

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. VALERIANO RAGAS, JESUS GAVIOLA BAROLA & ESTEBAN QUILAPIO ALIAS GREGORIO SALAS, DEFENDANTS, VALERIANO RAGAS, DEFENDANT-APPELLANT.

G.R. No. L-29393. March 29, 1972

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PER CURIAM:

Automatic review of a death sentence, for robbery with homicide, against the above-named sole accused-appellant Valeriano Ragas, rendered by the Court of First Instance of Surigao del Norte in its Criminal Case No. 4119. Originally, there were seven (7) persons accused in an information for robbery in band with homicide, filed in the aforesaid court on 20 April 1967, namely: Jesus Gaviola Barola, Esteban Quilapio, alias Gregorio Salas, Valeriano Ragas, Pafiniano Lazarte, Ladi Galve, Paulino Doe, and Antonio Tony, alias Mario Castro, but this review is concerned only with the case against Valeriano Ragas because:

- (a) Jesus Gaviola Barola and Esteban Quilapio, alias Gregorio Salas, who at first pleaded not guilty, later changed their plea to that of guilty, were sentenced to reclusion perpetua, for robbery with homicide, and they did not appeal;
- (b) Pafiniano Lazarte died in an encounter with Philippine Constabulary soldiers after bolting jail just after the preliminary investigation conducted by the municipal court of Mainit, Surigao del Norte;
- (c) Ladi Galve, Paulino Doe and Antonio Tony, alias Mario Castro, had remained at large.[1]

The facts established by uncontroverted evidence are the following:

By occupation, Jovenal Tañare is a driver, butcher, and a buy-and-sell merchant of scrap-iron.[2] He lives with his wife, Diosdada Tañare, his newly married daughter, Nieva Tañare Empleo, son-in-law, Camilo Empleo, and some nephews and nieces in the barrio of Siana, Municipality of Mainit, Province of Surigao del Norte. They were victims of a recent robbery of which Pafiniano Lazarte was accused.[3]

At about 2:00 o'clock in the early dawn of 25 February 1967, the Tañares were awakened by someone outside their house shouting that their pig was being stolen. Jovenal and Diosdada got up and went down the first floor of their house. Diosdada loudly inquired who the stranger was and he answered that he was "Pabling". The spouses became suspicious as they did not know any neighbor by that name. The wife opened the window jalousies and again asked for the identity of the caller, but a reply came in the form of gunfire upon the house.[4]

Diosdada and her daughter, Nieva, decided to escape through a small window in the second floor. Nieva clambered down the window, as her mother followed, while the firing continued. When Nieva was already in the media-agua; her mother touched her forehead and found out that Nieva's left cheek was bleeding;[5] wherefore, the mother abandoned the plan to escape, took the prostrate body and gave it to her son-in-law Camilo. A post mortem examination conducted later on the cadaver of Nieva showed that she died of brain injury and shock by reason of a gunshot wound, through and through, from her left maxillary to her left parietal regions.[6]

Three (3) intruders gained entry into the lower story of the house by battering the kitchen wall with a pestle[7] , later abandoned within the house. All the intruders were armed but one wore a mask covering the lower half of his faces[8] while the other two, who were positively recognized and admitted to have been Jesus Gaviola Barola and Esteban Quilapio, alias Gregorio Salas, wore no masks. They demanded that the members of the household should surrender; so Diosdada and Camilo went down to the sala. The masked man queried Camilo on the whereabouts of Jovenal Tañare and on the proceeds of his scrap-iron deal.

At that time, Jovenal Tañare had already escaped through another window. He ran across a rice-field until he reached the PC detachment in Barrio Tubod where he met the chief of police.

Having a free run of the house, the robbers succeeded in taking away P35.00 in cash from a trunk which they forcibly opened; watches worth P160.00 and a radio worth P73.00.

Several slugs and shells of bullets of different calibers (.22, .38 and .45) were recovered at and around the house.

The principal and real issue in this case is: was appellant Ragas the masked robber? Corollary thereto are the issues of credibility of witnesses and the admissibility of the extrajudicial confessions of Barola and Quilapio.

