

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIONISIO CONDE, ALIAS, BENITO, ET AL., DEFENDANTS, DIONISIO
CONDE, ALIAS BENITO, DEFENDANT-APPELLANT.**

G.R. No. L-18777. May 29, 1964

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by defendant Dionisio Conde from a decision of the Court of First Instance of Pangasinan convicting him and Felipe Ortiz, as principal by induction and principal by cooperation, respectively, of the crime of robbery in band with homicide, and sentencing each to life imprisonment, with the corresponding accessory penalties, and to indemnify, jointly and severally, the heirs of the deceased Mariano Raquiza in the sum of P6,000.00, without subsidiary imprisonment, in case of insolvency, as well as to pay the proportional part of the costs.

In the evening of April 19-20, 1958, shortly after midnight, several men carrying firearms broke into a ware-house in the "hacienda" of Lourdes Sison at Capangasinan, Sto. Domingo, San Manuel, Pangasinan, where Florencio Imbuido, Alfonso Landayan, and Rodolfo Ganancial were asleep. One of the malefactors approached Ganancial, hit him on the abdomen and forcibly took away from him a P20.00 bill. The other intruders brought Florencio Imbuido with them to the house of Mariano Raquiza nearby. Upon reaching its door, they bade Florencio to open it, but he was unable to do so, because the door was locked, whereupon, the robbers kicked it open. As Raquiza inquired from inside the house as to who were those coming in, one of the thieves fired at him. Then they ran away. When peace officers repaired to the scene of the occurrence soon later, that same morning, they found Mariano Raquiza dead with a gunshot wound at the nape of the neck.

Several months later, Felipe Ortiz, Dionisio Conde and Dominador Bermudez were picked up by the authorities. On October 9, 1958, Bermudez and Ortiz swore before the Justice of the Peace of San Manuel, Pangasinan, to the truth of the contents of their respective affidavits, Exhibits A and D, which led to the filing with said officer of a complaint for robbery in band with homicide against them and said Dionisio Conde, alias Benito, alias Pedro Penduco, Dioscoro Flores, alias Porong, Julian Galamgam, alias Esco, and Andres Dolor, alias Dares. Thereafter, Galamgam was arrested, but Flores and Dolor were never apprehended. After entering in the justice of the peace court a plea of not guilty, Conde, Galamgam, Bermudez and Ortiz waived the right to the second stage of the preliminary investigation, and upon transmittal of the record to the Court of First Instance of Pangasinan, the corresponding information for robbery in band with homicide was filed therein against Conde, Flores, Galamgain, Dolor, Bermudez and Ortiz. Before the case could be heard, Galamgam had, however, jumped bail. Moreover, on motion of the prosecution, Bermudez was duly discharged from the information in order to be a state witness. Hence, the case was tried only as regards Conde and Ortiz. In due course, thereafter, the lower court rendered the afore mentioned decision, which, likewise, dismissed the case insofar as Dioscoro Flores, there being evidence to the effect that he had died of gunshot wounds on November 3, 1960. Further proceedings as regards Galamgam and Dolor were suspended until they shall have been apprehended.

The commission of the crime of robbery in band, as charged in the information, has been duly established by the testimony of Rodolfo Ganancial, Florencio Imbuido, and Daniel Raquiza, son of the late Mariano Raquiza, who partly corroborated by the testimony of Dominador Bermudez and Felipe Ortiz. The first three (3) witnesses were unable, however, to recognize any of the malefactors; whereas, the only direct proof of the participation of Conde in the perpetration of said offense is the testimony of Bermudez. As a consequence, this appeal hinges on the sufficiency of the evidence against appellant Conde.

In this connection, Bermudez testified that on April 20, 1958, at about 1:00 a.m., he and his co-defendants Flores, Galamgam, Dolor, Ortiz and one nicknamed Junior, proceeded from the sitio of Cabete, barrio Narra, municipality of San Manuel, Province of Pangasinan, to the sitio of Capangasinan, barrio Sto. Domingo, of the same municipality, for the purpose of committing a robbery in the latter place, following orders given by their leader, appellant Dionisio Conde; that the latter excused himself from going with the group to Capangasinan, by saying that his wife was then sick; that Conde, however, placed the group under the command of Flores, who was armed with a carbine; that Junior had a ".45", whereas Galamgam and Dolor were provided with "pitbongs" (Japanese rifles), and Code had given Bermudez a ".38"; that upon reaching the "hacienda" of Lourdes Sison in Capangasinan, Bermudez and Ortiz were ordered by Flores to stand guard near the aforementioned warehouse, as Flores, Galamgam, Dolor and Junior entered the same and then the house nearby; that soon thereafter, shot rang inside the house; that, thereupon, Flores came out and bade his companions to flee, because he had fired at someone; that as they were nearing the town proper, Flores gave Bermudez P1.00, stating that the group had been unable to get anything, and took the gun from Bermudez ; and that then they parted ways.

As above stated, this story was partly corroborated by Ortiz. He admitted that he went with the aforementioned group to the scene of the occurrence; that, while he and Bermudez were standing near the warehouse already adverted to, he heard the report of a gun; and that, forthwith, he ran away. However, he claimed to have gone to said place under the belief that the group would merely serenade somebody.

Upon the other hand, the only evidence for appellant Conde is his own testimony, denying any participation whatsoever in the commission of the crime charged or knowing any of his co-defendants herein -except Bermudez - before the occurrence. Conde averred that the whole evening of April 19-20, 1958, was spent by him in the house of his common-law wife, Erlinda Santos, in the barrio of Matatalahib, Tarlac, Tarlac, and that he had not left that province ever since he had escaped from the provincial jail of Ilocos Sur, several months before, the court of first instance of which province had convicted him by final judgment of the crime of homicide, and sentenced him to imprisonment from twelve (12) years to twenty (20) years.

Thus, the issue before us boils down to whether appellant's testimony deserves more credence than that of Bermudez. His Honor, the trial Judge found otherwise, and the record before us warrants no interference in this finding. Indeed, appellant's testimony is absolutely uncorroborated. He did not even present his common-law wife to bear him out. Upon the other hand, the version of Bermudez was corroborated in several respects by the witnesses for the prosecution and even by defendant Felipe Ortiz. What is more, appellant admitted that he knew of no reason why Bermudez should falsely implicate him. Furthermore, the fact that they knew each other since childhood suggests that they were good friends.

The lower court gave appellant the benefit of mitigating circumstance No. 3 of Article 13 of the Revised Penal Code, merely because "it is within the realm of possibility" that he - not being physically present at the scene of the occurrence - "had no intention to commit so grave a wrong as that actually committed by the armed band" above mentioned. This surmise is refuted, I, however, by the circumstance, not only that each one of the members of the band carried firearms, but, also, that the gun of Bermudez was supplied by the very appellant.

Considering that the crime was committed by a band and at nighttime, which, obviously, had been sought purposely, the penalty prescribed for the offense charged and committed - which is life imprisonment to death (Article 294, paragraph 1) - should be imposed to its maximum period, although, for lack of the number of votes necessary therefor, the penalty next lower in degree, which is that meted out by the lower court, is the one in order.

WHEREFORE, the decision appealed from is hereby affirmed, with the cost of this instance against appellant Dionisio Conde.

IT IS SO ORDERED.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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