

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AQUILINO AGUILAR, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-16985. June 29, 1963

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PER CURIAM:

Charged with robbery with homicide before the Court of First Instance of Misamis Oriental, Aquilino Aguilar, and Esteban Pacudan were sentenced to suffer life imprisonment while Pedrito Aguilar, who claimed to be only 17 years old when the crime was committed, to an indeterminate sentence of 8 years and 1 day of prison mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum, the three to indemnify the heirs of the deceased in the sum of P6,000.00, without subsidiary imprisonment, and to pay the costs. The three accused took the present appeal.

Early in the morning of March 21, 1958, while spouses Sulpicio Olario and Concesa Olario were sleeping at their house in the municipality of Medina, Misamis Oriental, they were awakened by the sound of footsteps of persons entering their house. Thru their mosquito net they saw three men in their bedroom and after they lifted the mosquito net they came towards their place carrying a pistol in one hand and a flashlight in the other. At the time the house was lighted by two lamps, one in the bedroom and another in an adjoining room which had no shutters. Concesa recognized one of them to be Aquilino Aguilar who had no mask because she had known him for a long time to be a friend of her father, while she noticed that the other two were masked up to their noses although one of them was shorter and bigger than the other. Aquilino Aguilar then demanded money from them to which Sulpicio Olario answered indicating that their money was in the drawer. After this the intruders ordered the spouses to lie down with their faces on the floor and as Concesa did as bidden, she raised her head to look but she was hit on the head by one with a chair causing it to bleed. Shortly thereafter she heard an explosion and gathering strength she rose and ran to the window which was about 56 inches from the ground and jumped dislocating her waist. As she tried to stand up she shouted for help until her mother came to her rescue. A neighbor by the name of Pastor Patnasic also heard the explosion. . He peeped thru his window and saw three men fleeing in the dark. Upon hearing the outcry of Consesa he repaired to her house.

When Concesa and her mother went back to the house after the intruders had fled, they saw Sulpicio lying on the floor already dead with three wounds in his body. Upon investigation three empty shells were found in the bedroom. The thirty pesos in coins that were kept in the drawer in their store were missing. A flashlight with its light still on was left on the dining table. Minutes after the incident Sgt. Ismael Wahiman of the Medina police force arrived to whom Concesa immediately related that she was able to recognize one of the intruders to be Aguilar, although she was not sure of his first name, and gave the physical description of the other two.

The autopsy performed by Dr. Irineo Pascual show that the deceased received the following injuries:

- (a) Gunshot wound region midway between frontal, two supra-orbital ridge.
- (b) Gunshot wound on or about the region of the anterior axillary line at the level of the 6th intercostal space, left.
- (c) Gunshot wound over the lumbar region, left.

(d) Gunshot wound (2) para vertebral, right at the interscapular region right.

The appellants set up alibi as their defense. Aquilino Aguilar declared that on March 20, 1958 he went to Portulin, Medina, to gather lanzones. He was not- the one who climbed the trees because he was afflicted with rheumatism. A 12-year old boy helped him. He went home at 4 o'clock in the afternoon and when he arrived he put down the lanzones and went to bed because of his rheumatism. His wife and his six children, including his co-accused Pedrito, and a guest Francisca Quesaba were in the house. His son Pedrito came home at 11 o'clock in the evening and did not go out again. The next morning he took his bolo to clean the lawn and did not go out until March 22, 1958, which was a Saturday. On March 23, a Sunday, his wife informed him that there was a boat going to Cabog and so he went to that place to join his labor union. He did not work on that day 'because the copra did not arrive and so he went to the cockpit. The next day he went to the pier to find out whether there was some loading to be done and while waiting a policeman from Medina approached him and invited him to the municipal building. It was only then that he came to know that he was accused of robbery with homicide. At noon of the same day his son Pedrito was also placed in jail. He denied his participation in the crime with which he is charged. He also denied knowing Concesa Olario although he admitted that being a gambler he came to know the father of Concesa in the cockpit. He further testified that Esteban Pacudan, Andres Paglinawan and another person accused of illegal fishing were later placed in jail and he met them for the first time. He had no chance to talk to them except at meal-time. He denied having talked to any one of them about the charge against him.