The evidence presented by the prosecution showing that the masked man was Valeriano Ragas consists inter alia of the following:

- (1) The testimony of Diosdada Tañare that she recognized, by the light of a lamp ("parol"), that the masked man was Valeriano Ragas, by his silhouette, forehead and voice; that he was familiar to her because they have been neighbors for a long time.[9]
- (2) The testimony of Camilo Empleo that the height and slim body of the masked man is similar to Valeriano Ragas, whom he had known for 13 years.[10]
- (3) The testimony of Alfredo Castro that, awakened by gunshots and following the incident, he had peeped through a hole in his nearby store and had seen three men coming from the direction of the house of the Tañares and had overheard Pafiniano Lazarte, Valeriano Ragas (whom the witness pointed out in court) and a third man conversing about the accomplishment of a revenge, that Ragas said the revenge was not adequate and how unlucky they were in not having been able to take money with them.[11]
- (4) The testimony of PC Corporal Luis Guzman that, when investigated, Valeriano Ragas had admitted to him, during the wee hours of the morning of 25 February 1967, that he was cleaning his .22 caliber rifle.[12]
- (5) The testimony of PC Sgt. Teofilo Cañizares and Cpl. Guzman that, upon inspecting the licensed rifle of Valeriano Ragas that same dawn and immediately after the incident, the .22 caliber rifle smelled as if newly fired, "the smell of powder is still very fresh", while the chamber was dirty.[13]
- (6) The testimony of policeman Honorato Mosende that Valeriano Ragas and two other co-accused bolted jail after the preliminary investigation of this case by the municipal judge of Mainit,[14] as duly entered in the police blotter, Exhibit "Q-1-A", under date 14 March 1967.
- (7) The extrajudicial confessions of Jesus Gaviola Barola and Esteban Quilapio, alias Gregorio Salas, sworn to before Municipal Judge Custodio, implicating Valeriano Ragas as one of the robbers.[15]

Of the foregoing evidence for the prosecution, this Court finds as credible all the testimonies offered by the prosecution corroborated as they were by the concessions of co-accused Barola and Quilapio (who pleaded guilty) pointing to appellant as their companion in the robbery.

Castro's testimony is assailed as not worthy of belief, because he untruthfully denied that he was the godson by marriage of Diosdada Tañare, when in fact he was so related to her, as shown by his marriage contract,[16] and

also denied having been imprisoned before 14 March 1967, when in truth he was jailed and was released from detention by court order, dated 11 March 1967.[17] Still, Castro is corroborated by the confessions of Barola and Quilapio. Anyway, the testimonies of the other witnesses for the prosecution have to be believed, and proved appellant's guilt beyond reasonable doubt. The identification of the masked man by Diosdada Tañare and Camilo Empleo was borne out by their familiarity with Valeriano Ragas, through long acquaintance, and, therefore, they were in a position to recognize his voice and physical features. These witnesses displayed candor and veracity by not asserting positively that Valeriano Ragas was the masked man, although they could have easily manufactured such testimony. That they did not do so makes them all the more credible. If a witness confesses ignorance when a positive, affirmation would promote his design, it is conduct hardly consistent with falsehood.[18]

The testimonies of the police officers Cañizares, De Guzman and Mosende, whose bias has not been shown, also deserve credit. To be sure, appellant Valeriano Ragas denied having admitted that he was cleaning his rifle in the early morning hours of 25 February 1967 and asserted that when he handed his rifle to De Guzman, De Guzman found it dusty and with cobwebs; but appellant's credibility in this regard was impaired when he declared that his rifle had not been brought out since the New Year (1967),[19] when the truth was that it was examined and inspected by the PC on the 28th of January 1967.[20] Not to be overlooked is appellant Ragas' other signed statement, taken by Corporal Conjurado, on 25 February 1967,[21] that Ragas loaned his rifle to Pifiniano Lazarte at about 11:00 o'clock in the evening of 24 February 1967, for the purpose of robbing the Tañares. As to his escape while a detention prisoner, appellant has not denied the fact.

