

NICANOR NAPOLIS, PETITIONER, VS. COURT OF APPEALS, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-28865. February 28, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal taken by Nicanor Napolis from a decision of the Court of Appeals affirming that of the Court of First Instance of Bataan, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby finds the accused Bonifacio Malana, Nicanor Napolis and Apolinario Satimbre guilty beyond reasonable doubt of the crime of robbery in band and sentences Bonifacio Malana as an accessory after the fact to suffer imprisonment of from six (6) months, arresto mayor, as minimum to six (6) years, prision correccional, as maximum and to indemnify the offended party, Ignacio Peñaflor in the sum of P80.00 with subsidiary imprisonment in case of insolvency but not to exceed one-third (1/3) of the principal penalty and the accused Nicanor Napolis and Apolinario Satimbre to suffer imprisonment of from ten (10) years and one (1) day, prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day, reclusion temporal, as maximum, both to indemnify the spouses Ignacio Peñaflor and Casimira Lagman in the sum of Two Thousand Five Hundred Fifty-Seven Pesos (P2,557.00) without subsidiary imprisonment in case of insolvency and all three to pay the proportionate part of the costs."

The main facts, on which there is no dispute, are set forth in the decision of the Court of Appeals, from which We quote:

"At about 1:00 o'clock in the early morning of October 1, 1956, Mrs. Casimira Lagman Peñaflor, 47-year old wife of Ignacio Peñaflor, the owner of a store located at the new highway, Hermosa, Bataan, after answering a minor call of nature, heard the barkings of the dog nearby indicating the presence of strangers around the vicinity. Acting on instinct, she woke up husband Ignacio Peñaflor who, after getting his flashlight and .38 caliber revolver, went down the store to take a look. As he approached the door of the store, it suddenly gave way having been forcibly pushed and opened by 4 men, one of them holding and pointing a machinegun. Confronted by this peril, Ignacio Peñaflor fired his revolver but missed. Upon receiving from someone a stunning blow on the head, Ignacio fell down but he pretended to be dead. He was hogtied by the men. The fact, however, was that he did not lose consciousness (tsn. 5, 1). The men then went up the house. One of the robbers asked Mrs. Casimira L. Peñaflor for money saying that they are people from the mountain. Mrs. Casimira L. Peñaflor, realizing the danger, took from under the mat the bag containing P2,000.00 in cash and two rings worth P350.00 and delivered them to the robber. Thereupon, that robber opened and ransacked the wardrobe. Then they tied the hands of Mrs. Casimira L. Peñaflor and those of her two sons. After telling them to lie down, the robbers covered them with blankets and left. The revolver of Ignacio, valued at P150.00, was taken by the robbers. The spouses thereafter called for help and Councilor Almario, a neighbor, came and untied Ignacio Peñaflor. The robbery was reported to the Chief of Police of Hermosa and to the Philippine Constabulary.

"Chief of Police Delfin Lapid testified that he went to the premises upon receiving the report of Councilor

Almario and found owner Ignacio Peñaflor with a wound on the head (tsn. 23, I). The wardrobe was ransacked and things scattered around. It appears that the robbers bore a hole on the sidewall of the ground floor of the store and passed through it to gain entrance. According to Chief of Police Delfin Lapid; 'they removed the adobe stone and that is the place where they passed through' (tsn. 24, I). In that same morning, policeman Melquiades Samaniego reported seeing suspicious characters passing through a nearby field and when the field was inspected, the authorities were able to locate a greasegun with 5 bullets and a pistol with 3 bullets (tsn. 24, I, testimony of Chief of Police).* * *."