Esteban Pacudan declared that on March 27, 1958 he went to Mandahilag, Talisayan, Misamis Oriental to visit his sister Paulina Pacudan with whom he left his child when he underwent medical treatment. He found that his sister was in Sta. Ines, Talisayan, so he went there. After meeting his sister he left to board a truck for Kinoguitan but before he could do so the chief of police of Talisayan approached him and asked him for his gun. He gave him his home-made gun "paliuntod. " The chief of police took him along to Talisayan where he was investigated. He was asked if he knew Aquilino Aguilar and the municipal mayor of Medina. He denied knowing Aguilar but admitted knowing the mayor. The next morning, Sgt. Acuna told him that Aquilino Aguilar had already confessed to the robbery but he claimed that he did not know Aquilino Aguilar. He declared that on March 21, 1958 he was in his house at Maujon, Gingoog, nine kilometers from Medina and stayed there from March 21 to 25, 1958. He had allegedly been living at that time on the land of one Telesforo Batab for one year at the time of his arrest, his work being planting corn. On March 28, 1958, Sgt. Acuna took him to the office of the Chief of Police of Medina and when complainant Concesa Olario was asked if he was one of the persons who were with Aquilino Aguilar on the night of the incident, she answered "may be this is the appearance." After such confrontation he was taken back to his cell.

Pedrito Aguilar testified that he is the son of Aquilino Aguilar and that early in the morning of March 20, 1958 he was in his house at Mincapis, Agay-ayan, Gingoog, Misamis Oriental. On that day he went to the land of Juana Isobel to watch the trucks passing through the latter's land. He had been employed by her since February, 1958. He used to stay on the land from 6 o'clock in the morning up to late in the evening. On March 20, 1958, he took his lunch at home and went back to work. He came home at 10 o'clock that evening. He arrived at the place of Juana Isobel to report at about 10 o'clock after which he went home arriving there at 11 o'clock in the evening. He ate his supper, smoked and went to sleep. He woke up at around 4 o'clock in the morning of March 21, 1958 and went back to the land of Mrs. Isobel. He did not know Concesa Olario nor the latter knew him. In the morning of March 23, 1958 he and his mother went to the seashore at Agay-ayan to buy fish where he saw a boat which was docked at the pier of Cabog, Medina, so he went home and informed his father about its presence. He was employed in the sacking department at Cabog.

His father went to Cabog ahead of him but he did not see him that day. He met his father the following morning

while he was loading copra. His father called him and told him to go to Agay-ayan and fetch his mother because he, Aquilino, was being charged with a crime. He fetched his mother at their house at Mincapis. Because he could not believe that his father was accused of any crime, he went back to the sacking department to work and it was only his mother who went to Medina. After one hour his mother returned and told him that his father was in jail, so he and his mother went to jail at Medina arriving at the place at 9 o'clock. He asked his father why he was in jail and his father answered that he was accused by a woman in Maanas. He saw Concesa Olario that morning with Teodora Neri at the door of the municipal building. After seeing his father he went back to Cabog to resume his work. As it was lunch time and there was no food left for him he went to the market. While he was eating he heard somebody pointing to him saying "that is the son of Aquilino Aguilar." He turned his head and saw Teodora Neri. He did not come to know Teodora Neri until the preliminary investigation conducted by the justice of the peace court. At about 4 o'clock in the afternoon a policeman came to see him at the bodega where he was working and told him that his father wanted to see him. At the door of the prison cell Sgt. Wahiman told him that it was he who sent for him because he and his father were accused as the authors of the crime committed in Maanas. At the beginning only he and his father were occupants of the jail. Later on Andres Paglinawan and Marial Toledo were brought in.

