

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUSEBIO HERLANDEZ, DEFENDANT-APPELLANT.***G.R. No. L-22498. December 28, 1970*

Ponente: TEEHANKEE, J.

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Appeal from the lower court's judgment finding the accused-appellant guilty of the crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim, Anacito Tragia, in the amount of P6,000.00 plus the sum of P53.00 as the value of personal belongings and P6.00 cash which were robbed from the deceased, with costs.

The crime was committed in the evening of September 30, 1962 in sitio Nacaalang, barrio Canlinga, Dagami, Leyte. At about 9 p.m. while the victim Anacito Tragia, his wife Cleofe Redoña and their daughter Benita Tragia, 13 years old, were asleep in the sala of their one-storey house, they were awakened by a noise coming from the kit-chen, which was an extension of the house and was separated from the sala by a partition. Anacito stood up, lighted a lamp and with it went to the kitchen. Cleofe and Benita who remained lying down in the sala then heard two gun shots, after which Anacito walked back to the sala and laid down, apparently wounded. Two men then followed him into the sala, opened their trunks and took five pairs of pants and threatened the women that they would also shoot them if they did not give their money. Benita then took P6.00 from the pocket of the trousers worn by Anacito and gave it to the robbers who then left. Anacito died about three hours later that same evening of one wound on his body above the waistline, according to the women's testimony - no medical report having been pre-pared or submitted as to the cause of the victim's death.

The lower court rendered its verdict of guilty on the strength of the testimony of the widow, Cleofe, and her daughter Benita, that they recognized appellant as one of the robbers. On appeal, Atty. Salvador San Juan, as counsel de oficio, has raised as a main issue the sufficiency and adequacy of the evidence identifying appellant as the culprit.

Our careful review of the record and of the testimony of the two principal prosecution witnesses fails to leave that degree of moral cer-tainty sufficient to overcome reasonable doubts favoring appellant's in-nocence and to let the mind rest easy upon the certainty of his guilt. There are so many unexplained gaps and conflicts on vital details between their inadequate testimonies that even the State, in its brief upholding the verdict, was constrained to contend that "as between Benita who was only 13 years old at the time of the incident and her mother, the testimony of the latter is more reliable and accurate."^[1]

Benita, who testified on June 10, 1963, the year following the com-mission of the crime, was noted by the Court and the State to be ignorant and practically illiterate and hard put to answering even simple questions of the prosecuting fiscal. She identified appellant in court as one of the robbers, claiming to have known him "about two months" but could not answer and gave no answer to the fiscal's follow-up question of "two months from what time?"^[2] In testifying on the incident as related above, she declared that appellant "and his two companions went

inside the house"; that "the companion of the accused" shot her father at the kitchen, using a carbine;[3] that afterwards these two persons went to the sala and threatened to shoot them also, if they would not give money, while appellant "was walking to and fro;"[4] that after these two persons opened their trunks and got the five pairs of pants and the P6.00 taken from her father's trousers, they all left; that her father "told us (herself and her mother) that he was wounded, "sat down, and died at about twelve o'clock in the evening; and that three town policemen went to their house the next day to investigate and found an empty shell inside the house.

Cleofe, testifying after her daughter, likewise identified the appellant but her own testimony contradicted her daughter's in a number of major details about which neither of them could be possibly mistaken and which contradictions, taken together with the facts and circumstances of record supporting appellant's defense, cast serious doubt as to their trustworthiness. Cleofe testified that she had known him for about two years as they were residing in the same barrio, although her sitio was "about 9 kilometers" away in her rough calculation being far from his place; that appellant had "only one (companion) because they were only two who went up";[5] that after her husband was shot in the kitchen, he was still able to walk to the sala, where she and Benita had remained; that he said nothing to them because he fell down on the floor, could not talk anymore and was already dead;[6] that although from her own testimony, it is quite clear that since she and her daughter remained in the sala, they could not see the intruders who shot her husband in the kitchen, Cleofe on her part declared that "he (appellant) pulled the trigger of the gun;"[7] she also described the gun as a carbine and stated that the police at their investigation found one empty shell.

The third and last prosecution witness presented was Servillano Ramuite, the municipal policeman who investigated the case at the victim's house at sitio Nacaalang. This witness declared that "Benita pointed to (him) two empty shells of a carbine gun"[8] under the house (These empty shells were the only objects presented as evidence.) He observed that the victim's corpse had wounds, but could not tell their location, as "(he) did not try to verify carefully."[9] He then positively declared that at the investigation, "(A)ccording to Benita Tragia, the one who shot her father was the companion of Eusebio Herlandez,"[10] and "(T)hat she suspected that the assailant was Eusebio Herlandez because that person has the same curly hair with Eusebio Herlandez, the same height and the same feature of the face."[11] The repeated efforts of appellant's counsel, on cross-examination to press on this point that Benita, at the police investigation right on the day after the killing, had not positively identified appellant as one of the robbers who broke into their house, but that the killer of her father had similar physical features as appellant, were inexplicably blocked *motu proprio* by the lower court, who three times successively, ordered counsel to make "another question." [12] Defense counsel, upon asking the witness directly "what did Benita Tragia tell you behind the house when you investigated her? "got finally the direct admission "that the assailant who shot her father was a companion of a person who was similar or identical to Eusebio Herlandez." [13]

