

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RICARDO ERIT ET AL., DEFENDANTS, RICARDO ERIT, LEOPOLDO ERIT AND PEREGRINO FRANCO, DEFENDANTS AND APPELLANTS.*G.R. No. L-2301. July 11, 1949*

Ponente: TUASON, J.

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A band of five men raided and robbed the house of Eulalio Bedrijo in barrio Matagangtang, municipality of Cataingan, Masbate, on the night of September 16, 1946, killing Bedrijo and carrying away P400 in cash and various articles of personal property worth, according to the information, P200. Four witnesses pointed to Peregrino Franco, Ricardo Erit and Leopoldo Erit, the last two being brothers, as three of the perpetrators of the crime. The witnesses were Edilberto Bedrijo, Eulalio's son, Pablo Morales, Mauricia Catampungan, widow of the deceased, and Pacifico Muertegui. Their testimony is summed up in the brief for the Government as follows:

"It appears that at about 2 o'clock in the early morning of September 16, 1946, (pp. 3, 28, 34, t. s. n.) the herein appellants, Ricardo Erit, Leopoldo Erit and Peregrino Franco, accompanied by two other unidentified persons, all armed with rifles (pp. 5, 20, 43, t. s. n.), went to the house of Eulalio Bedrijo, who was the barrio lieutenant of Matagangtang (pp. 5, 40, t. s. n.) which was located in said barrio, municipality of Cataingan, Province of Masbate (pp. 2, 40, t. s. n.). Upon arriving thereat, they called from below, saying 'Good evening' (p. 13, t. s. n.), but as none of the occupants of the house answered, they fired at the house (pp. 10, 18, 31, t. s. n.). Immediately thereafter, Peregrino Franco and the two unknown persons went up the house (pp. 3, 18, 20, 31, 42, t. s. n.), while the appellants Ricardo and Leopoldo Erit remained below, standing guard around the house (pp. 3, 14, 28, t. s. n.) The occupants thereof, namely, Mauricia Catampungan, wife of the deceased, Edilberto Bedrijo, son of the deceased, Pablo Morales, and three students, Pacifico Muertegui, Leandro Aguilar and Pablo Nator (pp. 33, 40, t. s. n.), were all herded in a room therein (pp. 14, 38, 50-51, t. s. n.). The three robbers started looking for the revolver of the deceased and threatened to shoot the occupants if they did not deliver the said revolver (pp. 11, 19, 32, 40, t. s. n.) to which Edilberto Bedrijo answered that he had no revolver (pp. 19, 32, t.s.n.), and the widow saying that her husband had taken his revolver with him to town (pp. 11, 19, 32, 40, t. s. n.). The marauders then demanded money from them and upon being told by Mauricia Catampungan that she had no money, they threatened to force open her trunk (pp. 11, 19, 32, 41, t. s. n.). Upon being thus threatened, Mauricia opened the trunk from which Peregrino Franco took an "alcancia" which he broke open and which contained silver coins amounting to P400 (pp. 11-12, 19, 32, 41, t. s. n.). The robbers also took away with them a raincoat and eyeglasses belonging to the deceased (p. 33, t. s. n.), as well as several articles of clothing belonging to the students (pp. 40, 42, t. s. n.), with a value of P66 (Exhibit 1). Moments thereafter, the deceased arrived, and as he was entering the gate, appellant Ricardo Erit told him not to move (p. 33, t. s. n.), and when the former proceeded to enter, Erit fired at him (pp. 12, 33, 41, t. s. n.). After taking the revolver, valued at P100, from the cadaver, (pp. 5, 33, t. s. n.), appellants and their unknown companions hurriedly left the premises (pp. 39, 44, t. s. n.).

"As a result of the gunshot wounds he sustained on the left breast and left forehead (pp. 53-54, t. s. n.), the deceased expired on that same occasion (p. 37 t.s.n.) and was buried two days thereafter (Exhibit A)."

Upon this evidence, His Honor, Judge Jose Z. de Venecia found the three above-named defendants (the others not having brought to trial) guilty of robbery and sentenced them to not less than 4 months and 1 day of *arresto mayor* and not more than 3 years, 8 months and 1 day of *prision correccional*, and to pay the heirs of the deceased P500. Ricardo Erit alone was pronounced guilty of homicide and, in addition to the above penalty, was sentenced for this offense to an indeterminate penalty of from 10 years and 1 day of *prision mayor* to 14 years, 8 months and 1 day of *reclusion temporal*, and to indemnify the heirs of the deceased in the sum of P2,000.

Peregrino Franco admitted participation in the crime but said that he was forced by threats and intimidation by Santiago Onrubia, Zoilo de la Peña, Demetrio Mato and Antonio Sanchez. Ricardo Erit and Leopoldo Erit put up an alibi.

