

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS.
ALFONSO DE LA CRUZ, ET AL., DEFENDANTS, JOSE ROCES,
APPELLANT.**

G.R. No. L-357. September 30, 1946

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a judgment of conviction for robbery by which Alfonso de la Cruz, who did not appeal, and Jose Rooes, present and sole appellant, were sentenced to suffer imprisonment of not less than (4) years (2) months and (1) day, prision correccional nor more than 18 years and 1 day, reclusion temporal, with the legal accessories, to indemnify Cirilo Pamplona in the sum of P796.00, and each to pay one-half of the costs.

On the night of January 18, 1946, three men came to the home of Cirilo Pamplona in barrio Bar as, in the Municipality of Barotac Nuevo, Province of Iloilo. All the inhabitants of the house had gone to bed when Pamplona, was awakened by the call of a man who asked for food. The door of the house was, not bolted because Cirilo's eldest son was still out. Pamplona looked out the window and saw two men seated at the dining table and one in the yard. Unsuspecting, and believing that the s trangers really aeeded something to eat, he told his wife to feed them. What happened; from this point is thus related by the complainant;

"It turned out that we had no more cooked rice; my wife measured raw rice to cook for these people; we lighted a lamp to have light; and suddenly this tan man (De la Cruz) leveled his gun at me and said, 'Do not move'; I did not move, I crossed my arms; then this young mestizo (pointing to accused Rocess came up also; then there were two of them upstairs already; Rocess said, 'Hurry up with the light'; then with the light and the flashlight which the two accused brought with them they searched the interior of our house; this mestizo Rocess (indicating the accused Jose Rocess) prodded with the point of his carbine the back of my wife telling her, 'Open the wardrobe, if not, I shoot you'; my wife out of fear opened the small wardrobe which we had; Rocess told my wife, 'Take out the money, and give it to me'; my wife begged saying, 'Son, we have no money; we are laborers, and we have neither land nor carabao', but Rocess insisted saying, 'Do not lie; we know that you have money'; this tall man (pointing to accused De la Cruz) followed me with his gun aimed at me; I did not move out of fear; a little later their other oom-paaion oame«up, wearing short pants; he was as short as this mestizo Rocess; and that unidentified man, who is not now here, was the one who found our money and the few Jewels that we had. After these two accused and their companion had gotten Mold of our money and jewels they got a picee of rope, tied my hands behind my back and gagged me with an apron; afterward they tied also my wife's hands behind her back, and later this mestizo fiooes fetched a woman's dress in the room and with that dress gagged my wife in order that she could not scream; and afterward the three went down."

Pamplona farther testified that De la Cruz was armed with a Thompson, if he was not mistaken, Rocess with a carbine, and the third man with a bayonet. A bayonet, which was introduced as Exhibit A, was identified by him as the bayonet just referred to, and the dagger Exhibit B as among his personal belongings and cash which the

robbers carried away' The total amount of the property and money taken was P819, according to the witness.

Adela Pamplona, Cirilo's daughter aged: 11 years, testified substantially in the same vein as her father.

Antonio Bagaforo, a member of the military police, stated that, having received information that two suspicious looking persons were strolling in barrio Tabog Suba, in the municipality of Barotac Nuevo, he and a companion, upon instruction of his sergeant, proceeded to the place indicated, and as they were about to cross a broken bamboo bridge in that barrio, they spotted the two accused. When the defendants saw them coming, De la Cruz and Roces started to flee, but they (officers) grabbed them and took them to the headquarters for questioning. When the prisoners were searched, a bayonet Exhibit A was found in Roces' pocket, and a dagger Exhibit B on "Alfonso de la Cruz's waist.

The defendants set up an alibi. They testified that all night on January 18 they were in barrio Acquit, Barotac Nuevo.