Appellant, a married farmer with two children, and 24 years old at the time he took the stand on December 17, 1963 to defend himself, denied the charge against him as, untrue and attributed it to personal grudge and ill feeling that members of the victim's family had against him. He recounted that he had worked in June 1961 in a land near the house of Felicisimo Llanito, a son-in-law of the deceased and married to Iluminada, another daughter of the deceased; that since Llanito's ducks were destroying and eating his palay seedlings, he reported them to the barrio lieutenant, Filemon Maganda, who summoned the couple and required them to fence in their ducks; that in October 1961 when appellant's palay was almost ripe, the couple's ducks continued to go to his field and eat the palay, and appellant struck them, killing two and catching 14 others, and turned them over to the barrio lieutenant, Maganda; the latter summoned the couple again and told them he would not release the ducks unless they paid the damages which he fixed at 15 gantas and the couple paid the same to appellant. This incident was corroborated by the barrio lieutenant, Maganda, who further confirmed that the two families became

"enemies", because the Llanito couple "had a sort of a grudge against Eusebio Herlandez because of the two geese which were killed." [14]

Appellant gave a straightforward account of his whereabouts and activity on the day of the crime and on the following day: his mother, Maria Teves, had gone to his house that day to help prepare a native pastry called *lidguid* to be brought by his wife to Manila to sell there; in the afternoon he busied himself gathering firewood and preparing the things needed for the pastry; after he had placed the pastry for cooking, he then laid down in the house and went to sleep; the cooking was done by his wife and mother in the kitchen and began at around 9 p. m. and lasted up to midnight, according to his mother who testified in corroboration; appellant never left his house up to the following morning; the following morning, he told his wife and mother to go ahead to the poblacion and to take the things to be brought by his wife to Manila, since he had to attend to bringing the copra of Celso Lagunza on a carabao sledge to one Mang Asiong. After making his delivery, he met his wife and mother at the corner store; he then noted people going to the municipal building to see something strange (as the corpse of the deceased was brought there) and he went in also out of curiosity; after about half an hour, as he was returning to where his wife and mother were waiting, Carlo Ugat, a policeman called him and told him "that (he) was the one who shot Anacito Tragia;" appellant "told him not to be joking because it is not only a trifle matter (sic)" [15] but Ugat brought him to the office of the chief of police.

Appellant further asserted that Benita Tragia was in the office with only the two of them; that Ugat was investigating Benita who did not say anything; and that he heard Ugat tell Benita "If the Chief of Police arrives and you are investigated, tell him that it was Eusebio Herlandez who shot your father." [16]

Appellant was not cross-examined at all by the fiscal and his testimony thus gains unchallenged weight, as the fiscal opted not to test it in the crucible of cross-examination. The recalled Benita to the witness stand in rebuttal for her only to declare that it was not Ugat but the chief of police who investigated her and her mother at the municipal building, and that they identified him as he was there in the municipal building viewing the corpse. [17] But Benita was not asked directly about Ugat's alleged instruction to her to name him as the killer. Nothing was even presented by the prosecution to indicate that appellant was ever confronted by Benita and her mother in the municipal building. More importantly, Ugat, the policeman was not presented either to rebut the charge of appellant that he, Ugat, was responsible for Benita's pointing to him. Furthermore, when appellant's counsel asked appellant in direct examination as to whether the police searched his house for the stolen five trousers the following day after the incident, appellant was prevented from answering by the fiscal's objection to the question as "leading and of no materiality" [18] - giving rise to the adverse presumption that appellant's house was indeed searched by the police, who found nothing.

All the foregoing facts and circumstances: the uncertainties and inadequacies in the identification of appellant by the prosecution's eyewitnesses, their conflicting testimonies about major details about which they could not possibly be mistaken, the improbability of Cleofe's testimony that she saw appellant pull the trigger of the gun with Benita on the other hand stating to the policeman investigating the case at their house right on the day after the incident that "the assailant who shot her father was a companion of a person who was similar or identical to Eusebio Herlandez", the utter lack of any description by these witnesses of the one or two other companions of the assailant who broke into their house, notwithstanding they had all the opportunity to observe and remember their features and the rule cited by the State that victims of robbery and violence strive to know the identity of their assailants, [19] their failure to explain why they did not confront appellant with their denunciations as the deceased's killer when they allegedly identified him in the municipal building, the difficulty of giving credence to Benita's testimony that all appellant did at their house was to "walk to and fro" as if deliberately to expose himself to identification notwithstanding his being a resident of the same barrio as theirs, the absence of any motive on the

part of appellant to commit such a dastardly act, the unlikelihood that appellant who was gainfully and lawfully employed would rob and kill for five pairs of trousers that were practically valueless, the prosecution's failure to rebut appellant's accusation of fabrication of testimony against him - all these serve to give commensurate strength to appellant's protestation of his innocence and heighten the prosecution's failure of discharging its burden of establishing by competent and credible proof the guilt of the accused beyond reasonable doubt.[20]

ACCORDINGLY, the judgment a quo is reversed and the accused-appellant Eusebio Herlandez is acquitted of the charge and ordered forthwith released from detention, unless he is held on some other valid charge. Costs de oficio.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur. Concepcion, C.J., on leave.

[1] Appellee's brief, p. 5.

[2] Perez' T.s.n. p. 5.

[3] Idem, p. 8.

[4] Idem, p. 7.

[5] Idem, p. 21.

[6] Idem, p. 30.

[7] Idem, p. 22.

[8] Molon T.s.n., p. 5.

[9] Idem, p. 4.

[10] Idem, p. 4.

[11] Idem, p. 5.

[12] Idem, p. 7.

[13] Idem, p. 9

[14] Idem, pp. 28-31.

[15] Perez, T.s.n., pp. 61-62.

[16] Idem, p. 63.

[17] Idem, p. 66.

[18] Idem, p. 64.

[19] Appellant's brief, p. 4.

[20] See *People vs. Pagkaliwagan*, G.R. No. L-29948, Nov. 26, 1970; *People vs. Gallora*, 29 SCRA 780 (Oct. 30, 1969); and *People vs. Cruz*, 32 SCRA 181 (Mar. 30, 1970).

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