He did not know of any person by the name of Esteban Pacudan. He came to know him for the first time at the preliminary investigation at Medina. Pacudan arrived at the municipal jail of Medina three days after his arrival.

There can be no doubt that those who intruded into the house of spouses Sulpicio Olario and Concesa Olario in the morning of "March 21, 1958 with the intention of depriving them of their earthly possession in the course of which they laid hands on them to the extent of firing shots at Sulpicio causing his instant death are the appellants as testified by the victim's widow who, gathering strength upon hearing an explosion, jumped down from their house and shouted for help which outcry made her mother come to her rescue and caused the intruders to flee and leave the house after taking possession of the money they had in the drawer in coins amounting to P30.00. This tragic incident appears well-narrated in the testimony of Concesa Olario who was lucky enough to survive and tell her awful experience. And it cannot be disputed that she was¹ able to identify their three assailants not only because one of them was without mask, Aquilino Aguilar, whom he had known for a long time to be a friend of her father, but also because at the time there were then two lighted lamps one in the very room where they were sleeping and another in an adjoining room which had no shutters.

It is true that the other two intruders were then masked up to their noses, but these masks notwithstanding Concesa was able to give a good description of their physical condition as to enable her to identify the two of them when minutes thereafter she was investigated by Sgt. Wahiman and unhesitatingly pointed to the two as the companions of Aquilino in the commission of the dastardly act. As the lower court has aptly observed: "There is no plausible reason to doubt the veracity of the widow's testimony because there was no previous misunderstanding between her and each of the accused, and her unhesitating and positive identification of them as the authors of the crime immediately after they were shown to her in the municipal building of Medina a few days after the incident is a strong indication of her truthfulness. The crime committed is of such a serious nature and it is hard to believe that she would try to foist the responsibility on the accused just for the mere satisfaction of a vanity or wild fancy."

The testimony of Concesa finds corroboration in the statement of Pastor Patnasic, a neighbor, who also heard the explosion and who upon peeping thru the window of his house saw three men fleeing in the dark coming from the house of the Olarios who could not be but the three appellants herein. It is not true that Concesa Olario did not positively identify the three intruders or that it was Sgt. Wahiman who suggested the name of Aguilar during the investigation. When said sergeant arrived after the incident to conduct an investigation the widow immediately

informed him that she recognized the faces of the three men who went up her house and although she did not know the names of the two or could not mention the first name of the third, she could however remember that his surname was Aguilar. Concesa Olario also knew Esteban Pacudan. Only one week before the incident she saw Pacudan riding in a truck and after he was arrested for illegal possession of firearm and taken to her presence she immediately identified him. She made the same identification with regard to Pedrito Aguilar when the latter was arrested in connection with a robbery case in Bayugon where the complainant was one Teodora Neri.

On the strength of such positive identification corroborated by the testimony of a neighbor who is a disinterested person one can hardly argue that the defense of alibi set up by the three appellants merits weight and consideration, more so when from their very testimony it appears that their houses where they allegedly were at the time of the incident were not so far-distant as would make physically impossible their presence at the place of the commission of the crime. And we make this comment notwithstanding the attempt made by the defense to bolster up appellants' alibi with the testimony of Francisca Quesaba and Juana Isobel insofar as the father and son are concerned. Indeed, we find the testimony of Francisca Quesaba punctured with so many flaws as to deserve, credence. And to bear this out, suffice it for us to quote what government's counsel commented on her credibility:

"1. As the trial court concluded, it is unbelievable that with her house only one kilometer away and along the National Highway she would not go home when it was still early in the evening when she allegedly reached the Aguilar's house. She admitted that it was only a short walk from her house to the Aguilar's'.

"2. Her testimony that the night of the 20th was the first and the last time that she ever slept in the house of the Aguilar is highly suspicious (pp. 321, 253, t.s.n.).

