

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DOROTEO BOLLENA, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-13415. December 30, 1961*

Ponente: PAREDES, J.

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Doroteo Bollena, Gregorio Valida, Cresencio Cabero and Tanso Urabe were found guilty of Robbery in Band with Homicide, attended by the aggravating circumstances of lack of respect for the old age and sex of the victim, superior strength, evident premeditation, night time and dwelling, and sentenced to suffer the death penalty and to indemnify, jointly and severally, the heirs of the deceased Lucia Varona in the amount of P6,000.00, with proportionate costs.

At the midnight of March 2, 1957, Lucia Varona (85) and her grand daughter, Maxima Bohol, (12) who lived near the vecinal road going to the seashore at Union. Mayorga, Leyte, heard a noise coming from the kitchen of their house. Maxima was memorizing a poem and Lucia was smoking in the dark. Lucia lighted a lamp, placed it on the table in the sala, and with Maxima proceeded to the kitchen where the noise, emanated. They were met by accused Gregorio Valida and Doroteo Bollena. The latter, upon seeing Lucia, grabbed the front of her kimono and Valida demanded for her money. Lucia denied having money, whereupon Bollena pushed and stabbed her with a small bolo (pisaw). Then, Bollena, lifted her and for three times in succession dropped her on the floor. After wounding Lucia, Valida and Bollena trunk and handed it to Tanso Urabe who, then in the kitchen. Urabe, in turn, passed it to Cresencio Cabero, who waited on the ground. Before leaving the house, Valida warned Maxima not to tell what she saw, under pain of death. Frightened, Maxima hid behind a table. When the trunk was already on the ground, Cabero fired shots and shouted, "You come down faster, help may arrive soon". When the intruders had left the house, Maxima peeped thru the door which they had broken and she saw the four accused fleeing. She shouted for help to her father who lives in another house. Hilario Bohol, Maxima's father and son of Lucia, came and upon hearing what had happened, left to inform his brother, Estanislao Calopas. Calopas reported the matter to the Vice Mayor who assigned 3 rural policemen, Jose Gamba, Melecio Daguetan and Quirino Matunob, with Calopas. The four proceeded to the Municipal building of Mayorga to report the matter to the police authorities. The Chief of Police, Miguel Tancinco, repaired to the scene of the robbery, reaching the place at about 1:00 o'clock at dawn. Lucia was found with 3 wounds. The Chief of Police also found fresh foot prints at the back of the house. He Instructed his men to search the neighborhood. Calopas tried to help in looking for the robbers. With bolo and a flashlight, he went to the vecinal road. After covering some 30 brazas from the house, he heard some sort of a noise coming from a bamboo grove. He stealthily approached the place and when he was about two brazas away, he focused his flashlight from whence the noise was coming and there saw four men, two of whom he recognized as the accused Valida and Bolena. The two other, whom he knew only by face, turned out to be the accused Cresencio Cabero and Tanso Urabe. Upon noticing the flashlight, Valida, Cabero and Urabe, took to their heels. Bollena, however, rushed upon Calopas and the two fought. Calopas succeeded in wresting the bolo from Bollena and was able to stab him. When he (Calopas) was fighting with Bollena, he shouted for his companions. The timely arrival of the Chief of Police saved Bollena from being fatally injured by Calopas. A search in the

place yielded the trunk taken from Lucia's house, the contents of which (clothes) were all scattered. Also found was a maong cap and a bolo and its scabbard. Bollena was arrested and brought to the municipal building together with the trunk, clothes, the bolo and the cap. Before the trunk was taken from the house, it contained money amounting to P235.00 in various denominations, bottles of medicine, jewelry valued at P35.00, and clothes worth P50.00. Only the clothes were recovered.