The admissibility of the extrajudicial confessions of Barola and Quilapio is assailed as *res inter alios acta*, and for having been allegedly extracted by force and intimidation.

It is contended that the confessions cannot affect Ragas, who took no part in said confession, under Section 25, Rule 130, of the Rules of Court,[22] and the case of *People vs. Durante*, 47 Phil. 654, is cited in support of the contention that extrajudicial confessions are evidence against the confessants but not against their co-defendant who did not take part in said confessions.

The confessions in question are identical in their essential details, such as the number and names of the men who participated in the robbery, the arms they carried, how they positioned themselves around the house of the Tañares preparatory to the robbers' entry, who of them went inside and who stood guard outside, and where they went after committing the robbery. While Barola did not know what articles were taken by them, Quilapio stated that he saw a watch. Their declarations interlock with each other and are indicative of their spontaneity. The extra-judicial confessions are, therefore, admissible as corroborative circumstantial evidence against Ragas, who was implicated therein, because there is no indication that they were the result of collusion, but are identical with each other in their essential details and were the spontaneous expressions of what was in the minds of the declarants at the time. This admissibility, which is an exception to the general rule of non-admissibility of evidence that are *res inter alios acta*, was recently applied in *People vs. Provo, et al.*, L-28347, 20 January 1971,[23] citing numerous precedents.[24]

Esteban Quilapio, alias Gregorio Salas, took the witness stand and testified that he and Jesus Gaviola Barola were manhandled in the PC detachment in Tubod by Corporals De Guzman and Conjurado; that Quilapio was struck with a gun and boxed in all parts of his body, especially his abdomen; that his testicles were pressed; that Barola was similarly treated and even an instrument as big as a coconut frond rib was inserted into his penis; that the PC wanted them to include Valeriano Ragas and Pafiniano Lazarte as having participated in the robbery, when in fact they did not; that because of their maltreatment, they implicated Ragas and Lazarte in their extra-judicial confessions.

Quilapio's testimony is uncorroborated, not even by Barola, and his testimony was correctly assessed by the trial court as a "tale" prompted by the motive "that he had enough of the consequence for himself for which he will not, despite the sins of his companions, help to hang them". For Quilapio had not complained to the judge before whom his confession was sworn.[25] And, as heretofore observed, the narration of details reflects spontaneity and coherence which cannot be associated with the mind of one to whom violence and torture have been applied.[26]

The similarity of the voice and physical features of the masked man with those of Valeriano Ragas; his cleaning of his rifle in the wee hours of the morning following the commission of the robbery; the smell of fresh gunpowder in the rifle when inspected by the PC that same dawn; his escape from jail, which is a mark of guilt;[27] and the strong corroboration of these circumstances by the extrajudicial confessions of his companions, point beyond reasonable doubt that the masked man was Valeriano Ragas.

That the crime was committed with the aggravating circumstances of nighttime and dwelling of the victim is unchallenged. To these should be added a third aggravating circumstance disguise against Ragas, for having used a mask to hide his identity.[28] We find no offsetting mitigating circumstance.

Appellant insists that he was not the masked man. He claims to have been asleep in his house at the time of the commission of the crime; that that night, while he had gone out at 7:00 o'clock to catch frogs by the riverbank because one Florentino Mora had ordered frogs to buy to be used as bait for fishing, he had returned home at about 10:00 o'clock and then went to sleep. His testimony was sought to be corroborated by his wife, Diana Ragas, who testified that she knew that her husband was already at home at 10:00 o'clock that night because it was at that time that she fed her baby.