Peregrino Franco appealed to the Court of Appeals as well as Ricardo Erit and Leopoldo Erit but withdrew his appeal before the case was submitted for decision. The First Division of the Court of Appeals certified the case to this Court, being of the opinion that the crime committed was the complex crime of robbery with homicide, with aggravating circumstances, and that the impossible penalty was the maximum of that prescribed in article 294, subsection 1, of the Revised Penal Code, which is death.

Ricardo Erit's and Leopoldo Erit's appeal presents a question of identity.

Although, as the court below observed, the witnesses directly and positively affirmed that Ricardo Erit and Leopoldo Erit were the two men who stood guard downstairs and that Ricardo Erit shot Eulalio Bedrijo, their testimony is far from being airtight and is totally uncorroborated. Aside from the witnesses' affirmation, there is no evidence, direct or circumstantial, which links the two brothers with the crime in question. The truth of the testimony that the witnesses saw Ricardo and Leopoldo Erit through the window hinges not so much on the witnesses' veracity as on their ability to recognize the defendants beyond any possibility of mistake. That they told what they conscientiously believed to be true might be conceded; that their perception was correct is seriously to be doubted.

The time and the position of the parties lend ground for skepticism as to the accuracy of the witnesses' observation. The witnesses were all inside the house while the robbers, who they said were the Erit brothers, were in the yard. The house was quite high, high enough at least to permit a man to stand up under the floor. The light in the house was not described, nor was the part of the house where it was placed revealed. The probabilities were that it was an ordinary kerosene lamp, the light of which could not have transcended far beyond the window.

It is said that there was a moon, but it was not full moon, as some witnesses erroneously asserted. We may take judicial notice of the fact that the moon was in its last quarter on September 18, 1946, and rose on the 16th at 10:20 p.m. Granting that the night was not overcast, still we are not satisfied that a quarter moon afforded the people inside the house sufficient light to recognize the people in the yard with a reasonable degree of certainty. A person may be recognized through his size, his height, movements, and the shape of his body by another to whom those features are familiar. Edilberto Bedrijo was not so situated with reference to Ricardo or Leopoldo Erit. These lived eight kilometers from Bedrijo's house and were known to Edilberto only because this witness used to see them; in the market. Our doubts find concrete proof in the fact that Edilberto Bedrijo, of all the four witnesses, was the only one who said from the start that the two men who kept watch downstairs and one of whom shot his father were the Erit brothers. Two of the other witnesses named only Peregrino Franco in their extra-judicial statements. The other witness was not examined or presented at the preliminary investigation although he said he was on hand ready to testify.

Circumstances of affirmative character disclosed by the evidence add to the uncertainty:

- Peregrino Franco, who was arrested before the Erit brothers and who from the outset admitted complicity in the robbery, did not implicate Ricardo or Leopoldo Erit, either directly or indirectly, while naming four others as his confederates. There is no indication, and there is no reason to believe, that Franco committed perjury to shield these brothers or out of fear of them. He had more reason to be afraid of the people he squealed on Ricardo Erit and Leopoldo Erit, as well as Franco, were securely lodged in jail. And, a stranger from Iloilo, Franco was not bound with the Erits by ties of blood or friendship. Except for the fact that he claimed to have been forced against his will, a claim which we think is untrue but which was not strange for him to make, this defendant's testimony has the earmarks of sincerity. His answers were to the point, straightforward, plausible and consistent.

- The people whom Peregrino Franco pointed out as his companions were not imaginary persons but real hardened bandits who were the terrors in Cataingan. Three of them were slain by the police in November, 1946, and so were still alive when they were incriminated by Franco. This clashes with the prosecution's theory that Franco falsely implicated them because they could not refute his statements.

- On the body of one of the three men killed, Santiago Onrubia, was found witness Muertegui's belt, which was among the personal effects stolen from Bedrijo's house. This is a safe demonstration that Onrubia was one of the robbers. It is to be presumed from the nature of their business that Onrubia, De la Peña, Mato and Sanchez operated in group and were together when the crime at bar was committed. The information in fact named all of them as active participants in the crime. Now then, with Peregrino Franco there were already five malefactors accounted for. According to the witnesses for the Government, only five men composed the band, three going up the house and two remaining outside.

- Ricardo Erit and Leopoldo Erit have not been shown to have any police record or reputation for lawlessness. As a matter of fact, one of them at least, Ricardo, appears to have gainful occupations. He was a carpenter and farmer.

Our conclusion is that Ricardo Erit and Leopoldo Erit should be acquitted. The appealed decision is reversed with costs charged de oficio.

Moran, C.J., Ozaeta, Paras, Feria, Perfecto, Bengzon, Briones, and Reyes, JJ., concur.

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