

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANGELES CRUZ, DEFENDANT-APPELLANT.***G.R. No. L-24424. March 30, 1970*

Ponente: CASTRO, J.

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Ten persons were charged with the offense of robbery with homicide committed in the early morning of November 3, 1962 in the barrio of Goso-on, municipality of Carmen, province of Agusan. Six of them, described in the indictment by the appellations John, Peter, Joseph, Walter, Caesar and Roberto, all surnamed Doe, were, up to the promulgation of the judgment a quo, at large. Of the remaining four accused, two, Inecito Hevero and Nonilon Butao, were, after due trial, acquitted for insufficiency of evidence. The last two, Angeles Cruz and Arturo Bonifacio, were found guilty, and each was sentenced to life imprisonment; both were also adjudged, jointly and severally, to indemnify the heirs of the two deceased victims, in the sum of P6,000 each. From this decision of the Court of First Instance of Agusan, these two appealed.

Bonifacio later withdrew his appeal; under Resolution of November 16, 1966, we granted the withdrawal.

Only the appeal of Angeles Cruz is the object of this review.

The heart of this appeal is the correctness of the identification of Angeles Cruz by the two principal witnesses for the prosecution, the sisters Zenaida and Emma Cabillo, 15 and 12 years of age, respectively, in June 1963 when they testified in Court.

We address the question: Was the identification of Angeles Cruz so positive and certain as to meet the inflexible require-ment of proof beyond reasonable doubt of his criminal participa-tion? Our answer is in the negative.

The prosecution's version may be summarized briefly. A band of robbers, numbering from five to ten, at about one o'clock in the morning of November 3, 1962, broke into the house of Tarciano Cabillo in Goso-on, Carmen, Agusan. They scaled the front wall by the use of an improvised ladder. Upon reaching its veranda, they drilled holes in the wall to loosen the boards, after the removal of some of which they gained entrance into the house. Mixed eerie sounds of screaming and simultaneous discharge of firearms forthwith followed. Soon thereafter the robbers hurriedly fled, away to a waiting speedboat and out to the sea and darkness. Behind them lay a terror-stricken household, its master Tarciano Cabillo dead from a spray of bullets, and a housemaid, Margarita Cabilogan, profusely bleeding from a gun-shot wound which inexorably caused her death.

It was the integrated testimony of Zenaida and Emma Cabillo upon which the trial court principally based its conviction of Angeles Cruz. They were roused from slumber, so they tes-tified, by the instantaneous presence of at least five men, all masked, in the living room where they were sleeping. When they had sprung to their feet, they were grabbed by two of the rob-bers. Zenaida was held fast by Arturo Bonifacio, with his arms slung around her waist, while Emma was held in a similar fashion by Angeles Cruz; both girls were utilized as shields when the robbers commenced firing into the master's bedroom where Tarciano Cabillo apparently held out for sometime

with his own gun. After resistance had altogether ceased, the robbers ransacked every known drawer and container. Zenaida and Emma were then forced down to the store below where, with the aid of electric lights, they marked the identities of Arturo Bonifacio and Angeles Cruz whose masks had fallen off during the confusion. The drawers in the store were chiseled open and their contents seized by the robbers. Angeles Cruz then returned upstairs, Emma with him, unlocked the door to the master's bedroom, and ransacked the two drawers therein. Zenaida, meanwhile, succeeded in slipping out to safe refuge in the house of a neighbor, Ben Maol. Emma had remained upstairs, after the robbers beat a hasty escape, stunned by the sight of her father lying inert in a pool of blood.

The appellant's challenge against the identification made of him by Zenaida and Emma is two-pronged: first, the conditions that hapless morning were not conducive to, but on the contrary were suppressive of, definitive identification; and second, the subsequent actuations and declarations of Emma and Zenaida are irreconcilable with their avowed certainty as to the identity of the appellant Cruz.

We have committed the records of this case to an exacting study. Unhappily, our minds cannot rest easy on the evidence of guilt adduced against the appellant.

In the wee hours after midnight when the robbery took place, what was the lighting situation in the house? Let us examine the record. In her statements given to the Butuan City police just a few hours after the perpetration of the crime, and to the police authorities of Carmen the day after, Zenaida was explicit that the living room of the house was sufficiently lighted to enable her to identify at least two of the armed malefactors. On the witness stand, however, she admitted, contrary to her statements to the police, that the living room was unlighted and "so dark that I could not see clearly their faces that night." It was only later when they were down in the store that she came face to face with two of the robbers, one of these being the appellant Cruz. In the latter part of her testimony in court, however, she reneged on her previous declaration and stated that while they were still upstairs, the light in the living room was switched on by one of the malefactors who commenced to ransack the drawers in that room. This narration hardly squares with the testimony of the other girl, Emma, who testified that the light in the living room was already on and was put out only when the firing started. Completely negating the testimony of these two girls, their mother, Remedios Cabillo, declared positively that the entire house was enveloped in darkness at the time of the perpetration of the crime, except for a small lamp in the master's bedroom - and this, because the family was economizing on electrical consumption.