It appears that, shortly after the occurrence, a criminal complaint for robbery in band was filed with the Justice of the Peace Court of Hermosa, Bataan. Named as defendants in the complaint, as subsequently amended, were Nicanor Napolis, Bonifacio Malana, Ben de la Cruz, Mauricio Anila, alias Mori, Jose Escabel, alias Pepe, Antonio Bededia, alias Toning, John Doe, alias Sommy Casimiro, Apolinario Satimbre, Paul Doe, et al. Napolis, Malana, Anila and Casimiro having waived their right to a preliminary investigation, the case, insofar as they are concerned, was forwarded to the Court of First Instance of Bataan, where the corresponding information was filed. As subsequently amended, by the inclusion, as defendants therein, of Antonio Bededia alias Toning, Domingo Flores alias Eko, Ben de la Cruz, Jose Escabel alias Pepe, Apolinario Satimbre, Carlito Veloso and Paul Doe, it is alleged in said information:

"That on or about 1:00 o'clock in the early morning of October 1, 1956, in the Municipality of Hermosa, Province of Bataan, Philippines, and within the jurisdiction of this Honorable Court, the herein accused Bonifacio Malana, Nicanor Napolis, Ben de la Cruz, Mauricio Anila Alias Mori, Jose Escabel Alias Pepe, Antonio Bededia, alias Toning, John Doe, Alias Sommy Casimiro, Apolinario Satimbre, Carlito Veloso, Domingo Flores, Alias Eko, and Paul Doe, by conspiring, confederating and helping one another, with the intent to gain and armed with a Grease Gun, Three (3) caliber .45 pistols and two (2) revolvers, did then and there willfully, unlawfully and feloniously, entered the dwelling of the spouses IGNACIO PEÑAFLOR and CASIMIRA L. PEÑAFLOR by boring a hole under the sidewall of the ground floor of the house and once inside, attack, assault and hit Ignacio Peñaflor with the handle of the Grease Gun causing him to fall on the ground and rendering him unconscious tied his hands and feet and then leave him; that the same accused approached Casimira L. Peñaflor threatened her at gun point and demanded money: that the same accused while inside the said house searched and ransacked the place and take and carry away the following cash money and articles belonging to said spouses Ignacio Peñaflor and Casimira L. Peñaflor, to wit: P2,000.00 in cash, Philippine Currency, One (1) ring (Brillante) valued at P350.00, One (1) licensed Comando Colt Revolver, Serial No. 532132 and One (1) Flashlight, valued at P7.00, to the damage and prejudice of said spouses in the total sum of TWO THOUSAND FIVE HUNDRED FIFTY-SEVEN PESOS, (P2,557.00) Philippine Currency."

At the trial of Malana, Napolis, Satimbre, De la Cruz, Casimiro and Flores,[1] the evidence for the prosecution consisted of the testimony of the offended parties, Ignacio Peñaflor and his wife Casimira Lagman Peñaflor and his wife Casimira Lagman Peñaflor, Provincial Fiscal Eleno L. Kahayon, Clerk of Court Pedro Aldea, Deputy Clerk of Court Eulogio C. Mina, Delfin Lapid, the Chief of Police of Hermosa, Bataan, and Lt. Luis Sacramento of the Constabulary and the affidavits, Exhibits A, B and C of defendants Napolis, Satimbre and Malana, respectively, admitting their participation in the Commission of the crime charged.

Mr. and Mrs. Peñaflor testified mainly on the robbery involved in the charge, whereas Fiscal Kahayon narrated the circumstances under which the affidavit Exhibit A was subscribed and sworn to before him by appellant Napolis; Police Chief Lapid and Lt. Sacramento dwelt on the investigations conducted by them and the circumstances; under which said defendants made their aforementioned affidavits and Clerk of Court Pedro Aldea and Deputy Clerk of Court Eulogio C. Mina explained how Exhibits B and C were subscribed and sworn to before them by defendants Satimbre and Malana, respectively.

Upon the other hand, Napolis tried to establish an alibi. Testifying in his own defense, he would have Us Believe that on October 1, 1956, he was in his houses in Olongapo, Zambales, because of a tooth extracted from him by one Dr. Maginas.

Defendant Satimbre, in turn, introduced his own testimony and that of his wife Engracia Mendoza. Satimbre claimed to be innocent of the crime charged and said that, although reluctant to sign Exhibit B, he eventually signed thereon, upon the advice of his wife Engracia Mendoza who sought to corroborate him and Mayor Guillermo Arcenas of Hermosa, in order that he may not be implicated in a robbery that took place in Balanga, Bataan, and that he could be sent back to his hometown, Hermosa, Bataan.

Before the conclusion of the trial, the court of first instance of Bataan dismissed the case as against defendants Flores, Anila, Casimiro and De la Cruz.

