

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMILIO DE LOS SANTOS, ET AL., EMILIO DE LOS SANTOS, AURELIO
DE LOS SANTOS, PEDRO DE LOS SANTOS AND ENRIQUE NATIVIDAD,
DEFE...**

G.R. No. L-16304. November 30, 1962

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APPEAL from a decision of the Court of First Instance of Cagayan.

SUMMARY

Appeal from a judgment finding the defendants-appellants guilty of robbery in band with homicide and sentencing each of them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased. The three witnesses of the prosecution were able to establish beyond doubt the identity of all the five accused-appellants as the perpetrators of the crime inspite of each one setting up the defense of alibi.

RULING

The place where the crime took place in the afternoon of April 13 is very near (one kilometer) the places where the appellants claimed to have been present playing mahjong, witnessing the threshing of palay, or attending a dance. Their presence in these places notwithstanding, the testimony of the three witnesses who saw them in the store and identified each and everyone of them is sufficient to satisfy the Supreme Court beyond doubt that they were in fact the ones who perpetrated the crime.

The trial court found that there was no very clear and sufficient proof that there were more than three malefactors who participated in the robbery who carried arms. The assistant solicitor general claims that the evidence clearly shows that four of them carried arms. The Supreme Court find this contention to be correct as four arms were clearly shown to have been . carried by the malefactors. One, a long firearm was used in killing the victim, another is a revolver which was used in intimidating the victim's wife and in breaking the lock of the table where the P800.00 was concealed, while the two who stayed at the door of the store at the time the robbery was perpetrated had each, a drawn bolo.

The recommendation of the assistant solicitor general is that the penalty to be imposed is the maximum provided for in the law. (Art. 294. par. I). However, since there is no sufficient number of Justices approving the imposition of the death penalty, the next lower in degree or, that of reclusion perpetua should be meted to each and everyone of the appellants.

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