

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PELAGIO CONDE MENA, CASAMERO PETIÑO, SIMPLICIO ANIEL,
RICARIDO CAUSING @ GARIDO, DEFENDANTS, SIMPLICIO ANIEL,
DEFENDANT-APP...**

G.R. No. L-22426. May 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Pelagio Condemena, Casamero Patiño, Ricarido Causing and Simplicio Aniel were charged with the crime of robbery in band with homicide in the Court of First Instance of Leyte, with the qualifying circumstance of treachery, and aggravating circumstances of nocturnity, abuse of superior strength and dwelling.

After trial, the court found all the accused guilty beyond reasonable doubt of the crime of robbery in band with homicide without, however, making a finding on any of the aggravating circumstances alleged in the information, instead it took into consideration the lack of instruction and education in mitigation of their criminal liability, and sentenced each to a penalty of reclusion perpetua, to pay P6,000.00 to the heirs of the victim, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.

Pending their appeal in this Court, Pelagio Condemena, Ricarido causing and Casamero Patiño withdrew their appeal which was granted in a resolution of the Court of June 5, 1964. As the record now stands, only Simplicio Aniel remained as the appellant.

The evidence for the prosecution has established that on October 6, 1962, at about 6 o'clock in the afternoon, Barcelisa Lamoste was sitting by the side of the cradle of her child facing her husband Fermin Lamoste who was on the yard of the house. Their eldest daughter, Esmeralda Lamoste, 14 years old at that time, was at the door of their house together with her younger brothers and sisters.

Suddenly, four men arrived at their house. Of these four, Barcelisa Lamoste recognized Pelagio Condemena who had been living in Mambajao, Villaba, Leyte, for quite a long time as their neighbor. Barcelisa Lamoste did not know the names of the companions of Pelagio Condemena, but she recognized them by their faces. On the witness stand, Barcelisa Lamoste pointed and identified Pelagio Condemena to be one of the four men who were in their house on October 6, 1962, at about 6 o'clock in the afternoon, the date and approximate time of the commission of the crime. In the words of the trial Judge, "Barcelisa Lamoste also unhesitatingly and unmistakably, in open court, pointed to the three companions of Pelagio Condemena on that fateful day and time above-mentioned who turned out to bear the names of Ricarido Causing @ Garido, Casamero Patiño and Simplicio Aniel." (p. 2, Dec.)

She further testified that Simplicio Aniel and Casamero Patiño were armed with guns, and Pelagio Condemena and Ricarido Causing were armed with bolos when these four men arrived in their house on October 6, 1962, at about 6 o'clock in the afternoon. That upon their arrival, Simplicio Aniel rushed towards her and pointed the gun, about one foot long, at her face, telling her the following words: "Do not shout. If you shout, I will kill you."

Barcelisa Lamoste, out of fear, did not in fact shout. While Simplicio Aniel was thus pointing the gun at her, the three other men went directly towards where her husband was. Two of them, Casamero Patiño and Ricarido Causing, each held the hands of her husband and when resistance from Fermin Lamoste was already impossible, Pelagio Condemena, with the use of his bolo, stabbed her husband on the right side of the breast. Upon being hit with the bolo-stab, she heard her husband said: "Dong, why did you stab me when I did not commit any wrong?" After Fermin Lamoste was stabbed, Pelagio Condemena, Ricarido Causing and Casamero Patiño dragged her husband towards the kitchen of the house. Pelagio Condemena stayed outside while Casamero Patiño and Ricarido Causing went up the house through the kitchen.

Esmeralda Lamoste, who was at the door of the house together with her young brothers and sisters, saw Ricarido Causing stab her father with a bolo on the right breast below the nipple. Then Casamero Patiño and Ricarido Causing approached Simplicio Aniel, at the time still pointing his gun towards her mother, and demanded from Barcelisa their money. Her mother, out of fear, pointed to Ricarido Causing their trunk. Ricarido Causing opened the trunk and took the amount of P200.00 from it.

Barcelisa Lamoste explained that the money was the proceeds of the sale of their carabao on October 5, 1962, the day previous to the incident. After taking the money, the four men, Pelagio Condemena, Ricarido Causing, Simplicio Aniel and Casamero Patiño fled towards the same direction where they had come from. After they were gone, Barcelisa Lamoste shouted for help. Crispin Bactol was the first person who responded to the call for help.