Juan Discipulo declared that the two accused and Angel Ludero called at his house and that after he and his family finished their supper, the three visitors, who had brought a can of salmon, ate theirs. After eating, the defendants and Ludero went out to attend, so they said, a dance in Tabog Anday-hagan in barrio Acquit. It was about 9:00 o'clock when they departed, but he could not tell what time they came back that night.

Librada Paraico testified that she lived about twenty meters away from Juan Discipulo's home. Often volunteering answers which were not asked, she declared that she saw the two accused on the night of the 17th, and again on the night of the 18th eating in the house of Juan Discipulo, after which, at about half past nine, they stepped out to go to a wedding party; that, from the party the defendants came back and asked for Juan Discipulo; that, as Juan Discipulo was already asleep, they wanted to pass the night in the school house; that she invited them to sleep in her house because in the school building there were no mats, pillows nor blankets' and because "poor Alfonso" (de la Cruz) had just recovered from illness' She swore that the two accused did not leave her house that night because she closed and tied the door. She said, however, that she slept all night and was not watching her guests.

Angel Ludero, a school teacher in barrio Acquit, declared in essence that he was with the two defendants on the 17th, the 18th and the 19th of January, 1946.

Of the three witnesses who gave evidence for the defense, only Juan Discipulo has impressed us as being truthful. His testimony is not so air-tight as to be incompatible with the hypothesis that the defendants were the authors of the crime herein charged, as to the other two witnesses, these betrayed signs of being uncertain of some of their statements; in several instances they withdrew or changed their answers immediately after they had been given, and although there is now the slightest proof to bear out the hints that Angel Ludero was the third man of the gang that broke into Pamplona's home, it is certain that he was very partial to the accused, was their intimate and close friend, and was in their company in their loafing and rambling. The defendants were from other-municipalities and had no visible means of livelihood.

For the rest, Pamplona and his daughter were positive of the identity of the two accused; and they could hardly be mistaken, for the malefactors were undisguised and there was a lighted lamp when they ransacked the house and gagged and bound Pamplona's and his wife's hands. It may be added that, although the night in question was the first time Pamplona laid eyes on the defendants, Cirilo's daughter assured the court that before that date she had seen Roces several times pass in front of the school she was attending.

Without going farther, there are two outstanding facts which explode the defense of alibi and leave no room for doubt of appellant's guilt. Alfonso de la Cruz's conformity with the decision which imposed on him a heavy penalty may be logically interpreted as an acknowledgment of the commission of the crime. And the finding in

this defendant's possession of the dagger stolen from Pamplona's home, Exhibit B, a few days after the crime was perpetrated, constitutes a strong if not conclusive corroboratidn of the robbery victims' testimony. It would be argued perhaps that Alfonso de la Cruz guilt should not be confounded with Rocés'. Against this possible argument, it should be remembered that according to defendants' own evidence De la uruz and Rocés never separated from each other since the 17th or before and that they presented a common defense based on the same set of evidence. It follows that the proofs of participation in the crime against one are proofs against the other of such participation and lack of merits of the defense of alibi.

The crime committed by the appellant is robbery with intimidation of persons as defined in Article 293 and punished in Article 294 of the Revised Penal Code, and not robbery in an inhabited house as alleged in the information. The penalty for such offense is prision correccional to prision mayor in its medium period. (Article 294, subsection 5, Revised Penal Code). The mitigating circumstance of lack of education is not available to the appellant because this circumstance does not apply to crimes of theft or robbery. (United States vs. Pascual, 9 Phil. 491). On the other hand, there have concurred the aggravating circumstances of nocturnity and dwelling, by reason of which the maximum penalty provided by law is to be applied in its maximum period.

The appealed judgment is modified and the appellant is sentenced to an indeterminate penalty of from months of arresto mayor to 10 years of prision mayor, with the accessories of law, to pay Cirilo Pamplona P814.00, and to pay one-half of the costs.

Moran, C.J., Feria, Bengzon, and Briones, JJ., concur.

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