

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APELLEE, VS. VALENTIN ERAÑA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-1568. June 16, 1949*

Ponente: PERFECTO, J.

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A group of malefactors went to the house of Antonio Alcantara in barrio Punod, Cebu City, about midnight of July 9, 1946, and, after killing Marcelo Alcantara and wounding his wife, Leonarda Bafon, on the thigh, opened trunks and ransacked the house and carried away P500 in cash and P427 worth of jewelries, clothes, rice, tools, fowl, and crockery. The members of the gang were armed with firearms, hunting knife and bolo.

Eleven persons were charged with robbery in band with homicide and physical injuries and all of them were tried except three (Venancio Eraña, Esteban Batalla and Bienvenido Camacho) who were still at large and the one (Gervacio Ygot) who was used as a state witness.

The trial court acquitted two, Gregorio Alcordo and Tomas Sasing, and found guilty the remaining five.

Valentin Eraña, Calixto Bordadora, Ricardo Velasquez, and Tranquilino Naquines were sentenced to life imprisonment and to indemnify the families of the deceased Marcelo Alcantara in the sum of P2,000 and Antonio Alcantara in the sum of P800, and to pay the proportionate costs of the proceedings. Calixto Cabuntagon was ordered committed to the custody of the Director of Public Welfare pursuant to article 80, as amended, of the Revised Penal Code because he was a minor.

The five accused appealed.

Were appellants members of the gang of malefactors who perpetrated the crime? This is the main question that has to be answered upon the evidence on record. The question is narrowed down to the determination as to whether or not there is enough basis in the evidence to show appellants' participation beyond reasonable doubt.

The prosecution offered as evidence the testimony of Gervacio Ygot, Irineo Alcantara and Antonio Alcantara and the statements thumbmarked by appellants. We shall analyze their respective probatory value under separate headings.

1. GERVACIO YGOT

On the night of July 9, 1946, Venancio Eraña and Esteban Batalla went to his house in barrio Sungon, Cebu City at about 1 o'clock. They awakened him and told him to come along with them to the mountains, to the house of Antonio Alcantara, (2). He refused, but they got angry and pointed their guns at him, ordering him just to go with them. (3). Venancio was carrying a carbine and Esteban a rifle. "I was forced to go with them because I was afraid they would kill me."

A little beyond his house they met Tomas Sasing, Gregorio Alcordo, Tranquilino Naquines, Ricardo Velasquez,

Calixto Cabuntagon and Sixto Bordadora. (4). While there Esteban, Venancio and Tomas agreed to go up the house of Antonio Alcantara. The trio led the way. Ygot was left by Esteban Batalla in a place ten meters away from the house. (5). Ygot did not know whether all the men went up the house or not "because I was hidden by the bushes." Although it was a moonlit night the moon had already set. Coming from the house the witness heard shots that he could not count. He attempted to run away but Esteban struck him on the back with a stone and "I just stayed there * * * about one-half hour." (6). Esteban was in the yard of the house with a companion, but Ygot could not recognize who his companion was because it was dark. After thirty minutes the gang came from the house "and we went away towards the place from where we came. I went ahead of them in going home." (7). Ygot knew all the accused since before the war. (8).

In another case, No. V-746, for robbery in band with murder, Ygot testified before Judge Piccio that on July 9, 1946, at 9 o'clock, Valentin Eraña went to his house. (32-33). Ygot testified before that on July 9, 1946, Esteban Batalla and Venancio Eraña went to his house at 9 o'clock. They invited him to proceed to the house of Antonio Alcantara. (35). When they reached the mountains, "I saw there Tomas Sasing, Gregorio Alcorido alias Guiling." "The fact is that I only saw there Venancio Eraña, Esteban Batalla, Gregorio Alcorido and Tomas Sasing. The truth is that I have not seen Tranquilino Naquines and Sixto Bordadora but inasmuch as I was threatened by Tomas Sasing that he would kill me if I would not declare before the court that I saw the last two in the mountains, I am forced to testify not that I have seen them there." (Italics ours.)

"I have not seen there" Calixto Cabuntagon, Ricardo Velasquez or Sixto Bordadora. "This Tomas is very notorious. I am afraid of him." Those who went to the house of Antonio Alcantara were Esteban Batalla, Venancio Eraña, Tomas Sasing and Gregorio Alcorido. "I did not know that there in the mountains they had still some more companions." (36). The persons who went to the house of Alcantara were Tomas Sasing, Esteban Batalla, Venancio Eraña and Gregorio Alcorido.

