

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VIVENCIO VICTORIA ET AL., DEFENDANTS, PONCIANO DE LA CRUZ,
APPELLANT.***G.R. No. L-930. August 29, 1947*

Ponente: TUASON, J.

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According to the evidence for the prosecution several persons armed with pistols and carbines broke into the home of Hermenegildo Maneja on Enconado Street in Quezon City, on April 28, 1946, at about 9 o'clock in the evening. The occupants of the house were told, at the points of guns, to lie flat on the floor face down, and they obeyed, except Hermenegildo Maneja who remained standing. Some of the bandits searched wardrobes and pockets for money and valuables while others stood guard at or outside the door. When Hermenegildo Maneja saw the bandits were bent on taking all the money he and his housemates had against his entreaties, he told other men of the household to get up and fight. Gregorio Maneja and Severino Flores, Hermenegildo's brother and brother-in-law, rose on their feet and with Hermenegildo started to rush on the gangsters. Taken aback and disconcerted the thugs fled and were pursued by the two brothers as far as the foot of the stairway. But after reaching the other side of the fence the malefactors fired into the house killing Telesforo Agulay, 19 years of age, who was inside. They succeeded in carrying away P140 in cash, a wrist watch and a pair of slippers.

Seven young men were later charged with robbery in band in an inhabited house with homicide, but only four were brought to trial—Vivencio Victoria, Ponciano de la Cruz, Jesus Beltran and Leonardo Simbulan. The rest, though included in the information, had not been arrested. The first four-named defendants were found guilty as co-principals in the crime, and Vivencio Victoria, Jesus Beltran and Leonardo Simbulan, whose ages range from 15 to 17 years, were ordered committed to the reformatory school at Welfareville, while Ponciano de la Cruz, 24 years old, was sentenced to reclusion perpetua with the accessories of law. All four were ordered jointly and severally to pay the heirs of the deceased an indemnity of P2,000 and to pay the other offended parties the amounts in cash and the value of the goods stolen. Only Ponciano de la Cruz has appealed.

There is no doubt in our minds as to the identity of the appellant, which is the main point at issue. There was a bright electric light (60 kilowatts) burning in the house before and during the perpetration of the robbery. The appellant and his co-defendants lived in the neighborhood of the place of the crime and had been known since 1937 by Hermenegildo Maneja, one of two direct witnesses for the prosecution. Hermenegildo Maneja added that he came face to face with the robbers and talked with them. With particular reference to Ponciano de la Cruz, he stated that this accused was one of two men who opened one of the wardrobes and got money from it. Gregorio Maneja, on his part, gave positive assurance that De la Cruz was armed with a .45 caliber pistol and entered his room.

More, in the presence of the appellant at the police headquarters, two of his co-accused pointed to him as one of their confederates. It does not appear that he protested at the time against that incrimination, and there is no

indication that the statements were obtained by the police through improper means. El que calla otorga. And again, in his own statement to the police, the appellant, after denying he knew anything about the robbery, said he heard the shooting and that Victoria came to see him in his house on the night in question carrying a gun and told him of the raid.

Ponciano de la Cruz made a half-hearted attempt to put up an alibi. His testimony in chief is terse and consists of two short questions and answers. His answer to the first question was, "I was at home." To the second he replied he knew nothing of the robbery. There was no corroboration except his co-defendants' denials that he was with them on the night of the crime. But no weight can be attached to these denials. They are in conflict with two of the other defendants' spontaneous declarations made shortly after their arrest, and have the appearance of being part of a last-minute endeavor to save from a stiff sentence, if not from the electric chair, one who seemed to be the leader or one of the leaders of the gang and who, being an adult, was not entitled to the benefits of a suspended judgment.

Defense counsel characterize certain testimony of the offended parties as "manifest improbability." We do not think so. The Maneja brothers were not given an opportunity to explain why Hermenegildo did not lie down like the rest of the household and why the two and Flores, unarmed, dared defy and offer resistance to gunmen. Hermenegildo and Gregorio were not even, cross-examined. Nor do we find inherent weakness in the evidence that the culprits were undisguised. People, especially young people, do foolish things. The youth and lack of experience and foresight of the defendants might well have accounted for their neglect to take appropriate precaution against being recognized. To the same factors and clumsiness of the accused may well be attributed the refusal for long of Hermenegildo to be awed and cowered by the gangsters.

The conviction of the appellant is affirmed in all respects with costs of the appeal.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, and Padilla, JJ., concur.

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