On March 16, 1957, Lucia died as a result of the wounds inflicted upon her. From March 2, 1957, Bollena was in detention. Upon learning of Lucia's death, he bolted jail. He was, however captured by civilians who saw him escape. Upon his capture, Bollena executed a confession (Exh. B, translation Exh.B-1) sworn to before the Justice of the Peace, Manuel C. Tutaan, stating that after a drinking spree in the evening in question, he, Valida, Cabero and Urabe, agreed to rob the house of Lucia; that because he did not want to go up, Valida his pistol to him; and because he was afraid, he went up the house; his 3 companions followed and stayed in the kitchen, while he was demanding money from Lucia; then stabbed him and pointed Valida ordered him to get a red box from the house and which he delivered to Cabero and Urabe. Thereafter the four (4) of them, bought the same under a bamboo grove where he was wounded by a person with a flashlight (Calopas); that the one who took charge of Lucia in the sala was Valida and that he escaped from jail because he did not want to be imprisoned for what he had not done.

All the accused adopted a uniform defense, that of alibi.

Doroteo Bollena testified that at 12:00 o'clock in the evening of March 2, 1957, he was with his mother in their house at barrio Cacao, La Paz, Leyte, about 5 kilometers away from Union. In the morning of March 3, 1957, he was sent by his mother to buy fish in Union; that as he was returning home, he saw two young men and a girl near the house on the vecinal road. One of the men asked where he came from and whom did he meet. Then he said he did not meet anybody, one of the men, who turned out to be Calopas, drew his bolo and stabbed him. He was pursued by the two men, who upon overtaking him on the ricefield, stabbed him on the head which rendered him unconscious; and he only regained consciousness at the Municipal building of Mayorga. Although he was wounded and bleeding, the Chief of Splice refused him medical assistance, unless he promised to involve Valida, Cabero and Urabe. As he refused, the Chief of Police ordered his mentto tie his hands against the railing of the municipal building where they burned him with cigarette butts; placed him on top of an ant hill and sposed to the sun, in public. When he could no longer endure the punishment, he acceded and was taken to the office of the Justice of the Peace where he where he signed a confession already prepared by the Chief of Police. He met his co-accused Valida and Cabero for the first time in the Provincial jail and Urabe at the Provincial Hospital.

Cresencio Cabero declared that long before March 2 and even on and after such date, he was staying in the house of a relative, Leoncio Estolano, at Tacloban, Leyte, 49 kilometers from Union, where he was in the business of buying and selling scrap iron. He did not know his co-accused, before he met them at the jail, after his arrest in the house of Estolano in Tacloban, in connection with a robbery on March 28, 1957. He was included in the information because he fought with the driver of the Chief of Police over a question of fare, at the time the said Chief was operating a passenger "bus, over a year before the robbery.

Gregorio Valida averred that before March 2, 1957, he was in Balinsasayo, 30 kilometers from the scene of the crime, at the house of his uncle where he was making copra. He was later joined by Alipio Laser and Gorgonio Godofredo in the work. On March 3, together with Godofredo and Lasar, he went home to Union. His companions alighted in MacArthur. When he arrived at his house, which was near the seashore, he bought rice and cooked it and later washed the clothes of his wife Felicisima Nuevas who had just delivered. He also went to the cockpit where he met the Vice Mayor and some policemen. After two days he returned to Balisayo. Every Sunday, he used to go home to bring food for his wife and look for fuel and wash her clothes. He came to know of

the robbery only on March 5, 1957; and was arrested on April 27, 1957 in Balinsasayo. He denied having been with his co-accused Bollena and Cabero in the evening of March 2 or having known them prior to the date in question; that although he knew Urabe before, they were not friends. Maxima testified against him because one time, he caught her taking coconuts from his uncle's plantation and he whipped her. Hilario, father of Maxima, also testified against him because at one time, they fought and Hilario was not able to retaliate.

Tanso Urabe. There is nothing on record to show that this accused testified. We find, however, that Quiterio Balusea, barrio lieutenant, vouchsafed that on March 2, 1957, Urabe his neighbor, was suffering from influenza; and that when Urabe was arrested about the end of March, 1957, he was in his house.

