

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO HAMTIG, ET AL., DEFENDANTS, FRANCISCO HAMTIG,
EUTQUIO HAMTIG AND MARIANO ALIAS ALEJANDRO OSORIO,
DEFENDANTS -AP...**

G.R. No. L-27431. August 22, 1969

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PER CURIAM:

Compulsory review of the decision of the Court of First Instance of Leyte (Carigara Branch) in Criminal Case No. 3072, finding Francisco Hamtig, Eutiquio Hamtig and Mariano alias Alejandro Osorio guilty, beyond reason-able doubt, of robbery with homicide, and robbery with frustrated homicide, under Article 294, paragraph 1, in relation to Article 63, paragraph 1 and Article 50 of the Revised Penal Code, with the aggravating circumstances of nighttime, disregard of the respect due to the offended party on account of her sex, relationship - only as regards Francisco Hamtig, who was the son-in-law of the victim -and in band, without any mitigating circumstance to offset the same. The dispositive portion of said decision is as follows:

"Wherefore, the Court finds the accused Francisco Hamtig, Eutiquio Hamtig and Mariano alias Alejandro Osorio guilty beyond reason-able doubt of the crimes of robbery with homicide and frustrated homicide. Taking into consideration the provisions of Article 294, paragraph 1, in relation to Article 63, paragraph 1, of the Revised Penal Code, the Court hereby sentences the said defendants to suffer the penalty of DEATH for the crime of robbery with homicide; to indemnify the heirs of the deceased Hilaria Vda de Hondolero to the amount of SIX THOUSAND PESOS (P6,000.00), without subsidiary imprisonment in case of insolvency, the principal penalty imposed being higher than prison correccional; and to pay the costs of the proceedings. In view of the penalty imposed for the first offense which is DEATH, the Court deems it unnecessary that the penalty of reclusion temporal for the second offense of robbery with frustrated homicide shall be imposed upon the accused and served by them. It is hereby recommended to the Chief Executive, through the Department of Justice, that the death sentence be commuted to life imprisonment in order to give the accused a chance to reform."

The information filed against the defendants reads as follows:

"The undersigned Assistant Provincial Fiscal accuses FRANCISCO HAMTIG, EUTQUIO HAMTIG, MARIANO OSORIO, 3 JOHN DOES and FRANCISCO GASTON (the last named accused being still at large), of the crime of ROBBERY IN BAND WITH HOMICIDE AND FRUSTRATED HOMICIDE, committed as follows:

"That on or about the 15th day of June, 1966, in the municipality of Carigara province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another and all armed with guns and pointed bolos with intent of gain and by means of violence against and intimidation upon persons, did then and there willfully, unlawfully and feloniously enter the house of one HILARIA VDA. DE HONDOLERO and MASTITO HONDOLERO and once inside rob, steal, take and carry away against their will and consent the amount of P1,400.00. Philippine Currency to their damage and prejudice in the said mentioned sum and that by reason and on the occasion of the said robbery the

above-mentioned accused in conspiracy did then and there wilfully, unlawfully and feloniously shoot Hilaria Vda. de Hondolero and Mas-tito Hondolero with the weapons which the accused have provided themselves for the purpose, thereby inflicting upon Hilaria Vda. de Hondolero the following wounds, to wit:

Gunshot, wound, entrance 1/2 cm. in diameter with powder burns, right hypochondrium, penetrating, perforating mesentery, retro-cecal; hemorrhage, moderately severe, secondary.

General peritonitis, Toxemia, severe.

Gunshot wound, entrance, 1/2 cm. diameter with powder burns lateral middle 3rd, arm, right.

Exit - 1/2 cm. in diameter, posterior, middle 3rd arm, left. No exit, which wounds caused her death.

and upon Mastito Hondolero the following wounds, to wit:

Gunshot wound, entrance, 1/2 cm. in diameter antero-medial upper 3rd, forearm, right.

