

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RUPERTO ARANGUREN ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-1620. January 26, 1949*

Ponente: PERFECTO, J.

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On the night of November 6, 1946, while sleeping in their house in barrio Santa Maria, San Pablo City, Gaudencio Pere and his wife Angelina Hernandez were awakened by armed persons pretending to be authorities. Two of the three intruders entered the dining room while the third, who turned out to be Ruperto Aranguren, remained in the balcony. Gaudencio was ordered to go down with one of those who were in the dining room, who followed him behind with a gun. The one who remained inside the house ordered Angelina to produce money and Jewellries. She produced P65, and, when ordered to produce more because she was known to be a merchant, she showed her bamboo alcancia, (meaning any kind of container where money is concealed or deposited). (4 & 5). While the alcancia was being opened with a bolo by the intruder with the help of Angelina, a gunshot was heard and the intruder ran away without having been able to get the money, and at that time Angelina heard Magno Correa shouting "Gaudencio, I am shot, I will die." Angelina, went down to join her husband and then went to the house of her aunt Baldomera Hernandez. She saw Magno Correa dying from a wound. Magno was brought to a hospital where he died early the next morning. Angelina identified Aranguren to be one of the malefactors because he was living in the same barrio and she knew him since his childhood. (6 & 7). Angelina further testified that the deceased was shot by Aranguren because he was the one near a banana tree where Magno Correa was shot, while one of his two companions was with her inside the house and the other was guarding her husband near a coconut tree, about 6 arms length from the place where Aranguren was. (11). The incident happened at midnight. The moon was bright and its light penetrated the surroundings. Angelina's horse was surrounded with coconut and lanzones trees and banana plants. (12). Her husband was brought at 3 arms' length from the house. (13).

Gaudencio Pere testified that on the midnight in question he obeyed, the order of the intruders to go down, leaving his wife upstairs. (16). he was ordered not to look behind by one of the intruders who "was aiding his gun at me." Of the regaining two intruders, one was left in the house "asking money from my wife, and the other whom I recognized as Ruperto Aranguren toward the banana plant." He was brought near a coconut tree. He was ordered not to face his guard or else he would be killed, and while he was facing the coconut tree he heard a shot and the intruder guarding him went near the banana plants and said "Let us go," and then Gaudencio heard someone saying he will die. When the robbers left, he went running toward the house of his aunt. (17). His "supposition" was that Magno Correa was shot by Aranguren "because he (Aranguren) was the one standing near the banana plants. Immediately after I heard the shot, I saw him to be near Magno Correa." The first person to arrive at the place where Magno Correa was wounded was the latter's wife. (16). When Gaudencio arrived at the place there were also Maximo Ilagan and Valeriano Correa besides Correa's wife. After bringing the wounded to the poblacion, Gaudencio went to see a policeman and then the chief of police, to report that they were robbed, and the only name he mentioned to them was that of Ruperto Aranguren. (19). At the time Gaudencio was taken down

the house, Aranguren went ahead towards the banana plants. (23). Before Gaudencio heard the shot, Aranguren was near the banana plants and after he heard the shot, he saw the intruders running, carrying long guns. (24). Gaudencio recognized Aranguren "when he was in the house because the light was behind him." (25). When Gaudencio saw Aranguren later with the chief of police, he saw him in wet clothes and shoes, because probably he crossed rivers. (26).

Chief of Police Gertrudo San Pedro testified that, before Gaudencio Pere reported to him the robbery, and while on patrol in the vicinity of Aglipay Street, he saw somebody approaching. Because it was dark, he focused on him his flashlight and it seemed to him that the man was running, and he ordered Felipe Endralino to run after him. The person apprehended happened to be Aranguren who said that he came from barrio Botocan to watch the lanzones trees of his uncle Felix Artificio. The chief of police investigated Aranguren suspicious of him because he had his clothes and shoes wet even if it was not raining. "I investigated him and as he had nothing to conceal I released him." After Gaudencio Pere informed the chief of police of the incident, said officer ordered the apprehension of Aranguren, who was taken to the municipal building in the early morning. (29-30). Aranguren, when first apprehended, carried no firearm. He said that, he was wet because he passed several rivers. (32).

Isabel Santos testified that her husband Magno Correa was shot behind the house of Gaudencio Pere. (33). Magno was shot at about 30 meters from their home. She went to the scene with her brother-in-law. (34). Her brother-in-law asked her husband what happened to him, and her husband answered that he "was Shot by Perto" (the witness pointing to Aranguren). Her husband did not give any description of the person who shot him except by naming him as "Perto," by which name appellant was known in the barrio. (34). When her husband mentioned the author of the crime, he was in a "serious condition, dying down," and was himself the one who suggested that he be brought to the hospital. (36).

