

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. QUIRLNO MALLABO, DEFENDANT AND APPELLANT.

G. R. No. L-3412. June 26, 1951

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Quirino Mallabo is appealing from a decision of the Court of First Instance of Cagayan, finding him guilty of murder of causing the death of Marcelino Paragua, and sentencing him to an indeterminate penalty of nine (9) years and four (4) months of prison mayor to twenty (20) years of reclusion temporal, with the accessories provided for by law, to indemnify the heirs of the deceased in the amount of P2,000, and to pay the costs. Because of the penalty imposed by the trial court, the appeal was first taken to the Court of Appeals where the briefs for the prosecution and the defense were filed. After studying the case the Court of Appeals in a resolution found that appellant really killed Marcelino Paragua, the killing being qualified with treachery, with the aggravating circumstance that the crime was committed in the dwelling of the deceased, and being of the opinion that the penalty imposable is that of death, it certified the case to this Court. Once here the case was again set for oral argument, and counsel for appellant appeared and argued the case and even submitted a memorandum which was admitted.

We have carefully gone over the record and we agree with the trial court and the Court of Appeals that appellant Quirino Mallabo killed Marcelino Paragua in the latter's home in a surprise attack with his revolver, which may readily be considered as treacherous. The manner said attack was made is adequately described in the counterstatement of facts of the Solicitor General, concurred in by the Court of Appeals. Finding said counterstatement to be fully supported by the evidence, we reproduce it below, and make it our own:

"On the night of June 8, 1947, while Marcelino Paragua and his wife, Inocencia B. de Paragua, were sleeping in his house in San Juan, Pamplona, Cagayan, appellant accompanied by Bernardino Mallabo and some companions knocked at their store and asked for cigarettes. As it was already late, calculated to be around 10 p.m., and the night was dark, the couple did not answer at all. Whereupon the malefactors forced open the door of the store and once inside inquired again for cigarettes. Having received no reply, they also forced open the door and window of the house where the couple were sleeping. Upon being awakened and while he was getting out of the mosquito net, Paragua was shot by the appellant who was then standing near the door (pp. 2-3, t.s.n.).

"The death of the deceased was instantaneous as the bullet entered bis mouth, came out of the lower jaw, entered the thoracic cavity and finally lodged in the lungs (pp. 5, 10, 11, ts.n.)."

The determination of this case hinges on the identity of the killer. Inocencia B. de Paragua, widow of Marcelino Paragua, was the only witness presented to establish said identity. But she had every opportunity to recognize and identify the appellant herein as the person who shot and killed her husband because there was then a lighted lamp in the house, besides the light emitted by the flashlight carried and used by Bernardino Mallabo, one of the companions of the appellant. Besides, when appellant Quirino Mallabo fired his revolver he was standing at the

door of the house and only about three meters away from her. Moreover, according to Inocencia, she was familiar with the appearance, stature and voice of defendant Quirino because he was her neighbor. Incidentally and in this connection it may be stated that Bernardino Mallabo was also identified by Inocencia, charged in a separate case and was convicted by the trial court, and from the records of the Court of Appeals and of this Tribunal it does not appear that he had appealed from that conviction. The appellant at the time of the commission of the crime was a member of the Philippine Scouts U. S. Army, with headquarters in Quezon City, but he had gone to Pamplona, perhaps his native town, on a furlough.

Appellant interposed the defense of alibi, not through his testimony, for according to the record he did not take the witness stand, but by the testimony of others. It is claimed by his witnesses that on the night in question, from about eight o'clock in the evening the defendant was in the neighboring barrio of Mataguisi about three kilometers distant from the house of Marcelino Paragua in the barrio of San Juan, attending a dance or rather playing as a member of the orchestra and that he did not leave the dance hall until about midnight. This defense was correctly rejected by the trial court in view of the short distance between the two barrios, because assuming that appellant really attended said dance in Mataguisi, and had left when it ended late in the evening, he could still have gone to the barrio of San Juan to commit the crime. Although the widow Inocencia stated in her testimony that her husband was killed about ten o'clock in the evening, that hour was a mere estimate of hers because as pointed out by the Solicitor General, she had no timepiece by which to accurately tell the time, but the fact is that it was quite late, and the inmates of the house had long since retired and were already sleeping when appellant and his companions came. Other reasons for not accepting this defense of alibi occur to us. In the first place, the appellant did not bother to establish it himself by taking the witness stand, a task not so difficult, unless he felt that his testimony could not stand cross-examination. Secondly, as stated in numerous cases decided by this Court, particularly in the case of *People vs. Badilla*, 48 Phil. 718, the defense of alibi is "frequently relied on in criminal cases, but oral evidence tending to prove alibi is so easily manufactured and usually so unreliable that it can rarely be given credence." Besides, because of the inherent weakness of the defense of alibi, it readily gives way and is rejected when the presence of the accused at the scene of the crime and his participation in its commission is established by at least one reliable witness. In the present case, we have that reliable witness in the person of the widow Inocencia.

Counsel for appellant attacks the veracity of Inocencia's testimony in identifying the defendant as the killer of her husband because she failed to tell the barrio lieutenant and the Chief of Police who came that same night, that it was the appellant who killed her husband, and that she pointed to the defendant as the author of the murder only when she was investigated by the Provincial Fiscal more than a month after the commission of the crime. However, in our opinion, she has sufficiently explained her silence on this vital point, when she stated that after her husband was killed, she was naturally emotionally upset, and was continually crying and trembling. Added to this was her fear that if she immediately identified the killer or his companions, she might be the object of reprisal, especially because the appellant was a Philippine Scout soldier, armed, and one of his companions was a half-brother of the policeman who accompanied the Chief of Police when the latter came to investigate the case. But she told the court that not long after, when a sergeant of the Military Police came to investigate the killing, she pointed to appellant Quirino Mallabo as the killer, and this was confirmed by the said Military Police sergeant, Lucio Banan.

The murder in this case was committed in the very house of the victim and there is no mitigating circumstance to offset this aggravating circumstance of dwelling. The penalty for murder provided for in Art. 248 of the Revised Penal Code which is reclusion temporal in its maximum period to death, should, consequently, be imposed in its maximum degree, which is death. However, because of lack of sufficient votes we cannot impose the extreme penalty. The defendant is therefore hereby sentenced to reclusion perpetua. The indemnity which he was

sentenced to pay by the trial court is increased from P2,000 to P6,000. With these modifications, the decision appealed from is hereby affirmed, with costs. So ordered.

Paras, C. J., Feria, Pablo Bengzon, Padilla, Tuason, Reyes and Jugo, JJ., concur.

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