

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SEVERINO GANIBAN, ET AL., DEFENDANTS. SEVERINO GANIBAN,
DEFENDANT AND APPELLANT.**

G.R. No. L-4165. August 28, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

An information for robbery in band with murder was filed in the Court of First Instance of Ilocos Norte against Severino Ganiban, Pio Balicoco, Tomas Mateo and Benjamin Ganut. When the prosecution was about to close its evidence, it moved for the exclusion from the information of Benjamin Ganut with a view to utilizing him as a government witness. Over the objection of counsel for the other accused, the motion for exclusion was granted by the court. After the prosecution had rested its case, counsel for the accused Severino Ganiban, Pio Balieoco and Tomas Mateo moved for the dismissal of the case for lack of a prima facie case. The motion for dismissal was granted by the court only as to Tomas Mateo and Pio Balieoco. Trial was proceeded with as against Severino Ganiban, after which the Court of First Instance of Ilocos Norte found him guilty of robbery with homicide and sentenced him to reclusion perpetua, with legal accessories, to indemnify the heirs of the deceased Valentin Malvecino in the sum of P4,000, plus P450, the value of the articles taken, and one-fourth of the costs. From this judgment Severino Ganiban appealed.

Valentin Malvecino and his wife Fulgencia Rasay lived in barrio No. 22 (Madpes), municipality of Sarrat, Ilocos Norte, together with their son-in-law Justo Molina and the latter's wife and children. At about 11:30 in the night of December 9, 1949, four men with faces covered by handkerchiefs below their eyes, came into the house of Valentin Malvecino, one of them being armed with a Thompson gun. They proceeded directly to the kitchen where Justo Molina was sleeping with his wife and children. After the hands of Justo Molina were tied at his back, three of the intruders brought him to the sala where Valentin Malvecino and his wife were sleeping, while the other companion remained at the batalan near the doorway. One lighted a lamp, whereupon Fulgencia Rasay was ordered to open her trunks. Two ransacked the trunks and took there from three wrist watches valued at \$60 each, one pocket watch valued at \$40, and two flash-lights valued at \$50. The person holding the Thompson gun demanded money from Valentin Malvecino who was then standing with his hands tied at his back, and after the latter informed that he had no money, the armed person fired at Valentin Malvecino who was hit at his right ear. At this juncture, however, Valentin Malvecino, who was able to free his hands, took hold of a club and struck one of the malefactors on his right shoulder, whereupon the person holding the Thompson gun fired upon Valentin Malvecino four times, as a result of which the latter fell and died a few minutes afterwards. As Fulgencia Rasay shouted for help, the malefactors fled away. Justo Molina reported the matter to the chief of police at dawn. These facts have been testified to by Justo Molina and Fulgencia Rasay, who could not however identify the assailants because of their covered faces.

Benjamin Ganut who, as already stated, was excluded from the information, testifying for the prosecution, pointed out Severino Ganiban, the appellant, as the leader of the gang and as the one who shot with his Thompson gun

Valentin Malvecino. He also identified Pio Balicoco and Tomas Mateo who together with Benjamin Ganut and Jacinto Aguinaldo (another witness for the prosecution) were the companions of the appellant on the occasion in question; although Benjamin Ganut claimed that he went with the gang under pressure from the appellant. The testimony of Benjamin Ganut is in substantial corroboration of his affidavit Exhibit "A", executed during the investigation conducted by the mayor and the chief of police of Sarrat.

Jacinto Aguinaldo, testifying for the prosecution, also identified the appellant as the one who held the Thompson gun from the time he was fetched in the house of his cousin Tomas Mateo by the appellant, Pio Balicoco and Benjamin Ganut.

Dr. Aurelio Malvar, who testified on the injuries received by Valentin Malvecino and the cause of his death, declared that he examined Tomas Mateo and found a contused wound on his right shoulder just below the level of the acromium, and that said wound might have been caused by a round piece of wood.

The evidence for the prosecution is sufficient for appellant's conviction. The testimony of Fulgencia Rasay and Justo Molina is, corroborated in substance by the testimony, of Benjamin Ganut and Jacinto Aguinaldo who, moreover, positively identified the appellant as the leader of the gang and as the one who shot to death with his Thompson gun Valentin Malvecino.

The defense of alibi set up by the appellant cannot prevail over the positive testimony of Benjamin Ganut and Jacinto Aguinaldo who, according to the appellant himself, could have no motive in testifying against him. Moreover, even assuming that the appellant was with Mariano Campano on December 9, 1949, arranging and making bundles of palay in the barrio of Bangay, Dingras, Ilocos Norte, there is no showing that it was impossible for the appellant to be at the place of the commission of the crime at 11:30 o'clock in the evening of said day, specially because the appellant left the place of Mariano Campano at 9:00 o'clock.

The legal question is raised that the exclusion of Benjamin Ganut was contrary to section 9, Rule 115, of the Rules of Court, providing that the discharge of an accused may be ordered at any time before the defendants have entered upon their defense, it being contended by the appellant that the discharge must be sought and made before the commencement of the trial. This contention is clearly untenable, since the clause "at any time before they have entered upon their defense" contemplates that the discharge "can be affected at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence." (People vs. Mendiola et al., 82 Phil., 740; 46 Off. Gaz., 3629.) Besides, errors or irregularities in the manner of discharging an accused would not affect his competence as a prosecution witness. (People vs. Badilla, 48 Phil. 718.)

The appellant also argues that the testimony of Jacinto Aguinaldo deserves little credit, on the ground that, before taking the witness stand, he was always in the court room and heard the testimonies of the previous witnesses, and that as the said Jacinto Aguinaldo was not mentioned by the prosecution as one of its witnesses, the appellant was deprived of the right to pray for his exclusion from the court room. It appears, however, that at the bottom of the information, the name of Jacinto Aguinaldo is included in the list of witnesses for the prosecution, and that Jacinto Aguinaldo was sworn in together with other government witnesses on the first day of trial. For appellant now to avail himself of his counsel's omission is, to say the least, against all rules of fairness.

The appealed judgment being in accordance with the facts and the law, is hereby affirmed with costs against the appellant. So ordered.

Pablo, Bengzon, Padilla, Tuason, Montemayor, and Labrador, JJ., concur.

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