

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MELECIO AQUIDADO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-12916. May 25, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Melecio Aquidado, Carlos Hervas and Emilio Alinsangan were charged with attempted robbery with homicide before the Court of First Instance of Iloilo. After trial the court found them guilty of the crime charged with the aggravating circumstances of treachery, nocturnity and superior strength, and sentenced each of them to suffer reclusion perpetua, with the accessory penalties of the law, to indemnify the heirs of the deceased in the sum of P3,000.00, and to pay the costs. The accused were credited with one-half of the period of their preventive imprisonment.

The three accused have appealed. However, Carlos Hervas' petition to withdraw his appeal was granted on February 6, 1958. The appeal of Melecio Aquidado was dismissed due to his escape from confinement. Hence, only the appeal of Emilio Alinsangan was continued who in due time filed his brief.

At about 8:00 o'clock at night on April 12, 1956, in barrio Abangabang, Alimodian, Iloilo, three men appeared in the sala of the house of spouses Felix Alpuerto and Florentina Alpuerto while the former was seated on a bench and the latter was feeding her baby who was crying. They were identified as Melecio Aquidado, Carlos Hervas and Emilio Alinsangan. Two kerosene lamps lighted the house at the time, one in the sala and another in the kitchen. Being the first to reach the sala, Hervas immediately grabbed Felix Alpuerto by the hand and asked him where he kept his money, but Alpuerto answered that he had none. Alinsangan, who came next, pointed his gun to Florentina telling her not to move otherwise he will fire at her. When Aquidado arrived, he immediately tied Felix Alpuerto after which he ordered his two companions to kill him. Obeying his command, Hervas fired his carbine while Alinsangan fired his revolver killing Alpuerto instantly.

When Captain Carlos Jalandoni of the Philippine Constabulary stationed at Sta. Barbara, Iloilo, received a report from the Chief of Police of Alimodian that Felix Alpuerto was shot to death by unknown persons, he sent Sgt. De la Torre to the scene of the crime to find out who were the killers. Upon his return from the scene of the crime, De la Torre reported that the killers were Melecio Aquidado, Carlos Hervas and Emilio Alinsangan. With this report, Capt. Jalandoni set out to look for them, but to no avail.

On April 21, 1956, Capt. Jalandoni received another report from the barrio lieutenant of Takas, Pavia, Iloilo that a certain person from Alimodian was hiding in his barrio with a woman. This information led to the arrest of Melecio Aquidado who, upon being investigated, revealed that his companions in the killing were Carlos Hervas and Emilio Alinsangan. This also led to the arrest of Hervas and Alinsangan. Aquidado also told Capt. Jalandoni that he gave his firearm to one Braulio Anape, who, upon inquiry, indicated the place where the same was buried. Hervas in turn informed said captain that he sold his pistol to one Santiago Anam who, after having been investigated, surrendered the firearm. The statements of Carlos Hervas and Emilio Alinsangan were taken down

in writing at the headquarters of the Philippine constabulary at Sta. Barbara, which were signed under oath by them before Cipriano Cabaluna, Clerk of Court of the First Instance of Iloilo.

The defense of appellant is alibi which he tried to establish through the testimony of one Crispulo Buglosa. This witness testified that Alinsangan had a farm of about three hectares located in sitio Alay, Iloilo, which adjoins sitio Bugang where he lives; that sometime on April 11, 1956, he was asked by Alinsangan to plow his field; that on April 12, 1956, at about 6:00 a.m., he plowed the land up to 5:30 p.m., and, thereafter, he proceeded to the house of Alinsangan to collect his pay and left the house of Alinsangan at about 8:00 p.m.; that when he plowed the field of Alinsangan he saw him there cutting grass; that from 6:00 p.m. to 8:00 p.m. he saw that Alinsangan was in his house; and that the distance of the house of Alinsangan from barrio Abangabang is about eight kilometers which can be covered in about five hours walk.

There is no doubt that appellant is one of those who in the night in question went up the house of Felix Alpuerto to rob and that when the latter failed to produce the money he and his companions demanded they fired at him with their firearms killing him instantly. This is evidenced not only by the testimony of Florentina Alpuerto, wife of the deceased, who was present at the time of the killing, but also by the confessions given not only by appellant himself but by his companions Melecio Aquidado and Carlos Hervas. It should be noted that Hervas withdrew his appeal realizing the futility of his defense, while Aquidado escaped from his confinement which caused the dismissal of his appeal. These are unmistakable signs of guilt.

There is no point in the claim of appellant that the widow's testimony relative to how the attempted robbery and killing took place should not be given credence because it is incoherent, contradictory and inconsistent in some respects, for we have examined her testimony and have found it to be just the contrary. She clearly testified that she was able to recognize the three intruders and assailants because at the time there were two lamps in the house, one in the sala and another in the kitchen. And her testimony cannot be doubted because she had no motive to impute such serious charge against them especially because one of them is her relative. Moreover, her testimony appears to be substantially corroborated, by the confessions given by appellant and his co-accused Carlos Hervas before Capt. Jalandoni which were signed by them voluntarily under oath before the clerk of court of Iloilo.

It is true that his council now claims in his brief that said confession was obtained from him through violence and intimidation and does not represent a voluntary admission of his participation, but such claim is gratuitous for there is nothing in the record to support it. Bear in mind that appellant did not even have the courage to take the witness stand even if only to show that such confession was involuntary. On the other hand, the clerk of court before whom said confession was signed under oath testified and made the court understand that it was a voluntary confession.

We cannot also give any importance to the claim of alibi of appellant not only because it only finds support in the testimony of one Crispulo Buglosa who claims to have been with him from six to eight o'clock in the night in question but especially because from that time on he knew nothing of appellant's whereabouts, apart from his admission that from the house of appellant to that where Felix Alpuerto was killed there is only a distance of eight kilometers. And, as we have already said, he did not even have the courage to support such alibi by taking the witness stand. Verily, such defense cannot prevail over his own confession and the positive testimony of the widow Florentina Alpuerto.

The crime committed is attempted robbery with homicide penalized under Article 297 of the Revised Penal Code with reclusion temporal in its maximum period to reclusion perpetua. In the commission of the offense, there are present the aggravating circumstances of treachery and dwelling which are not offset by any mitigating circumstance. The penalty imposed by the trial court is, therefore, correct.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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