In due course, said court convicted Nicanor Napolis, Bonifacio Malana and Apolinario Satimbre, as above indicated. Said defendants appealed to the Court of Appeals which, however, dismissed Malana's appeal, and affirmed the decision of the Court of First Instance, insofar as Napolis and Satimbre are concerned. Satimbre did not appeal from said decision of the Court of Appeals, whereas Napolis alleges that said court has erred

"I. In affirming in toto the conviction of petitioner herein, of the crime charged based upon a lurking error of identity.

"II. In affirming, the conviction of petitioner based upon an extra-judicial confession extracted through duress.

"III. In affirming the decision of the court a quo based upon the evidence on record adduced during the trial.

"IV. In deciding the case not in accordance with the provision of law and jurisprudence on the matter."

Under the first assignment of error it is urged that appellant has not been sufficiently identified as one of those who perpetrated the crime charged. In support of this contention, it is argued that the identification made by Mrs. Peñaflor was due to a picture of appellant taken by Lt. Sacramento from the files of the police in Olongapo, Zambales, and then shown to her, before he (appellant) was apprehended and then brought to her presence for identification. It is thus implied that Mrs. Peñaflor identified him in consequence of the suggestion resulting from the picture she had seen before he was taken to her for said purpose. The defense further alleges that she could not have recognized appellant herein, in the evening of the occurrence, because the same was dark, and the flashlight used by the malefactors was then focussed downward.

Appellant's pretense is, however, devoid of factual basis. The record shows that the authorities were notified immediately after the occurrence; that, soon after, peace, officers - Police Chief Lapid and PC Lt. Sacramento repaired to the house of Mr. and Mrs. Peñaflor and investigated them; that based upon the description given by Mrs. Peñaflor, one individual was apprehended and then presented to Mrs. Peñaflor, who said that he was not one of the thieves; that another person subsequently arrested and taken to Mrs. Peñaflor was, similarly, exonerated by her; that in the course of the investigation conducted by the Philippine Constabulary, Lt. Sacramento later brought Mrs. Peñaflor to the offices of the police force in Olongapo and showed her the pictures of police characters on file therein; that among those pictures, she noticed that of appellant herein, who, she believed, was one of the culprits; and that appellant was, therefore, arrested and brought to Mrs. Peñaflor, who positively identified him as one of the malefactors.

In other words, Lt. Sacramento did not suggest to Mrs. Peñaflor, through the aforementioned picture of appellant, that he was one of the thieves. It was she who told Lt. Sacramento that said picture was that of one of the thieves. Besides, the fact that Mrs. Peñaflor readily exonerated the first two suspects, arrested by the authorities, shows that appellant herein would not have been identified by her if she were not reasonably certain about it.

Then, again, she had ample opportunity to recognize appellant herein because it was he who demanded money from her and to whom she delivered P2,000 in cash and two (2) rings worth P350; it was, also, he who opened and ransacked her wardrobe; and it was he who tied her hands and those of her two sons. These series of acts, performed in her presence, consumed sufficient time — from 10 to 20 minutes — to allow her eyesight to be adjusted to existing conditions, and, hence, to recognize some of the robbers. The night was dark; but, there were two flashlights switched on, namely, that of her husband, and the one used by the thieves. Although the tatter was, at times, focussed downward, it had to be aimed, sometimes, in another direction, particularly when the money and rings were delivered to appellant herein and when he opened and ransacked the wardrobe of Mrs. Peñaflor. Lastly, her testimony was confirmed by other circumstances presently to be mentioned, in connection with the consideration of the other alleged errors pointed out by appellant herein.

The second assignment of error is based upon a wrong premise — that appellant's conviction was based upon his extrajudicial confession and that the same had been made under duress.