Felix Artificio, defense witness, barrio lieutenant, testified that upon arriving at the scene of the crime he asked Gaudencio Pere what had happened, and Gaudencio stated that two persons had gone to his house to rob, but that he was unable to identify them because their faces were covered. (40). He made the investigation at 11 o'clock in the evening of November 6, 1946. (41). Aranguren is the witness' stepson. (42). The witness was present when the chief of police asked the wounded man (Magno) if he recognized the robbers, and he answered that "he did not see any person." (44). When the witness saw his stepson Aranguren in jail at the San Pablo City Hall on November 8, 1946, he did not ask the chief of police why his stepson was arrested. Witness admitted that on November 9, 1946, he went to the fiscal's office to inquire about the information against Aranguren, and that the fiscal informed him that he was still completing the evidence. He also admitted that two days later, on November 11, he came back to the fiscal's office asking if the case could be fixed and that the fiscal told him no. (46-47). He however alleged that he had no interest in his stepson, although he admitted he had gone to Attorneys Dizon and Robles and asked them to defend the accused. (48).

Alberto Rosales testified that he was present when the barrio lieutenant asked Magno Correa if he recognized the person who shot him and that Magno answered that he did not recognize him. (50-51). He was also present when the chief of police asked Magno about the same thing and Magno replied that he did not know who wounded him because he did not see, and this answer was given during the investigation made in the hospital at about 2 a.m. on November 6, 1946. (52). A week after the incident, Felix Artificio told the witness that he would be used as a witness in this case. (53). The witness was also present when Gaudencio Pere was asked by the barrio lieutenant about what had happened and Gaudencio answered that he was robbed by two persons whom he did not know. (55).

Ricardo Pandialan testified that he was present in the house of Magno Correa when the latter was asked by Felix Artificio what had happened to him and when Magno said that he did not see the person who fired at him, and that

was the only conversation between the barrio lieutenant and Magno. (64). Since the incident took place, Felix Artificio had already asked the witness to testify in this case. (66).

Francisco Bondiginio said that he was present when the barrio lieutenant investigated Gaudencio Pere and Angelina Hernandez, (67) and when Gaudencio said that he was robbed of two 50-centavo pieces, but said nothing more. (68).

Alfredo Barrento testified that on the night of November 6, 1946, he saw Aranguren on Aglipay Street, San Pablo City, in a barong-barong where people were "enjoying the game of dice." He saw him there at 9 o'clock. He left the place at 10, but returned at 11 and remained up to 12; and during that time he saw the accused in the dice game. After 12 o'clock he did not see him anymore. (70-71). As to the trial of the case, the witness was informed by Felix Artificio one week earlier. (71-72). The witness did not remember whether before November 6, 1946, that barong-barong was closed. The last time that he went there was on November 8, 1946, and it was closed. (75). It was Felix Artificio who notified him of the trial of the case. The Sunday following November 6, 1946, the witness met Felix Artificio in a cockpit and there Artificio told him that as soon as the trial is called the witness may testify to the effect that he saw the accused in the evening of November 6, 1946, at the barong-barong. (76).

Ruperto Aranguren, the accused, testified that in the evening of November 6, 1946, "I cannot tell exactly whether (I was) in ray house or in the dice game." His house is near the place where the said game was being played on Aglipay Street. At about 12 o'clock in the evening of November 6, 1946, he was playing dice. After eating supper at 8 o'clock he went to the place where the game was being held. At about 12 o'clock he went out "because I felt warm. I went to the store of Andoy near the dice to buy cigarettes but the store was closed. When I was to return, I met the chief of police and lie asked ne where I came from and I answered that I went to Botocan to look for the lanzones of my father-in-law. When I met him that evening I was going home to sleep. At early morning of the following day I was awakened up by the authorities and told that I was wanted." When he met the chief of police he was not wet. (77-78). He saw A-lfredo Barrento in the dice game at 9 o'clock that evening. Barrento was playing. (80). He was there from 9 to 12 o'clock that night. Asked to explain why Barrento testified that he did not play, the accused said that he believed that Barrento was playing because he was inside the place. The accused told the chief of police that he came from Botocan "because I know that the game of dice was prohibited." (81).

Gertrudo San Pedro, chief of police, testifying on rebuttal, said that although it is true that he went to the hospital to investigate upon receiving news of the robbery, he was not able to get "any answer because the wounded man was delirious at that time." (85). He belied the testimony of Felix Artificio who said that he conducted an investigation and reported to the chief of police to the effect that the wounded man and the spouses Gaudencio Pere and Angelina Hernandez told him that they did not recognize the assailant. Artificio did not make any report. What he said was that he had no knowledge about the incident. (86).