Crispin Bactol testified that at about 6 o'clock in the afternoon on October 6, 1962, he saw four men going to the house of Fermin Lamoste. He recognized Pelagio Condemena to be one of the group. Later on, he heard a woman's voice from the house of Fermin Lamoste calling for help. On his arrival at the house of Fermin Lamoste in answer to the call for help, he saw Fermina Lamoste dead. He asked Barcelisa Lamoste who were the persons who killed her husband. Barcelisa Lamoste answered that of the four men, she only knew Pelagio Condemena.

Jose P. Burgos, municipal judge of Villaba, Leyte, testified that on December 3, 1962, Pelagio Condemena, accompanied by a certain P. C. soldier, appeared before him and sworn to the truth and veracity of his confession, Exhibit "B", the pertinent portions of which are:

"9. Q.- What are the names of your four(4) companions in going to the house of Fermin Lamoste?

A.- I know their names but I do not know their surnames.

10. Q.- Who are they and where are they residing at present?

A.- x x x @ Simplicio Aniel, from bo. Oson, x x x.

11. Q.- What arms are you carrying and your companions in go-ing to the house of Fermin Lamoste?

A.- x x x @ Simplicio Aniel is carrying shorten Japanese Rifle, x x x."

Judge Burgos further testified that on December 11, 1962, in the presence of Felix Arañez, Chief of Police of Villaba, Leyte, accused Casamero Patiño appeared before him and sworn to the truth and veracity of his statement. Exhibit "C", its translation is Exhibit "C-1", with the following pertinent portions:

"5. Q.- Why are you detained here, what crime are you charged?

A.- Because I was with the robbery and to the murder of Fermin Lamoste.

"6. Q. - Do you know the robbers and those who murdered Fermin Lamoste?

A.- Yes, sir. They x x x and Simplicio Aniel."

As evidenced by the medical certificate, Exhibit A and A-1, the victim suffered the following injuries:

1. Incised wound on right hypochondrium 3/6" x 1/2 cm. x 1 cm. obliquely directed.
2. Incised wound in the anterior axillary line on the right hypochondrium 1-1/2" from the first wound obliquely directed 3/4" x 1/2 cm. up to the abdominal cavity.

Appellant Simplicio Aniel, in exculpation, interposed the defense of alibi. He presented Benjamin (Benigno) Corpin, a 73-year old man, who testified that on October 6, 1962, he was in the market fair of Celso Muertigue in Wague, Leyte, selling salted fish. His companion on that date was Simplicio Aniel whom he hired to help him. The two of them left Considra (or Consuegra), Leyte, at 7:00 o'clock in the morning and returned home to Considra from the market fair at 5:00 o'clock in the afternoon of the same day. They arrived together in his house at Considra where the two of them took their meals. Then after that, Simplicio Aniel went to his house. Aniel's house was only about 10 to 15 meters away from his home.

Felix Arañez, Chief of Police of Villaba, Leyte, also testified for the defense. He testified that on October 7, 1962, a day after the robbery and the killing occurred, he went to the house of Fermin Lamoste in Sitio Mambajao, Villaba, Leyte. His purpose was to investigate the incident which was reported to him by the Barrio Lieutenant of Cagnocot. During his investigation, Barcelisa Lamoste, wife of the deceased, informed him that at about 6:00 o'clock in the afternoon of October 6, 1962, there were unidentified persons who went up their house while she was holding her baby in the cradle; that Fermin Lamoste was outside the house and when he was brought up the house, he was already stabbed; that one of them pointed his gun at her; that she was not able to identify the robbers, not even one, because it was already dark; that Barcelisa Lamoste pointed to the two sons of Segundo Mesa as the persons she suspected to be responsible for the robbery because on the day of the incident, these two went to their house to buy corn and they promised to come back the following afternoon; that he investigated the two sons of Segundo Mesa but he had to release them for lack of evidence; that when he further asked Barcelisa Lamoste whether there were other persons who were responsible for the commission of the crime aside from the two sons of Mesa, she said that she and Pelagio Condemena had a misunderstanding a week before the crime was committed; that when he found out later on that this Pelagio Condemena did not go inside the house, he abandoned the investigation of Pelagio Condemena because he had received information that before the commission of the crime, Pelagio Condemena had already abandoned his house in Mambajao.

On the basis of these facts, the question before the Court hinges on whether or not appellant Simplicio Aniel has been sufficiently identified as one of the four men who participated in the commission of the crime charged.