Exit - 1/2 cm. in diameter antero-lateral upper third, forearm, right.

which wounds required a period of from twenty (20) days to thirty-five (35) days to heal and incapacitated said offended party from performing his habitual work for the same period of time; thus the accused performed all the acts of execution which would have produced the crime of Homicide as consequence thereof with respect to said Mastito Hondolero but nevertheless did not produce it by reason or causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said Mastito Hondolero which prevented his death.

"CONTRARY TO LAW.

"Carigara, Leyte, July 27, 1966.

SGD. SALVADOR ??? SEGOVL

Assistant Provincial Fiscal"

The following facts appear to have been fully established:

Hilaria Vda. de Hondolero, widow, lived with her son, Mastito, in Barrio Manloy, Carigara, Leyte. Sometime after 8 o'clock in the evening of June 14, 1966 they went to sleep: Hilaria and her grandson Antonio Dan-dan - who decided to stay with them that evening - occupying the only room of the house, while Mastito lay down on a table found in the "sala" where they had a vigil lamp.

At about three o'clock the following morning, they were suddenly awakened by noise coming from the kitchen. Mastito sat down on the table, took hold of his flashlight and focused its light towards the door leading to the kitchen from which emerged four armed persons whom he recognized as his brother-in-law, Francisco Hamtig, Eutiquio Hamtig, Mariano Osorio and Francisco Gaston. As the four intruders were advancing towards him, his mother came out of the room where she had been sleeping and upon seeing Francisco Hamtig she exclaimed: "It is you Kikoy". Thereupon Francisco, who was Hilaria's son-in-law, fired at her with a rifle hitting her in the abdominal region. Mastito immediately went to the aid of his mother and pulled her inside the room where the four armed persons followed them. As they continued firing they hit Hilaria again on the right and left arms. Mastito then decided to counter attack, and arming himself with a bolo he found in the room, he hacked the hand of Francisco Gaston with it, forcing the latter to go back to the sala. The other intruders, however, continued firing and hit Mastito on the right forearm. During all this time, Antonio Dandan was in hiding among the buri bags of rice in the room. On the other hand, in spite of their wounds, Hilaria and Mastito succeeded in escaping through the window, and went towards the house of Gonzalo Dandan Antonio's father and son-in-law of Hilaria - located

around thirty meters away.

As Gonzalo Dandan was also awakened by successive gunshots coming from the direction of the house of his mother-in-law, he went down his house with a flashlight. Nearby he met his mother-in-law and Mastito - both wounded - and helped them go upstairs. Thereafter, he went down again to look for his son. Near the house of his mother-in-law he focused his flashlight towards it and was thereby able to recognize Francisco and Eutiquio Hamtig, Maria-no, alias Alejandro Osorio and Francisco Gaston who were then going down the house.

As stated heretofore, Antonio Dandan hid himself behind several burl bags of rice found in the room where he and his grandmother had slept. From that place he later saw the four intruders drag a trunk into the middle of the room where they forced it open and from which Francisco Hamtig got a bag full of money while the rest stood by, and afterwards they went downstairs together. Antonio then jumped out of the window and ran to his house.

Hilaria and her son were brought to the Rural Health Officer of Capoocan, Leyte, upon whose advice they were taken to the Leyte Provincial Hospital in Tacloban City where the Senior Resident Physician operated upon Hilaria. The latter, however, died on June 24, 1966 as a result of Generalized Peritonitis due to her wounds, and secondary infection, while Mastito was able to return home the next day.

The Senior Resident Physician who examined and operated upon Hilaria subsequently issued a medical certificate wherein he described the wounds inflicted upon her as follows:

"Gunshot, entrance 1/2 cm. in diameter with powder burns, right hypochondrium, penetrating perforating mesentery, re-tro-cecal, hemorrhage, moderately severe, secondary.

General peritonitis. Toxemia severe. Gunshot wound entrance 1/2 cm. in diameter, powder burns lateral middle 3rd arm right.

Exit -- 1/2 cm. in diameter, posterior, middle 3rd arm right. Gunshot wound, 1/2 cm. in diameter posterior middle 3rd arm, left. No exit, which wounds caused her death."

