

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FELIX DACANAY, ET AL., DEFENDANTS. FELIX DACANAY, PABLO
ARREOLA, PASCUAL ARREOLA AND CIRPIANO ROSARIO,
DEFENDANTS AND ...**

G. R. No. L-4838. March 28, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

On the night of 20 March 1948 while Josefina Lictawa was breast-feeding her eight-month child named Florida, Felix Dacanay went up her house in the barrio of Salvacion, municipality of Lupao, province of Nueva Ecija, opened the door, entered the place, put out the light of a petroleum lamp near the head of Josefina, and immediately thereafter gunshots were fired. Several persons broke into the house and took earrings and a ring valued at P84 and two suits of Josefina's husband. After the malefactors had left Josefina Lictawa lighted the lamp and found her husband Ricardo Bacolor and her small child Florida dead with wounds in their heads. The other daughter, three years old, was wounded in the right cheek. Josefina Lictawa was also wounded in the calf of the right leg, in the right small finger and twice in the right shoulder, which were all healed in thirty-five days. Almost at the same time Rufino Marana went up the house of Felipe Bacolor which was five meters from the house of his brother Ricardo and told the latter to go down. Thereafter, gunshots were fired and several persons went up the house and took two suits of Felipe worth P35 and then the malefactors left. Rosalia Garcia went down and found her husband dead with a gunshot wound in the right side of his chin. The following day the dead were buried.

Felix Dacanay, Rufino Maraña, Pablo Arreola, Pascual Arreola, Antonio Bacudo and Cipriano Rosario were charged with robbery with triple homicide. All the defendants entered a plea of not guilty except Rufino Marana and Antonio Bacudo who entered a plea of guilty, but the last named defendant died pending the reading of the judgment, so the case against him was dismissed. Rufino Maraña, testifying for the prosecution, admitted having gone up and entered the house of Felipe Bacolor on the night of 20 March 1948, but claimed that he did so under duress. In view of this testimony, the trial court ordered his plea of guilty withdrawn and another of not guilty entered. The prosecution moved for his discharge from the information for lack of sufficient evidence to establish his guilt. After trial the court found Felix Dacanay, Pablo Arreola, Pascual Arreola and Cipriano Rosario guilty of the crime of robbery with triple homicide and sentenced each of them to suffer reclusion perpetua, the accessories of the law, to indemnify the heirs of Ricardo Bacolor and Florida Bacolor in the sum of P12,000 and the heirs of Felipe Bacolor in the sum of P6,000, and to pay the costs. They appealed.

The fact that on the night of 20 March 1948 the house of Ricardo Bacolor and Felipe Bacolor were robbed and that on that occasion three persons were killed is not disputed. The only point raised is that there is no sufficient evidence to show that the appellants took part in the commission of the crime. The testimony of Josefina Lictawa to the effect that she saw Felix Dacanay enter her house, put out the light of the petroleum lamp which was near her while she was breast-feeding her child Florida, taken together with the testimony of Rufino Maraña that all the

appellants together with others went to the place of the victims where gunshots were fired and three persons were killed is sufficient to support the finding of the trial court that the appellants are guilty of the crime with which they are charged. The testimony of Rufino Maraña is supported and corroborated by the extrajudicial sworn statements made by Felix Dacanay and Pablo Arreola (Exhibits A and B).