"Q. You indicate now who among those five men did not go with you?—A. Sixto Bordadora (indicating the accused Sixto Bordadora), Ricardo Velasquez, Calixto Cabuntagon, Valentin Eraña (indicating the accused), I have not seen them there. Tranquilino Naquines I have not seen him there also. (Italics ours.)

"Q. During that night, did you ever see these five accused you have just mentioned?—A. No, Sir. (Italics ours.)

"Q. At no time during that night, have you seen these five accused you have just mentioned?—A. No, Sir. (37). (Italics ours.)

"Q. While your four companions went up the house of Alcantara did not any of these five accused mentioned by you arrive at the place?—A. I have not seen any of them." (Italics ours.)

"Tomas Sasing is the master mind of all these robberies." Ygot happened to mention the five appellants only "because I was very much afraid inasmuch as when we were lodged in jail, I was very much maltreated. That is why I was forced to mention those names. I was afraid that I will be further maltreated." (38). He was maltreated by the chief of police, by the chief of the city jail "because they wanted me to reveal the names of those persons," including the five appellants. (39). (Italics ours.)

There cannot be any question that the testimony of Gervacio Ygot,—the whole substance of which appears above,—instead of showing that the five appellants took part in the commission of the crime, rather proves that not one of them participated in it and that not one of them was even present in the scene of the crime. Ygot testified that if he had ever mentioned them it was due to the notorious Sasing, of whom he was afraid and who compelled him to mention them, and because the chief of police and the chief of the municipal jail maltreated him to compel him to include the appellants. Not one of the three persons alluded to dared to take the witness stand to belie Gervacio Ygot's testimony.

2. IRINEO ALCANTARA

He is one of the sons of Antonio, in whose house he was sleeping in the night of July 9, 1946, at the time the robbery was committed. There were three rooms in the house. At the time there were sleeping in one room Antonio, Gregorio, Diosdado, Gerardo, Leoncio, Celestro, Rosina, Guillermo, Anastacia and the witness, and in another room Marcelo and his wife Leonarda Bafon. Irineo slept at 7:30 o'clock and awoke at 12 o'clock midnight. (27). The first thing that he heard was the words "who are you," addressed by Calixto Cabuntagon to Marcelo, pointing to the latter his flashlight. (11). Venancio Eraña had a flashlight tied to his carbine, Calixto shot Marcelo with a .45-caliber pistol. Marcelo reeled and fell down by the side of the wall. (12). Leonarda ran to the door and upon reaching it she was shot by Venancio Eraña. "I peeped at the door. Leonarda ran away and jumped from our kitchen, Calixto was in the sleeping room of Marcelo, Venancio entered the sleeping room of Marcelo through the window." After Leonarda had run away, Venancio and Calixto broke open our trunk, gathered everything that was contained" therein and went out. The things that they brought out, consisting of clothes, money, lard, a bowl and a wristwatch, were received by Esteban. (13). They took one-half cavan of vice. There were also in the house Tranquilino Naquines and Valentin Eraña. (14). Tranquilino helped in ransacking everything, including mats. "They went up our garret and took from there our chickens and eggs. They got the necklace from our trunk. They got money from the pillows and the mats." (15). They got from the pillow P500. They took the pillow near the door and there slashed it with a bolo. Venancio Eraña used a bolo. (16). His companions were gathered around. All of them looked and searched the contents of the pillow. They put the money into their pockets. (17). Tranquilino was carrying a hunting knife, Valentin a bolo, Calixto a pistol, and Venancio a carbine. Valentin and Tranquilino took the things to Esteban, (18). Esteban put them on the veranda. There were other persons downstairs. They went away bringing with them all those things.

"After they had gone a distance from our house, and when I heard that they were firing shots, I told my mother, 'Ma, let us go away from this house,' because I was afraid that they might shoot us. We went to a place a little way up beyond our house and once there, I told my mother 'You just stay there. Because I will go back to our house and see if Marcelo is already dead.' I found out that Marcelo was already dead. He was hit just a little below the left shoulder, piercing through the right shoulder, a little below the right armpit." (19). "I cried and wept and then, my brother appeared, followed by my father and then came the wife of Marcelo and my mother. We decided to report the matter to the authorities." (20).