As regards the wounds sustained by Mastito Hondolero the same physician's certificate reads as follows:

"Gunshot wound, entrance 1/2 cm. in diameter antero-medical upper 3rd fore-arm right.

Exit -- 1/2 cm. in diameter, antero-lateral upper 3rd forearm, right which wounds required a period of from twenty (20) days to thirty five (35) days to heal and incapacitate said offended party from performing his habitual work for the same period of time."

According to the evidence, on June 18, 1966 or five days before Hilaria's death, Sgt. Escal of the 57th P.C. Company stationed at Camp Bumpus, Tacloban City took down her statement in the Visayan dialect, which he afterwards translated into English, the substance thereof being to the effect that she was shot by Francisco Hamtig who was accompanied by three other persons, and that she was brought to the hospital on the 16th of June. Asked whether she thought she was going to die, however, she answered "Maybe".

The brief submitted by the counsel de oficio appointed by this Court for the three defendants (Gaston did not stand trial because the authorities had not been able to apprehend him) prays for the reversal of the appealed judgment claiming (first and second assignments of error) that the trial court erred in giving weight to the testimonies of prosecution witnesses Mastito Hondolero, Gonzalo Dandan and Antonio Dandan; in not believing the testimony of the witnesses for the defense, and in finding that Francisco Hamtig was the one who shot his mother-in-law.

The third assignment of error is to the effect that the trial court erred in ignoring the defense of alibi interposed by Eutiquio Hamtig and Mariano alias Alejandro Osorio.

Francisco Hamtig admits that he was present in the house of his mother-in-law in the early morning of June 15, 1966, but claims that he went there, upon the proddings of his wife, in response to a call for help; that on his way to said house, he stopped at that of Gonzalo Dandan whom he asked to accompany him, but the latter refused, for which reason he had to go alone; that he went up through the window of the kitchen because the main door was closed; that as he was entering the "sala", a flash-light was focused towards him and he saw four persons besides his mother-in-law and Mastito, and that the one who shot his mother-in-law was wearing a mask.

This version - supported almost exclusively by the testimony of Francisco Hamtig - can not overcome the clear and positive prosecution evidence identifying him as one of four persons who broke into the house of Hilaria. Mas-tito Hondolero, his own brother-in-law, recognized him immediately upon focusing his flashlight upon the four intruders. Then, when Hilaria came out of her room to find out what was the noise about, she saw him and even exclaimed: "It is you Kikoy", and having thus been re-recognized he immediately shot her. Then, as they were going down the house, they were positively identified by Gonzalo Dandan, another son-in-law of Hilaria.

Moreover, Francisco's claim that he went to the house of his mother-in-law precisely to help her is strongly belied by his conduct. In this connection, there is no evidence at all that he did anything to help her by preventing the commission of the crime; nor did he prove that he did anything to help his mother-in-law after she was shot and when she was taken to the hospital; in fact, he did not even visit her at the latter place, nor did he attend her funeral. His behavior, it is clear, strongly corroborates the prosecution evidence to the effect that he was, not only one of the four robbers who broke into the house of his mother-in-law but that he was precisely the one who fired at her after she had recognized him.

Attempting to assail the reliability of the testimony of Mastito Hondolero, the defense claims that it is full of improbabilities and contradictions. While it must be admitted that the testimony not only of Mastito but also of other prosecution witnesses suffers from some flaws and inconsistencies. We are convinced that the same refers only to minor details. As regards the main incident; the identities of the intruders and of the person who fired at the deceased Hilaria, their testimonies appear to be consistent with each other.

Lastly, it is contended on behalf of Francisco Hamtig that it is not probable that he was the one who shot his mother-in-law because he is not a holder of any licensed or unlicensed firearm; no firearm was ever confiscated from him; there is no evidence that powder burns were found in his person and, in fact, there was no investigation conducted in this regard by the police authorities.