The alibi was exposed to be false. Florentino Mora, who was supposed to have ordered the frogs, was presented as a rebuttal witness by the prosecution and he testified, in a straight-forward manner, that he did not place any order for frogs; neither does he engage in fishing and use frogs for bait, nor does he eat frogs.[29] Indeed, it would have been easy for Ragas to have left his house and gone to the house of the Tañares, at past midnight on 24 February 1967, because the distance was but one or two kilometers away. The rule has been repeatedly stated that alibi is a weak defense for it is easy of fabrication.[30]

The court a quo ordered the indemnification to the heirs of the deceased Nieva Tañare Empleo by the accused Jesus Gaviola Barola, Esteban Quilapio and herein appellant Valeriano Ragas, jointly and severally, the amount of P3,000.00 only for the death of Nieva because, according to the court, "there are other persons involved who are not as yet apprehended." The ground stated is speculative, for, not having been apprehended, the alleged other persons have not yet been tried or convicted. The amount should be increased to P12,000.00[31] because, since the obligation is solidary, the one who pays it may later claim against his partners-in-crime the share which corresponds to each.[32] Said amount of P12,000.00 is separate from the moral damages of P10,000.00[33] awarded by the court a quo. Furthermore, the money and articles taken should be restored or their value paid, in the sum of P268.00.

FOR THE FOREGOING REASONS, the decision under review is, insofar as Valeriano Ragas is concerned, affirmed, with the modification that (1) the indemnity for the death of Nieva Tanare Empleo is increased to P12,000.00; and (2) Valeriano Ragas shall restore the money and articles robbed or pay their value in the sum of P268.00. No costs in this instance.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., took no part.

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- [1] Ladi Galve was reportedly captured when the prosecution was already in the stage of presenting rebuttal evidence in the court of first instance, and the fiscal decided to file a separate information against him. (T.s.n., 10 November 1967, pages 153-156).
- [2] T.s.n., 23 October 1967, pages 27-28.
- [3] Id., page 20.
- [4] Id., page 18.
- [5] Id., page 19.
- [6] Exhibit "A".
- [7] Exhibit "D".
- [8] T.s.n., Camingue, page 19.
- [9] T.s.n., Camingue, pages 19-21; Flores, pages 25-26.
- [10] T.s.n., Camingue, page 31.
- [11] T.s.n., Camingue, pages 91-92.
- [12] Tsn., Camingue, page 50.
- [13] T.s.n., Camingue, pages 131-133.
- [14] T.s.n., 23 October, 1967, pages 40-49; Camingue, pages 111-112.
- [15] Exhibits "J-1" & "K-1".
- [16] Exhibit "9".
- [17] Exhibit "10-A".
- [18] Francisco, Evidence, The Revised Rules of Court, page 1111, citing Grant vs. Brown, 12 Grant Ch. (U.C.) 52, 67.
- [19] T.s.n. 26 October 1967, page 216.
- [20] Exhibit "G-1", being the firearm license.
- [21] Exhibit "P-1".
- [22] "Sec. 25. Admission by third party. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, and proceedings against one cannot affect another, except as hereinafter provided."

[23] 37 SCRA 19.

- [24] People vs. Lumanhang, L-6357, 7 May 1954; People vs. Carino, L-9580, 30 September 1957; People vs. Tansianco, L-19448, 28 February 1964; People vs. Simbajon, L-18073-75, 30 September 1965; People vs. Narciso, L-24484, 28 May 1968; People vs. Pareja, L-21937, 29 November 1969.
- [25] People vs. Valeriano, 90 Phil. 15, 28.
- [26] People vs. Cruz, 73 Phil. 651; People vs. Opiniano, L-18546, 29 January 1968, 22 SCRA 177; People vs.

Castro, L-17465, 31 August 1964, 11 SCRA 699.

[27] People vs. Cuevas, 97 Phil. 963, unrep.; People vs. Balongcas, L-11340, 17 March 1961, 1 SCRA 727.

[28] U.S. vs. Rodriguez, 19 Phil. 150; People vs. Piring, 63 Phil. 546.

[29] T.s.n., 27 Oct. 1967, page 242.

[30] People vs. Badilla, 48 Phil. 718; People vs. Japitana, 77 Phil. 175; People vs. Pingol, L-26931, 28 May 1970, 33 SCRA 73 & cases cited therein.

[31] People vs. Pantoja, L-18793, 11 October 1968, 25 SCRA 468.

[32] Article 1217, Civil Code.

[33] Heirs of Raymundo Castro vs. Bustos, L-25913, 28 February 1969, 27 SCRA 327.

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