Said extrajudicial confession was merely one of the factors considered by His Honor, the trial Judge, and the Court of Appeals in concluding that the evidence for the defense cannot be relied upon and that the witnesses for the prosecution had told the truth. Besides, appellant's confession was not tainted with duress. In this connection, the Court of Appeals had the following to say:

"Apart from the 'reliability of Mrs. Casimira Lagman Penaflor's identification, we have the extrajudicial confession of appellant Nicanor Napolis, marked Exh. A, subscribed and sworn to by said accused on October 26, 1956, 25 days after the occurrence, before Provincial Fiscal Eleno L. Kahayon; the 64-year old prosecutor who, since July 18, 1946, was the Provincial Fiscal of Bataan up to the present: His testimony shows that he read the confession, Exh. A, to said accused in the Tagalog dialect; asked him whether he understood it to which appellant Napolis answered 'yes'; inquired whether he was coerced to which he replied. 'No'; and then, required him to raise his hand in affirmation which he did (tsn.. 14-15, 1). Thereupon, appellant Napolis signed the confession in his (Fiscal's) presence. Provincial Fiscal Eleno L. Kahayon further testified that he saw no signs of physical violence on the person of the appellant who appeared normal in his appearance (tsn. 15, 1). In this confession; Exh. A, appellant Napolis related that it was co-accused Antonio Bededia (still-at-large) who pointed the greasgun to husband Ignacio Peñaflor and who hit him (Peñaflor) on the head and that it was co-accused Ben de la Cruz (whose case was dismissed) who wrested Peñaflor's revolver. For his part, appellant -Napolis admitted that it was he who talked to Mrs. Casimira L. Penaflor and it was he who got the money bag. The loot, according to him, was split from which he received a share of P237.00 (Answer to Q. A, Exh. A). Among others, he mentioned appellant Bonifacio Malana as the owner of the greasgun and the one who got Peñaflor's revolver from the hands of co-accused Ben de la Cruz. * * *."

It may not be amiss to advert to the fact that, on appeal from a decision of the Court of Appeals, the findings of fact made in said decision are final, except-

"(1) When the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court Of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee." [2]

and that the case at bar does not fall under any of the foregoing exceptions.

The third assignment of error is predicated upon the theory that the evidence for the prosecution is contradictory and, hence, unworthy of credence. Counsel for the defense alleges that, whereas Ignacio Peñaflor said that the thieves had entered his house by forcing-its door open, Mrs. Peñaflor testified that their entry was effected through an excavation by the side of the house, and the chief of police affirmed that the malefactors had removed

a piece of wood and an adobe stone to get into said house. No such contradictions, however, exist. The house of Mr. and Mrs. Peñaflor consisted of two (2) parts, one of which was a store and the other the dwelling proper adjoining the store, which had a door leading thereto (to the dwelling proper). Mrs. Peñaflor testified that the culprits had entered the store by removing an adobe stone from a wall thereof, and this was corroborated by the chief of police, although he added that the malefactors had, also, removed a piece of wood from said wall. Upon the other hand, the testimony of Mr. Peñaflor referred to a door, inside the store leading to the dwelling proper, as distinguished from the store.

In the light of the foregoing, and considering that the findings of fact made by the Court of Appeals are supported by those of His Honor, the trial Judge, who had observed the behavior of the witnesses during the trial, it is clear to Us that the first three (3) assignments of error are untenable.

The fourth assignment of error refers to the characterization of the crime committed and the proper penalty therefor. It should be noted that the Court of Appeals affirmed the decision of the trial court convicting Napolis, Malana and Satimbre of the crime of robbery committed by armed persons, in an inhabited house, entry therein having been made by breaking a wall, as provided in Article 299(a) of the Revised Penal Code, and, accordingly, sentencing Napolis and Satimbre to an indeterminate penalty ranging from ten (10) years and one (1) day of prison mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, which is in accordance with said legal provision.

In addition, however, to performing said acts, the malefactors had, also, used violence against Ignacio Peñaflor, and intimidation against his wife, thereby infringing Article 294 of the same Code, under conditions failing under sub-paragraph (5) of said article, which prescribes the penalty of prison correctional in its maximum period to prison mayor in its medium period, which is lighter than that prescribed in said Article 299, although, factually, the crime committed is more serious than that covered by the latter provision. This Court had previously ruled -

“* * * that where robbery, though committed in an inhabited house, is characterized by intimidation, this factor 'supplies the controlling qualification,' so that the law to apply is article 294 and not article 299 of the Revised Penal Code. This is on the theory that 'robbery which is characterized by violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things, because where violence or intimidation against the person is present there is greater disturbance of the order of society and the security of the individual.' (U.S. vs. Turla, 38 Phil. 346; People vs. Baluyut, 40 Phil. 89.) And this view is followed even where, as in the present case, the penalty to be applied under article 294 is lighter than that which would result from the application of article 299. * * * ”[3]