The defense argued that the identification in open court made by Barcelisa Lamoste and her daughter, Esmeralda Lamoste, should not have been considered by the trial court as a "positive identification" which could sustain the conviction of Simplicio Aniel for the crime charged. It is contended that the testimony of Barcelisa Lamoste that Simplicio Aniel was the person who pointed the gun at her, while his three other companions killed her husband and, thereafter, robbed their house, was more than sufficiently contradicted, rebutted and destroyed by the testimony of Felix Arañez, the Chief of Police of Villaba, Leyte, who investigated the crime the day following the commission of the offense; that the court should have given credence to the testimony of Benjamin Corpin with whom Simplicio Aniel was together on October 6, 1962, from 7:00 o'clock in the morning up to 5:00 o'clock in the afternoon, selling salted fish in the market fair of Celso Muertigue in Wague, Leyte, at the time the robbery and killing of Fermin Lamoste took place; that while it may be true that this witness was not able to recall the other dates when he hired Simplicio Aniel to carry salted fish to Wague, Leyte, aside from October 6, 1962, Benjamin Corpin had given the reason why he particularly remember the hiring of Simplicio Aniel on that day, because on that same day, he was reminded by his son-in-law who for the first time went fishing in Gotosan, and this being the first time his son-in-law fished in Gotosan, it is not strange that that date made a deep impression in

his memory.

The lower court, however, did not believe the testimony of Benjamin Corpin because he was not able to account the whereabouts of Simplicio Aniel after 5:00 o'clock in the afternoon of October 6, 1962, the time they returned home to Considra from Wague, Leyte. According to the trial court, Corpin was sure that they arrived in Consuegra (or Considra), Leyte, at 5:00 o'clock in the afternoon of October 6, 1962, because Juan Delanta told them that it was exactly 5:00 o'clock in the afternoon when asked by Benjamin Corpin. On cross-examination, however, Corpin admitted that he treated Simplicio Aniel as his son, because Simplicio Aniel is the nephew of Corpin's son-in-law. He also admitted that he did not remember the other dates, not even the last time, when he hired Simplicio Aniel to carry his salted fish to Wague, Leyte. Thus, the court who had personally seen and observed the behavior and manner of the witness while testifying, concluded that his testimony is not worthy of belief because it is tainted with bias and interest of the witness to obtain a judgment of acquittal. His memory is also faulty. The fact that a person has reached the "twilight of his age" is not always a guaranty that he would tell the truth, the trial court further added.

With respect to the testimony of the chief of police Arañez, We are more impressed into believing that he had attempted to tailor his testimony in an effort to bolster the validity of the defense of alibi. We are not persuaded to accord credence to the testimony of the chief of police that Barcelisa Lamoste told him that she was not able to identify the robbers, because he himself swore to the truth of the information after he had gathered evidence pointing to Simplicio Anie and his companions as the perpetrators of the crime.

He declared thus:

"Q.- Is it your purpose or intention to impress the Court that you do not believe that Pelagio Condemena, et al., have been charged falsely?

A.- No, sir.

Q.- What do you mean by that?

A.- I mean that these persons now who are accused are the ones responsible of the crime committed.

Q.- That is why you were the one who actually signed the criminal complaint in this case, is that right?

A.- Yes, sir, when the complaint was amended.

Q.- The incident took place on October 6, 1962 and the filing of the complaint took place on October 24, 1962, can you explain why the filing of the complaint was delayed?

A.- Because we were searching for more evidence, and when we were able to gather sufficient evidence, we filed this case. (tsn pp. 56-57, Pareja.)

Well settled is the rule that the defense of alibi is weak where the prosecution witnesses positively identified the accused. To prosper such a defense, it must be established by clear and convincing evidence and not merely supported by witnesses who bear close ties of relationship to the accused. The degree of the evidence must be such as to preclude any doubt that the accused could not have been physically present at the place of the crime or its immediate vicinity, at the time of its commission.

Barcelisa Lamoste, in the words of the trial judge who had personally seen and observed her behavior and manner of testifying on the witness stand, "unhesitantly and unmistakably" pointed to Simplicio Aniel as the person who rushed towards her and pointed his gun, about one foot long, at her face, warning her at the same time not to shout or else she will be killed. Esmeralda Lamoste substantially corroborated the testimony of her mother. And Crispin

Bactol's testimony has demonstrated a circumstance of strong persuasion when he recognized Condemeno and his companions when they were passing in front of his house. The credibility of their testimony was never successfully impugned by the defense when they were cross-examined on the witness stand. No motive was shown by the defense why these witnesses should impute so grave a crime to Simplicio Aniel who they did not even know before the crime was committed.

