallillin; it is his testimony given in open court. There is, therefore, no occasion to invoke the principle of evidence in question.

The most important claim of the defendants-appellants is that inasmuch as Mallillin was an accomplice in the crime and his testimony contains flaws in many particulars, the maxim *Falsus in uno falsus in omnibus* should be applied to the whole of his testimony, and the judgment of conviction would then have no leg to stand on. There are certainly many points or particulars in Mallillin's testimony which can not stand careful scrutiny. First of all, we have the supposed compulsion or hold-up which he claims he was subjected to. Mallillin admits that the defendants-appellants had been his companions in various games, like poker, "pekyo", etc. Then there is the circumstance that the supposed hold-up took place in the center of the town. According to some defense witnesses, Mallillin had also been telling of robberies that might take place in town. It is not unreasonable, therefore, to conclude that Mallillin was not an unwilling companion in the commission of the crime.

But, on the other hand, we find that his testimony is corroborated by evidence worthy of credit. That he was

present on the occasion of the robbery can not be denied, because his Llama pistol was proven to have been fired at the scene of the robbery, as cartridges and bullets proved to have been fired from the said pistol had been found in the house where the robbery was committed. And the fact that appellants had been companions of Mallillin in many gambling games points to the close acquaintance between them and their unity of purpose as well. While his story that it was not he who furnished the data about the climbing of the house can not be believed, as he must have known the house and its surroundings, his statement that Juanito Dasig and Sergio Eduardo were the ones who went inside the house is corroborated by the inmates of the house to the effect that only two of the robbers entered the house.

Again, the testimony about the different arms used, a carbine in the possession of Dayao, a pistol given Eduardo by Gabuni—these facts are corroborated by the finding of .22 caliber slugs and empty shells in the heart of the victim and in the house and in the premises. The testimony of Mallillin that Gabuni carried a .45 caliber pistol, which was his service pistol as chief of police, is also untrue because the examination of the .45 caliber bullet found in the premises shows that it was not fired from the service pistol of Gabuni. But Mallillin's assertion may be due to an innocent error on his part. He perhaps thought that the pistol that Gabuni carried was his service pistol. But Gabuni may have planned to avoid identification by using a firearm different from that which he used as member of the police force.

There is the corroboration of the testimony of Mallillin given by Andres Bumanglag, whom the trial court considered as a trustworthy witness. We find nothing from the record which would justify us in reversing the appraisal of the above testimony and the credit given this corroborating witness by the trial court.

It has been stated that the rule (*Falsus in uno falsus in omnibus*) invoked is not a mandatory rule of evidence, but rather a permissible one, which allows the jury or the court to draw the inference or not to draw it as circumstances may best warrant. (70 C. J. 783.) The unbelievable allegation of Mallillin, that he was forced into joining the band against his will, arises from the natural desire of an accomplice to shift the blame to his co-conspirators and exculpate himself; while his assertion that the gun Gabuni carried was his service pistol may be an innocent mistake on Mallillin's part. His claim that it was Bumanglag who indicated where access to the victim's house may be had may also be untrue, because Mallillin had been said to have been in the house. Do these flaws and defects render his testimony wholly inadmissible under the rule invoked?

We take advantage of this opportunity to explain the true scope of this much invoked and abused rule of (*Falsus in uno falsus in omnibus*.) Professor Wigmore states that this rule ceased to be the rule in England as early as the beginning of the eighteenth century. He criticizes the board rule as unsound, because not true to human nature; that because a person tells a single lie, he is lying throughout his whole testimony, or that there is strong possibility that he is so lying. The reason for it is that once a person knowingly and deliberately states a falsehood in one material aspect, he must have done so as to the rest. But it is also clear that the rule has its limitations, for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Because though a person may err in memory or in observation in one or more respects, he may have told the truth as to others. (III Wigmore, Secs. 1009-1015, pp. 674-683.) There are, therefore, these requirements for the application of the rule, i.e., that the false testimony is as to a material point, and that there should be a conscious and deliberate intention to falsify, (*Lyric Film Exchange, Inc. vs. Cowper*, 1937, 36 Off. Gaz., 1642.)

The rule is also carefully considered in the case of the *Santisima Trinidad*, 7 Wheat. 283, 5 Law. Ed. 454, thus:

"Where a party speaks to a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood: and courts

of justice, under such circumstances, are bound upon principles of law and morality and justice to apply the maxim *falsus in uno, falsus in omnibus*. What ground of judicial belief can there be left when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood?"