The evidence points conclusively to Aranguren as one of the trio who robbed the house of Gaudencio Pere at about midnight on November 6, 1946, although his two companions could not be identified by the witnesses for the prosecution. Two of them went inside the dining room, and from there one of them brought Gaudencio Pere down and made him stand facing a coconut tree, guarded at his back by one of the intruders, while the other remained inside the house to demand money and jewelry from Angelina Hernandez and, after receiving from her P65, was unable to open a bamboo alcancia. Aranguren at first posted himself in the balcony and then went down to where the banana plants were, just before Gaudencio Pere was brought near the coconut tree by one of his companions. While the intruder who remained inside the house was engaged, with Angelina's help, in opening the bamboo alcancia, a shot was heard and then the voice of the wounded person was heard from the ground near the house. The robber watching Gaudencio Pere went to call his companions and the three of them ran away. Magno Correa was subsequently found lying down wounded by a gunshot, by his wife and several ptesons including a

brother and Gaudencio Pere and his wife. According to Gaudencio and Angelina the three robbers were all armed with long firearms.

The participation of Aranguren in the crime has been proved beyond reasonable doubt. It was a moonlit night, and Gaudencio and his wife positively identified him, and they could not have been mistaken because appellant was a neighbor and Angelina had known him since their childhood.

The testimony of Felix Artificio and other witnesses for the defense, to the effect that Gaudencio told the former that there were only two robbers and that he could not identify anyone of them because they had their faces covered, do not deserve credence. Artificio denied repeatedly having any interest in the plight of Aranguren, notwithstanding the fact that Aranguren is his stepson, that he had gone twice to see the fiscal to inquire about the case and to ask if it could be fixed, and that he was the one who had taken pains to gather witnesses for his defense. The witnesses he called to corroborate him do not improve his testimony. He is belied by the chief of police whose impartiality has not been impeached, and there is no showing why Gaudencio Pere should testify in court that the robbers were three and one of them was Aranguren, a barrio-mate with whom he had previously no personal trouble, if he saw only two robbers whom he could not identify.

The defense of alibi offered by the accused has no weight at all, not only because of the material contradiction between the testimonies of Aranguren and Barrento,—the latter denying having participated in the dice game, while Aranguren said that Barrento played the game,—but because when Aranguren was questioned by the chief of police, who ordered his apprehension that night for his suspicious attitude, Aranguren did not say that he came from the barong-barong where the dice game took place but from Botocan. His explanation at the witness stand that he lied because he knew that dice was a prohibited game, is too silly to be accepted. There was no compelling reason for him to confess that he violated the law by playing dice or to lie by alleging that he came from Botocan, as, at the time, the chief of police did not yet have any incriminatory evidence against him. While the thought of lying that he came from Botocan seems rather to fit conveniently in the theory of the defense as the first fabricated alibi which the accused wanted to offer to show that he had not been in the scene of the crime, he did not press it for lack of corroborating witness, and had to shift to the dice alibi after Artificio was able to secure the conformity of Barrento to appear as a witness for Aranguren. Lastly, even if we should accept that Aranguren had been in the dice game from 9 to 12 o'clock in the night of the crime, that fact does not preclude his having participated in the commission of the crime which, according to the witnesses for the prosecution, took place at "about midnight" which includes the time from 12 to 2 o'clock, the time when people gathered to attend to Magno Correa, the wounded man, and the investigation of the crime started.

Although the Court is unanimous in finding Aranguren to be among the three intruders who committed the robbery in the house of Gaudencio Pere, the writer of this opinion disagrees with the majority concerning the probative value of the evidence tending to show the participation of Aranguren in the killing of Magno Correa. The majority is of the opinion that the dying declaration of Magno Correa, as testified to by his widow, coupled with the testimonies of Gaudencio Pere and Angelina Hernandez as to appellant's presence near the scene, are conclusive evidence that Aranguren was the one who fired the fatal shot. The writer of this decision opines that the dying declaration of Magno Correa is unacceptable because, under the circumstances, it was improbable for him to have been able to see the one who fired at him, and his widow's testimony as to said dying declaration has not, without any explanation, been corroborated by his own brother who was present at the time, and that the mere presence of Aranguren near the banana plants, as testified to by Gaudencio Pere, did not show beyond reasonable doubt that he fired the shot, aside from the fact that, according to Angelina Hernandez, Aranguren was in the balcony of their house.

With the dissent of the writer, who would impose upon appellant only the penalty provided by law for the crime

of robbery, conformably with the majority opinion, the appealed judgment,—which found Ruperto Aranguren guilty of the complex crime of robbery with homicide and sentenced him to suffer the penalty of reclusion perpetua with the accessories of the law, to indemnify the heirs of the deceased Magno Correa in the amount of two thousand pesos (P2,000) and to return the amount of sixty-five pesos (P65), and to pay one-third (1/3) of the cost,—is affirmed with the sole modification that the indemnity to the heirs of Magno Correa is raised from two thousand (P2,000) to six thousand pesos (P6,000), in accordance with the doctrine laid down in *People vs. Amansec*,^[1] 45 Off. Gaz., (Supp. to No. 9), 51. The appellant will also pay costs in this instance.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

[1] 80 Phil., 424.

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