The positive identification of appellant Simplicio Aniel was further bolstered when Pelagio Condemena and Casamero Patiño, in their sworn statements Exhibits "B" and "C", named Simplicio Aniel as one of them in the group when they killed Fermin Lamoste and robbed the house of P200.00 on October 6, 1962, at about 6:00 o'clock in the afternoon.

Extra-judicial confessions, independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime. As this Court has said:

"While confession of a coconspirator are not ordinarily admissible as evidence against another co-conspirator, the fact that they implicate the latter and were made soon after the commission of the crime, is circumstantial evidence to show the probability of their co-conspirator having actually participated therein," (People vs. Lumahang, et al., L-6357 May 7, 1954.)

The commission of the crime was attended by treachery. The act of the accused in suddenly rushing towards the victim, then two of them, each holding the hands of the victim, and the third of them stabbed the victim, is characterized by treachery insuring the accomplishment of their purpose without risk to themselves from any defense or re-taliation the victim might offer.

The conspiracy among the accused is evident and equally proven. Their acts collectively and individually executed have clearly demonstrated the existence of a common design towards the accomplishments of the same unlawful purpose and objective - to rob the house of Lamoste. Altho the killing of Fermin Lamoste was accomplished by only three of the intruders without any physical participation thereof by the appellant Simplicio Aniel, however, as conspiracy has been established, the crime committed is robbery in band, and the homicide was committed on the occasion thereof, all the members of the band are liable for robbery with homicide (People vs. Evangelista, et al., L-2489, April 12, 1950). And

"x x x any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same." (Art. 296, Revised Penal Code.)

the appellant Simplicio Aniel is liable as principal because the evidence does not show that he had attempted to prevent the assault and the killing of Fermin Lamoste. (People vs. Garduque, et al., L-10133, July 31, 1958.)

The information charging appellant Simplicio Aniel, and the three other accused, of the crime of robbery in band with homicide alleged three aggrava-ting circumstances, namely, nocturnity, use of superior strength, and commission of the crime in the dwelling of the offended party. The lower court, however, after finding all the four accused guilty of the crime charged, did not consider the above aggravating circumstances when it imposed the penalty, instead took into account lack of instruction and education in mitigation of their liability. In this respect, the trial court was in error. Existing jurisprudence has settled that lack of instruction and education as mitigating circumstance in the crime of theft or robbery is not recognized,[1] although it might be under certain situations in cases of homicide.[2] As to the aggravating circumstances of dwelling and superior strength, the evidence has clearly established the presence thereof in the commission of the crime. Two of the four accused each held the

hands of Fermin Lamoste, who was at the time unarmed, before he was stabbed, while Simplicio Aniel, the appellant herein, guarded the wife, Barcelisa Lamoste, with the gun pointed at her face, and the crime was committed in the dwelling of the victim. The trial court, therefore, should have considered dwelling and superior strength as aggravating circumstances. (People vs. Sine-on, L-15631, May 27, 1966.)

The aggravating circumstance of nocturnity, however, cannot be appreciated. The record does not show that the peculiar advantage of nighttime was purposely sought by the accused in the commission of the deed.

As this Court has pointed out:

"x x x in default of any showing or evidence that the peculiar advantages of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnidad. It must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by darkness of night." (People vs. Boyles, et al., L-15308, May 29, 1964.)

The penalty imposable on persons found guilty of the crime of robbery in band with homicide, under Article 294, paragraph 1, Revised Penal Code, is reclusion perpetua to death. Considering that appellant Simplicio Aniel acted in conspiracy with his co-accused, and there is no evidence that said appellant attempted to prevent the commission of the offense charged, and taking into account the two aggravating circumstances of dwelling and superior strength, without any mitiga-ting circumstance to offset the same, in the opinion of the writer, the appellant Simplicio Aniel should be made to suffer the extreme penalty of death. However, in view of the lack of the requisite vote, the sentence imposed on him by the trial court is hereby affirmed. Costs against said appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] People vs. Melendrez, 59 Phil. 154; People vs. de la Cruz, 77 Phil. 444; People vs. Mendoza, L-7039, Jan. 31, 1957; and People vs. Semanada, L-11361, May 26, 1958.

[2] People vs. Huberto, 61 Phil. 64.

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