The rule on admissibility of an act or declaration of a confederate after conspiracy is shown by evidence other than such act or declaration is applicable to extrajudicial acts or declarations but not to testimony given on the stand at the trial. The fact that Josefina Lictawa swore to a statement pointing to Felix Dacanay as the person who had entered her house on the night in question six months after the commission of the crime, or on 22 September 1948, does not detract from her testimony because it was given and taken on the occasion of the inquiry made by the justice of the peace to find out whether there was probable cause to issue a warrant of arrest and it does not appear that she was ever asked before about the incident in her house and that she answered that she did not recognize any of the malefactors who went up her house on the night when her house was robbed and her husband and child were killed. Josefina Lictawa could not have been mistaken about Felix Dacanay taking into consideration the fact that she had known him for five years as a resident of Parista, a barrio adjoining Salvacion. The appellants complain that the sworn statements allegedly made by them were not in fact made and were not read to them before they were signed and that they were maltreated by the P.C. and policemen. If that were true, Pablo Arreola, who was baptized under the sponsorship of the father or mother of Hospicio Boado the then acting mayor of Lupao, before whom the affidavits were sworn to voluntarily, would have complained to him about the alleged maltreatment suffered by them at the hands of the P.C. and of the policemen of the municipality of Lupao. The fact that the other defendants Pascual Arreola and Cipriano Rosario did not make any statement is proof that Felix Dacanay and Pablo Arreola were not ill-treated.

Felix Dacanay claims and testifies that he was in Parista where he was the chief of the rural police when the shooting in the barrio of Salvation took place. Pablo and Pascual Arreola testify that on that occasion they were talking to Felix Dacanay, Pedro Dacanay and others in a house in Parista. Cipriano Rosario swears that he was in Manila working as a helper to a carpenter, having left Lupao in January and returned only in July 1948. Granting that Felix Dacanay together with Pablo Lictawa, the father of Josefina, and Pio Dacanay, the father of Felix Dacanay, went to the municipal building of Lupao to report the incident, as testified to by Demetrio Leal, the policeman on guard at the municipal building, it does not prove that Felix Dacanay did not take part in the robbery and killing on that night. It was a shrewd and ingenious way of preparing his defense to be relieved from the responsibility for the wrong he and his companions had done.

Felix Dacanay questions the veracity of Rufino Maraña who, he claims, entertains an ill-feeling against him for the part he took in his (Maraña's) apprehension for allegedly raping a girl. Granting that Maraña was resentful, the same feeling cannot be attributed to Josefina Lictawa who in her testimony pointed to Felix Dacanay as the one who entered her house on the night of 20 March 1948 when her house was robbed and her husband and daughter were killed.

The alibi of the appellants corroborated by the testimony of close relatives—the father and brother of Felix Dacanay and brother of Cipriano Rosario—cannot outweigh the positive evidence of the prosecution that they took part in the robbery and killing of Felipe Bacolor, Ricardo Bacolor and Florida Bacolor. As the wounds suffered by Josefina Lictawa are not alleged in the information, they cannot be taken into account. For having gone together from their barrio to commit the robbery, they are responsible for the resulting crimes because of conspiracy which is shown by their common purpose and concerted action.

The information alleges two crimes because of the killing of two persons in one house and of one person in another house after committing robbery in both houses.

The penalty provided for is reclusion perpetua to death which must be imposed upon the defendants for each house robbed and the persons killed in each house. We hold with the trial court that the act of putting out the light before shooting may be taken either as an act intended to prevent or to avoid detection or identification or just to scare the people, for if the purpose was to kill, the putting out of the light would render effective shooting difficult. But this mitigating circumstance does not offset two aggravating circumstances that attended the commission of the crimes, to wit: nighttime and dwelling. However, for lack of sufficient number of votes to impose the death penalty the next lower in degree or reclusion perpetua is imposed. The penalty of reclusion perpetua for the robbery in the house of Josefina Lictawa and the killing of her husband Ricardo Bacolor and daughter Florida and an indemnity of P84 to be paid jointly and severally; and the same penalty for the robbery in the house of Rosalia Garcia and the killing of her husband Felipe Bacolor and an indemnity of P35 to be paid jointly and severally, are imposed upon the appellants. The indemnity of P12,000 and P6,000 is to be paid jointly and severally. The first penalty shall not exceed thirty years and the second one shall not exceed ten years pursuant to article 70 of the Revised Penal Code, as amended by Commonwealth Act No. 217. The rest of the judgment is affirmed with costs against them.

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

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