This contention is without merit. As already stated before, the testimony of Mastito Hondolero, his own brother-in-law and whose credibility has not been successfully assailed, proves that he was the one who actually fired at his mother-in-law. That there is no evidence that he was a holder of a firearm license is of no consequence. As he admits that he had no license to own a firearm, he must have shot the victim with an unlicensed firearm.

The other defendants relied on the defense of alibi.

Mariano Osorio claims that he was in the house of one Manuelita Cabelin on June 14, 1966 where he spat blood in the afternoon of that day; that he was treated by Manuelita and his co-accused Eutiquio Hamtig who also happened to be in the house of the latter; that he spent the whole day of June 15 lying down and left the house only to answer calls of nature.

For his part, Eutiquio Hamtig testified that in the evening of June 14, 1966 he was in the house of Manuelita Cabelin in Barrio Libo, four kilometers away from the scene of the crime; that he was fetched by Manuelita because Mariano Osorio had spat blood; while he was there, Manuelita requested him to boil water and perform

some other minor services, and that he left her house the following day.

Although Manuelita Cabelin corroborated the testimony of Osorio and Hamtig regarding their presence in her house on the dates mentioned above, the facts disclosed by the record clearly show that the trial court committed no error in disregarding their defense of alibi.

In the first place, considering the distance that separated the houses of said defendants and that of Manuelita Cabelin, from that of the deceased Hilaria (four kilo-meters more or less), it was not a physical impossibility for them to have been at the latter place at the time of the commission of the crime (People vs. Palamos 49 Phil. 601; People vs. Rosabal 50 Phil. p. 780).

In the second place, his Honor, the trial judge, who had the decided advantage of having heard the testimonies of the witnesses of both sides and the opportunity to observe their conduct and demeanor while testifying, gave full credit to the testimony of the prosecution witnesses to the effect that the three defendants herein, together with Francisco Gaston, were the ones who broke into the house of Hilaria; that it was Francisco Hamtig who fired a fatal shot at the letter, and that, thereafter, they continued firing at their victims, having, in fact, inflicted other wounds upon Hilaria and also wounded her son Mastito. A careful review of the record has failed to disclose any-thing sufficient to show that the above findings made by the trial court are arbitrary or unfounded, or that, in arriving at them, said court had failed to consider other material evidence to the contrary.

Lastly, it is well known that alibi is a defense that can be easily concocted. In the present case, it is supported exclusively by testimony given by the same defendants who rely upon it, corroborated by that of Manuelita Cabelin whose story about Osorio spitting blood does not ring true at all.

WHEREFORE, We affirm the appealed decision in so far as it sentences the three defendants named above to suffer the penalty of death for the crime of robbery with homicide, but we increase to P12, 000.00 the indemnity of P6, 000.00 which they were ordered to pay to the heirs of the deceased Hilaria Vda. de Hondolero as indemnity.

Moreover, it is clear from the appealed decision that the trial court also found said defendants guilty of the "second offense of robbery with frustrated homicide" but deemed it unnecessary to impose upon them the corresponding penalty "in view of the penalty imposed for the first offense which is death". In this respect, the lower court erred because it should have imposed upon them the penalty corresponding to the second offense of robbery with frustrated homicide alleged in the information and fully established by the evidence. Consequently, considering that said second offense is robbery in band with physical injuries under Article 294, paragraph 4 of the Revised Penal Code, since the injuries inflicted upon Mastito Hondolero required from twenty to thirty-five days to heal, the corresponding penalty of prision mayor in its maximum period to reclusion temporal in its medium period should be imposed in its maximum period, in view of the aggravating circumstances attending the commission of the crime. As a result, each and everyone of the three defendants are sentenced to suffer an indeterminate sentence of from eight (8) years and twenty (20) days of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum.

MODIFIED AS ABOVE INDICATED, the appealed decision is affirmed in all other respects. With costs.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano and Teehankee, JJ., concur.

Barredo, J., did not take part.

Reyes and Zaldivar, JJ., are on leave.

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