There is something strikingly unusual in the testimony of Irineo Alcantara. There were twelve persons sleeping in the house on the night in question, but he failed completely to tell anything as to what happened to the eight of them, giving the impression that all of them, including himself, remained undisturbed in the house until the five malefactors had left it with their loot. He testified that his mother and himself, upon his invitation, left the house, after the malefactors had gone away and left the house, because the malefactors had fired shots,—an extraordinary conduct considering that, after shooting Marcelo and Leonards, they were able to ransack the house and carry away their loot, without interference or obstruction from anybody. What was the purpose of firing such shots? From Irineo's testimony, it appears clearly that, at least, his mother and he remained in the house during the time in which the robbers were ransacking everything, taking all the things they looted. Other six members of their family also remained in the house. That the eight of them, including Irineo and his mother, had witnessed the whole incident until the malefactors had left the house with their loot, without being disturbed by the malefactors, appears to be inconceivable especially after the robbers had shot Marcelo and Leonarda. It is incredible that the malefactors would have allowed that eight members of the family should witness the robbery without taking any measure to preclude them from interfering with the whole proceedings or from later becoming witnesses in court to the crime, unless the eight members of the family who remained in the house had been endowed at the time with the quality of complete invisibility.

He testified that he saw Calixto Cabuntagon entering his house through the window towards his son (Marcelo), who was sleeping. When his daughter-in-law ran towards the door, she was shot by the person carrying a carbine, Venancio Eraña (40-41). When his daughter-in-law Leonarda Bafon ran towards the kitchen, "I followed her and upon reaching the door of the kitchen, I saw there Venancio Eraña and when I jumped from the kitchen, they fired at me. I ran to the house of my brothers and my neighbors to ask for help. After a while, I went back to my house. The robbers were no longer there. I called my children and wife and we assembled together. (41). My wife and I agreed to report the matter to the authorities. (42). He reported to the chief of police who told him to bring the matter to the MPC. Leonarda was hit on her right thigh (Trineo Alcantara declared that she was hit on her left thigh). (43). She was cured in September (Irineo said that she was cured in December). He recognized Calixto because "he used to buy pigs from us." (44). When he reported the robbery to the chief of police, he did not tell him that Calixto Cabuntagon was among the robbers. "I was not asked and my mind was very much confused." He told the chief of police how his son Marcelo was shot to death. "I told him about it." But the chief of police did not ask him who shot his son. "I did not tell the MP's that Calixto Cabuntagon shot to death my son Marcelo. I only limited myself to telling them that I lost a son during the robbery." (46).

Later on, changing his declaration, he said that "I told them that I saw Calixto Cabuntagon shoot to death my son Marcelo." It was to Lieutenant Dalogdog to whom he first revealed. (47). Besides the fact that this witness contradicted the testimony of his son Irineo in some important respects, he failed to corroborate him as to the presence of appellants Valentin Eraña, Calixto Cabuntagon and Tranquilino Naquines,—an unexplainable thing if we take into consideration by the testimony of Irineo that all appellants were their neighbors.

The fact that Antonio Alcantara, in reporting the robbery and the killing of his son Marcelo to the chief of police and the MPs, failed to mention Calixto Cabuntagon and Venancio Eraña as the persons who respectively shot Marcelo and Leonarda, and he revealed their identity only later on to Lieutenant Dalogdog, casts a dark shadow of doubt as to his credibility on whether he was in fact able to identify anyone of the robbers who entered his house.

4. WRITTEN STATEMENTS THUMBMARKED BY APPELLANTS

The prosecution offered as evidence Exhibits A and A—1, B and B-1, C and C-1, and D and D-1, as confessions of Calixto Cabuntagon, Sixto Bordadora, Ricardo Velasquez and Tranquilino Naquines, respectively. All of them appear to have been thumbmarked only, showing that said four appellants are illiterates.

Appellants testified that they did not make the statements contained in said exhibits and were compelled by intimidation and torture to stamp their thumbmarks therein. They have shown marks in their body of the maltreatment they received. One of them testified that a hole was even dug wherein he would be buried if he refused to admit his participation in the commission of the crime. Two of the accused, upon hearing that they were wanted, voluntarily presented themselves to the authorities, showing that they had nothing to be afraid of, as they were innocent.

Although the witnesses for the prosecution denied that intimidation, maltreatment and torture were employed or inflicted upon appellants, there is enough evidence on record that leads us to believe appellant's version. Considering their youth averaging about 20 years, it is not improbable that they could have been more easily intimidated, and that they were actually maltreated, because Gervasio Ygot himself, a witness for the prosecution, testified that he had been maltreated by police authorities to compel him to incriminate the five appellants in the commission of the crime, although they took no part in its commission.

CONCLUSION

For all the foregoing, we are not satisfied that the guilt of the appellants has been proven beyond all reasonable doubt.

The appealed decision is reversed and appellants are acquitted. They shall be immediately released upon promulgation of this decision.

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

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