"3. According to her, in the afternoon of March 20, 1958, at about 3 o'clock, she dropped by the house of appellant Pedrito Aguilar. on her way to her farm to give him the tickets which her sister, Juana Isobel, asked her to deliver to Pedrito, but because Pedrito was not at home when she delivered the tickets to-his mother (pp. 306-307 t.s.n.). According to Juana Isobel in the morning of March 20, 1958, she saw appellant Pedrito Aguilar on her land. She allegedly came back in the afternoon of the same day to gather bananas and found appellant still on the land watching for the trucks that passed through it. She even conversed with him (p. 220, t.s.n.). Why would Juana Isobel send the tickets to appellant Pedrito Aguilar through her sister, Francisca Quesaba, when she herself was going to the land which Pedrito was guarding. Why would she send him tickets when Pedrito allegedly used to report to her every day. (p. 261, t.s.n.).

"4. It is noteworthy that Francisca Quesaba whose house was only five houses from her sister, Juana Isobel, did not even know that appellant Pedrito Aguilar was in the employ of her sister when she had known the Aguilar since liberation and she allegedly used to pass by the road near the Aguilar house on her way to her farm (pp. 307-308, 319, t.s.n.) Significantly, she was a witness for Feliciano Aguilar, a relative of Aquilino Aguilar (p. 302, t.s.n.), and in a theft case against Pedrito Aguilar (p. 298, t.s.n.).

"5. In her testimony before the trial court, she stated that she slept in the house of appellant Aquilino Aguilar and woke up at 11 in the evening to answer a call of nature after which she resumed her sleep. It was then that Pedrito Aguilar arrived. Witness allegedly woke up at 4 o'clock the next morning and went on her way (pp. 300-301, t.s.n.). According to Victoria Acuna, Aquilino's wife, Quesaba left at 6 o'clock the next morning (p. 328, t.s.n.). In her testimony before the justice of the peace court, witness declared that both appellants Aquilino and Pedrito Aguilar were already in the house when she arrived at their house at 7 o'clock in the evening and that the whole evening she sat up without sleeping (p. 391, t.s.n.)."

With regard to the testimony of Juana Isobel, we find also worthy of note the following comment of government's counsel:

"* * * If appellant Pedrito Aguilar were in her employ since February 1, 1958 (p. 319, t.s.n.)', and she had sent him tickets for the trucks passing through her land only on March 20, 1958, it is unlikely that appellant Pedrito

Aguilar would take French leave of his employer the moment he allegedly saw a boat at Cabog (p. 223, t.s.n.). There must have been some weighty reason that induced him to leave. It is noteworthy that witness Juana Isobel did not even employ another to take appellant's place after the latter had left her service (pp. 223, 231, t.s.n.). Another circumstance that gives a lie to this witness' testimony is her and husband's special power of attorney executed on January 24, 1958, appointing Anastacio Sumastre to exercise supervision and control over their lands and tenements in the municipality of Gingoog to prevent any trespass and waste, etc (Exh. K, p. 123, rec). Considering that Agay-ayan is only 4 kilometers from Maanas and only 1 kilometer from Mincanis (p. 228, t.s.n.), it was not physically impossible for appellants to be at the place of the spouses Sulpicio and Concesa Olario at 1 o'clock in the morning in March 20, 1958."

Anent the nature of the penalty imposed by the trial court, counsel for the government recommends that the penalty of death be imposed upon appellants Aquilino Aguilar and Esteban Pacudan considering that the crime was committed at nighttime and in the dwelling of the offended party. We find this recommendation tenable especially considering that the said circumstances are not offset by any mitigating that may be invoked in favor of said appellants, and so the Court hereby imposes upon them the supreme penalty of death. However, with regard to Pedrito Aguilar, the Court finds that the penalty imposed upon him is within the limit prescribed by law.

Wherefore, modified as above-indicated, the decision appealed from is affirmed, with costs against appellants.

Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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