The lighting situation in the house was therefore wholly uncertain, and renders highly suspect and questionable, if not altogether infirm, the ability of the two girls to shape out a positive identification of the appellant Cruz.

But let us probe further into their other declarations. Under oath they testified that all the robbers were masked. It was downstairs in the store that these two sisters allegedly identified the faces of Bonifacio and Cruz, when the latter's masks suddenly fell off their faces. Rendered dramatic by the production in court of two handkerchiefs alleged to have been recovered from the scene of the crime that morning, this twist is remarkable for its inverisimilitude. In the first place, these handkerchiefs were not properly or satisfactorily identified because Zenaida, who had supposedly found them, could not say whether those produced in court were the self-same handkerchiefs that she had found. In the second place, these handkerchiefs were alleged to have been turned over by Zenaida to municipal judge Quirico Battad of Carmen, yet when called to the witness stand the latter failed to affirm the discovery of such handkerchiefs. Finally, no mention - not even the slightest hint - was ever made of these handkerchiefs in the various statements given by the two girls to the police investigators. A facet so significant and vital as the falling off of the masks, the two girls would not have escaped mentioning when shortly after the incident they were closely interrogated by the police.

In the afternoon of November 3, 1962, Zenaida and Emma were brought to the police department in Butuan City and, while there, made to examine photographs of several "tough guys" in that city. Zenaida singled out Arturo Bonifacio from the pictures, pointing to him as one of the robbers. Just then, one Sgt. Baril of the Philippine Constabulary remarked to her that Bonifacio belonged to a gang, a member of which was Angeles Cruz.

That very same afternoon, Angeles Cruz was picked up in front of a moviehouse and brought to the police station for questioning. He was made to walk and turn around in the presence of Zenaida and Emma. Cruz was not placed in a police lineup, contrary to standard stationhouse verification procedure, to test the accuracy of the witnesses' memory, and to afford a mere suspect a fair chance of early relief from the inconvenience inflicted on one who is mistakenly identified. Moreover, Zenaida and Emma testified that the several accused, including Cruz, were pointed out to them as the persons suspected by the police as the perpetrators of the robbery committed in Goso-on, and as notorious "tough guys" in Butuan City. The identification at the police station was attended, as the two girls themselves admitted, by a great deal of whispered conversations as well as by at least one unexplained conference elsewhere in the municipal building, at which they were present, immediately prior to their being confronted with the accused.

The manner by which Emma and Zenaida were made to identify the accused at the police station was pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted their reliability as eyewitnesses. This unusual, coarse and highly singular method of identification, which revolts against the accepted principles of scientific crime detection, alienates the esteem of every just man, and commands neither our respect nor acceptance.

Finally, chief of police Dionisio Pacon of Carmen, Agusan, whom the lower court praised and commended in no uncertain terms as

"... an impartial witness ... incumbent Chief of Police ... no relation to any one of the accused ... no motive to distort the truth ... his testimony ringing with truth and sincerity,"

testified candidly on the witnesses' efforts at identification of the appellant Cruz. Pacon's un rebutted testimony is hereunder reproduced:

"Q - What transpired when Angeles Cruz arrived in the police station? A - He was brought to a table which was fenced around and he was interrogated, while the children were outside.

"Q- Then what transpired? A - They asked the children who were beside me.

"Q - What did they ask? A - They were asked if they know the person who was sitting near the table of the office. Then I asked Emma first whether or not she know the person (referring to Angeles Cruz) and Emma answered: 'He is not the one.' Then Captain Villaremo went outside and inside the railing and related something to them and asked the children if said person was the one who, one of the members of the barcada of Arturo Bonifacio, robbed their father in Goso-on; that upon being asked, she said that he is not the one. 'Keep on watching and examine whether or not he is one who robbed your father in Goso-on,' Captain Villaremo said. So the children kept on watching Angeles Cruz. Shortly thereafter, Captain Villaremo asked again if he is the one and told them, saying: 'He is the one, Day, no? He is the one, Day, no?' And then Zenaida said, 'Maybe he is the one.' After that the children were brought to the P.C. Headquarters." (Dionisio Pacon, t.s.n., pp. 300-301, February 5, 1964)

We must hasten, at this juncture, without need of elaboration, to stress that the record is sufficiently interspersed with reliable proof of the identification of Arturo Bonifacio as one of the *particeps criminis*. In sharp contrast, there is a paucity of evidence of identification with respect to the appellant Cruz.

Although indications there are in the record that the alibi offered by the appellant Cruz may stand searching

scrutiny, we will merely repeat, as we come to the end of our travail, what we said in one case: "Although alibi is the weakest defense that an accused can avail of, it acquires commensurate strength where, as in this case, no positive and proper identification has been made by the witnesses of the offender. The prosecution has the onus probandi in establishing the guilt of the accused, and the weakness of the defense does not relieve it of this responsibility." (People vs. Baquiran, L-20153, June 29, 1967, 20 SCRA 451, 460-461)

ACCORDINGLY, the judgment a quo is reversed, and the appellant Angeles Cruz is hereby acquitted. Costs de oficio.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, and Villamor, JJ., concur. Barredo, J., did not take part.

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