In the case of *Godair vs. Ham National Bank*, 80 N. E., 407, the Supreme Court of Illinois made the following very illuminating expression of the scope of the rule:

"As to the second criticism, it has uniformly been held by this Court that the maxim, '*falsus in uno, falsus in omnibus*,' should only be applied in cases where a witness has knowingly and willfully given false testimony. *Chittenden vs. Evans*, 41 Ill. 251; *City of Chicago vs. Smith*, 48 Ill. 107; *United States Express Co. vs. Hutchings*, 58 Ill. 44; *Pope vs. Dodson*, Id. 360; *Gulihier vs. People*, 82 Ill. 145; *Swan vs. People*, 98 Ill. 610; *Hoge vs. People*, 117 Ill. 35, 6 N. E. 796; *Freeman vs. Easley*, 117 Ill. 317, 7 N. E. 856; *Overtoom vs. Chicago & Eastern Illinois Railroad Co.*, 181 Ill. 323, 54 N. E. 898; *Matthews vs. Granger*, 196 Ill. 164, 63 N. E. 658.

"In *City of Chicago vs. Smith*, supra, on page 108 of 48 Ill., it was said: 'As to the eight instructions asked by the defendant and refused, we are of opinion, under the authority of the case of *Brennan vs. People*, 15 Ill. 511, it should not have been given. There the court say it does not follow, merely because a witness makes an untrue statement, that his entire testimony is to be disregarded. This must depend on the motive of the witness. If he intentionally swears falsely as to one matter, the jury may properly reject his whole testimony as unworthy of credit. But, if he makes a false statement through mistake or misapprehension, they ought not to disregard his testimony altogether. The maxim, '*falsus in uno, falsus in omnibus*,' should only be applied in cases where a witness willfully and knowingly gives false testimony.

"And in *Pope vs. Dodson*, supra, on page 365 of 58 Ill.: 'The tenth instruction in the series given for appellee is palpably erroneous. It told the jury that, if the witness *Lovely*, 'has sworn falsely in any material statement,' the jury might disregard her entire statement except so far as it was corroborated. A witness cannot be discredited simply on the ground of an erroneous statement. It is only where the statements of a witness are willfully and corruptly false in regard to material facts that the jury are authorized to discredit the entire testimony. The most candid witness may innocently make an incorrect statement, and it would be monstrous to hold that his entire testimony, for that reason, should be disregarded.' This statement was quoted with approval in *Matthew vs. Granger*, supra, on page 72 of 196 Ill., on page 661 of 63 N. E.

"In *Gulihier vs. People*, supra, the court instructed the jury that, if they believed the defendant had 'been contradicted on a material point,' then the jury had the right to disregard his whole testimony unless corroborated by other testimony. The court said (page 146 of 82 Ill.): 'The instruction was clearly erroneous. When analyzed, it plainly tells the jury that 'if they believe, from the evidence, that *Alfred F. Foote* has been contradicted on a material point, then the jury have a right to disregard his whole testimony unless corroborated by other testimony.' This is not the law . . . If the witness, whether defendant or otherwise, is shown, by proof, to have sworn willfully and knowingly false on any material matter, his evidence may be rejected so far as it is not corroborated . . . The mere fact, however, that he is contradicted as to some material matter is not enough to warrant the rejection of his evidence altogether."

"In *Overtoom vs. Chicago & Eastern Illinois Railroad Co.*, supra, the court instructed the jury that 'if they believe any witness has testified falsely, then the jury may disregard such witness' testimony except in so far as it may have been corroborated.' In disposing of this instruction the court said (page 330 of 181 Ill., page 901 of 54 N. E.): 'A witness may have testified falsely upon some matter inquired about from forgetfulness or honest mistake, and in such case the jury would not be authorized to disregard his entire testimony, whether corroborated or not. It is the corrupt motive, or the giving of false testimony knowing it to be false, that authorizes a jury to disregard the testimony of a witness and the court to so instruct them.'"

With the above limitations of the rule in mind, it is clear that the maxim should not apply in the case at bar, for three reasons. First, there is sufficient corroboration on many grounds of the testimony. Second, the mistakes are

not on the very material points. Third, the errors do not arise from an apparent desire to pervert the truth, but from innocent mistakes and the desire of the witness to exculpate himself though not completely.