Upon mature deliberation, We find ourselves unable to share the foregoing view. Indeed, one who, by breaking a wall, enters, with a deadly weapon, an inhabited house and steals therefrom valuable effects, without violence against or intimidation upon persons, is punishable under Art. 299 of the Revised Penal Code with reclusion temporal,[4] Pursuant to the above view, adhered to in previous decisions,[5] if, aside from performing said acts, the thief lays hand upon any person, without committing any of the crimes or inflicting any of the injuries mentioned in subparagraphs (1) to (4) of Art. 294 of the same Code, the imposable penalty under paragraph (5) thereof – shall be much lighter.[6] To our mind, this result and the process of reasoning that has brought it about, defy logic and reason.

The argument to the effect that the violence against or intimidation of a person supplies the "controlling qualification," is far from sufficient to justify said result. We agree with the proposition that robbery with "violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things," but, precisely, for this reason, We cannot accept the conclusion deduced therefrom in the cases above cited reduction of the penalty for the latter offense owing to the concurrence of violence or intimidation which

made it a more serious one. It is, to our mind, more plausible to believe that Art. 294 applies only where robbery with violence against or intimidation of person takes place without entering an inhabited house, under the conditions set forth in Art. 299 the Revised Penal Code.

We deem it more logical and reasonable to hold, as We do, when the elements of both provisions are present, that the crime as a complex one, calling for the imposition — as provided in Art. 48 of said Code of the penalty for the most serious offense, in its maximum period, which, in the case at bar, is reclusion temporal in its maximum period. This penalty should, in turn, be imposed in its maximum period — from nineteen (19) years, one (1) month and eleven (11) day's to twenty (20) years of reclusion temporal — owing to the presence of the aggravating circumstance of nighttime. In short, the doctrine adopted in *U.S. vs. de los Santos*[7] and applied in *U.S. vs. Manansala*,[8] *U.S. vs. Turla*,[9] *People vs. Baluyut*,[10] *Manahan vs. People*,[11] and *People vs. Sebastian*,[12] is hereby abandoned and appellant herein should be sentenced to an indeterminate penalty ranging from ten (10) years, and one (1) day of prision mayor to nineteen (19) years, one (1) month and eleven (11) days of reclusion temporal.

Thus modified as to the penalty, the decision of the Court of Appeals is hereby affirmed in all other respects, with costs against herein appellant, Nicanor Napolis. It is so ordered.

Reyes, J. B. L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Makasiar, J., did not take part.

[1] Other defendants were granted a separate trial, whereas still others had not been apprehended as yet.

[2] *Garcia vs. Court of Appeals*, L-26490, June 30, 1970, citing *Roque vs. Buan, et al.*, L-22459, Oct. 31, 1967; *Ramos vs. Pepsi Cola Bottling Co.*, L-22533, Feb. 9, 1967; *Hilario, Jr. vs. City of Manila*, L-19570, Sept. 14, 1967.

[3] *People vs. Sebastian*, 85 Phil. 601, 603. See, also, *Manahan vs. People*, 73 Phil. 691; *U.S. vs. Manansala*, 9 Phil. 529, \$30; *U.S. vs. De los Santos*, 6 Phil. 411, 412.

[4] From twelve (12) years and one (1) day to twenty (20) years of reclusion temporal.

[5] *People vs. Sebastian*, 85 Phil. 601; *Manahan vs. People*, 73 Phil. 691; *People vs. Baluyut*, 40 Phil 89; *U.S. vs. Turla*, 38 Phil. 346; *U.S. vs. Manansala*, 9 Phil. 529; *U.S. vs. De los Santos*, 6 Phil. 411.

[6] From four (4) years, two (2) months and one (1) day of prision correccional to ten (10) years of prision mayor.

[7] *Supra*.

[8] *Supra*.

[9] *Supra*.

[10] *Supra*.

[11] *Supra*.

[12] *Supra*.

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