The principal issues involved in the appeal are: (1) identification; (2) credibility; (3) conspiracy; and (4) sufficiency of evidence to warrant conviction.

Bollena and Valida were fully identified by Maxima Bohol by face and name, as the ones who entered the house. They were well known to her, as she often saw them in the cockpit. She positively stated that Bollena stabbed the old woman and Valida threatened her; that Bollena and Valida carried the trunk and delivered it to Cabero and Urabe, who were acting as guards. The appellants had flashlights and a lighted lamp was on a table in the sala. Calopas fully identified Bollena as one of those who was with the group under the bamboo grove, and in the act of ransacking the trunk. Calopas even fought with Bollena. Calopas also recognized the 3 companions of Bollena who ran away from the bamboo grove whom he identified in court as the appellants Valida, Cabero and Urabe, Bollena in his confession implicated them as his companions in the commission of the crime. In the face of this positive and clear identification and the confession of Bollena, the defense of alibi is set at naught.

But the defense alleges that Bollena's confession was obtained by third degree method. This imputation is, however, belied by the Justice of the Peace who testified that he was the one who propounded the questions, and the answers appearing on the affidavit were those of Bollena. And if we consider Bollena's claim that in order to make him confess and implicate the three other accused, he was maltreated in the yard of the municipal building, within the gaze of the public, the allegation of the violence becomes preposterous. The police officers would not be so stupid as to openly advertise their misdeeds.

Appellant Valida claims that Maxima testified against him because he whipped her (Maxima) for picking coconuts belonging to his uncle. His wife tried to corroborate him in this respect. It was shown, however, that his uncle's coconut plantation was in Balinsasayo, not in Union. And even assuming that the whipping is true, it is hardly credible that a person of the age of Maxima, would harbor a grudge so deep as to implicate Valida in a very serious offense, if there was no truth of his participation. The alleged of Maxima in Court, refer to minor matters and render her more believable. They preclude the possibility of coaching and rehearsal. The trial court had correctly observed that, notwithstanding the lengthy cross examination by the defense and her tender age, Maxima stood creditably her ground. She declared in a clear, positive and straightforward manner.

Appellant Cabero's pretensions that he was included in the information due to a grudge entertained by the Chief of Police against him in connection with a bus fare, did not pass beyond a mere conjecture.

The testimony of the barrio lieutenant to the effect that appellant Urabe was sick at home during the night of the crime, is not corroborated. Appellant Urabe did not even care to take the witness stand.

The trial court had chosen to disbelieve the defense of alibi, and as far as the record is concerned, there is no reason to alter said conclusion.

Conspiracy exists if at the time or the commission of the offense the accused have the Same purpose and united in its execution. Conspiracy may be deduced from their individual acts (*People vs. Felix Nacua*, (107 Phil., 861; 57

Off. Gaz., [43] 7718. In the case at bar, conspiracy is clearly revealed by the acts of the accused. The extra-judicial confession of doubt, the community of purpose of the accused. They were together in going to the house where one of them killed the victim; they were together in carting away the trunk; they were ransacking said trunk together when they were surprised by Calopas, which resulted in the capture of Bollena. To cap it all, the record shows that Bollena pleaded guilty for robbery but not for homicide in the Justice of the Peace Court (See Order of March 25, 1957 JP Court).

The offense committed is defined and penalized under Article 294, par. 1, of the Revised Penal Code. No mitigating circumstance had been shown. The lower court found, against the accused, the aggravating circumstances of disregard of sex and age of the victim, night time and dwelling. Against Cabero, the additional aggravating circumstance of recidivism was also considered. This being the case, the penalty imposable is death. In view, however, of the lack of sufficient statutory vote to impose the said penalty, each of the appellants should suffer life imprisonment. Modified in this sense, the decision appealed from is hereby affirmed in all other respects, with costs.

Bengzon, C.J. Bautista Angelo, Labrador, Concepcion, Reyes J.B.L., Barrera, Dizon, and De Leon, JJ., concur.

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