The next legal question to decide is whether the credible evidence submitted, together with that adduced on behalf of the defendants, proves beyond reasonable doubt that it was the three appellants who participated in the commission of the crime. The evidence submitted by the appellants of their defenses of alibi are not satisfactory to us. That presented by appellant Juanito Dasig, which consists of the testimony of a nurse, that on the night in question Dasig was in his house because his wife was suffering from stomach-ache, is not satisfactory for the reason that the nurse did not positively state that the date when she went to attend Dasig's wife was December 23, 1949. This date was included in the leading questions propounded by counsel for appellants, where the date is insiduously joined with another fact and witness' affirmative answer may refer to the more important fact contained in the answer, not to the date. Thus, the first question asked was as follows

"Q. Do you remember having attended to the wife of Juanita Dasig sometime or around December 23, 1949?—A. yes, sir." (t. s. n., p. 174)

The affirmative answer may well mean that she did actually attend, and may not imply that she did so on December 23, 1949. Another question asked was:

"Q. How many days previous to that trip of yours on December 24, 1949? Was it the day previous?—A. Previous." (t. s. n., p. 176)

This question is a leading question. The witness also connects the night of the robbery with a trip supposedly made by her with one Dr. Modales. But as to this occasion of the trip, her answer as to the date is also ambiguous, thus:

"Q. Do you remember the date of that trip of yours with Dr. Modales when you left him in Antatet?—A. It seems to me it was on December 24, 1949." (t. s. n., p. 175; *Italics ours*)

On cross-examination, however, this witness testified that she never keeps a record of the cases that she attends to every day, and on being asked what cases she attended in December, 1949, she answered that she can not tell unless she saw her record. Its date, therefore, December 23, 1949, was not remembered by her but put into her mind by the leading questions of counsel. To convince the court that the attendance took place on December 23rd, it was necessary for her to have shown that date appeared in the record that she kept.

The alibi presented by Gabuni is to the effect that on December 23, he and Sergeant Tamani were together the whole day and evening, and during the evening Gabuni stayed at home. That Gabuni and Sergeant Tamani should stay in a barrio two kilometers away, on patrol, from nine in the morning to six in the evening, or fully nine hours, is hard to understand. For them to spend four more hours drinking and eating together in a restaurant, evidently without their returning to their offices to report the results of their supposed mission, is still harder to believe. But for them to eat again at the home of Gabuni, after they had already eaten in a restaurant, is the height of improbability. Gabuni must have been on vacation that day, not on duty. If Gabuni was really and actually on patrol on that day, why was not the police blotter submitted? But even if the above story, improbable as it is, were assumed to be true, and his claim that he was at his house at ten in the evening and woke up at six in the morning, also true, it is still not impossible for him to have gone down the house after ten o'clock in the evening to join in the commission of the robbery, and come back at home in time to be there and wake up at six o'clock in the following morning.

Neither can the defense of alibi presented by appellant Marcelino Dayao stand the test of careful scrutiny. That Dayao was with his witnesses on certain days and on the occasions mentioned, in the case of witnesses Silverio

Anies and Juana Molina on the occasion of the presentation of the latter's claim, and in the case of witness Daniel Yuson on the occasion of a night of gambling, may be assumed to be true. But their assertion that it was on the precise date, December 23, 1949, that they saw or were with Dayao is difficult to believe. Human memory on dates or days is frail, and unless the day is an extraordinary or unusual one for the witness, there is no reasonable assurance of its correctness. Dayao's witnesses did not prove that some extraordinary or unusual thing had happened on that day, that would have made them remember it. As to Anies, the presentation of claims is admitted by him to be a common occurrence, such that he had to admit he can not remember the dates when other similar applicants saw him. As to witness Yuson, the playing of mahjong was also a common pastime. Neither Anies nor Yuson presented any writing or book entry where the event or occasion they mentioned took place. The trial court did not believe their testimony, and we are unable to find that its conclusion is not borne out by human experience.

Having found that sufficient admissible evidence, worthy of credit, has been adduced to prove beyond reasonable doubt that the defendants-appellants were the ones who perpetrated the robbery in question, and the evidence with which they sought to prove their defenses of alibi having been found to be unsatisfactory, we must affirm, as we hereby affirm, the judgment appealed from, with costs against the appellants.

So ordered.

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

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