

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VALENTIN HERNANA ET AL., DEFENDANTS, TOMAS SASING,
DEFENDANTS-APPELLANT.**

G.R. No. L-1333. December 14, 1948

Ponente: PARAS, J.

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PARAS, J.:

Tomas Sasing, Guillermo Alcordo and Gervasio Ygot, with seven others, were accused in the Court of First Instance of Cebu with the offense of robbery in band with murder. At the instance of the prosecution, the trial court dismissed the case as against Gervasio Ygot in order to enable the prosecution to use him as a witness. After trial, the lower court convicted Tomas Sasing and Guillermo Alcordo of the complex crime of robbery with murder, aggravated by the circumstances of night time and armed band, and sentenced them to reclusion perpetua and its accessories, to indemnify the heirs of the deceased in the sum of two thousand pesos, and to pay the costs. All the other accused were acquitted. Only Tomas Sasing has appealed to this Court.

The evidence for the prosecution in substance tends to show that at about nine o' clock in the evening of July 3, 1946, Inocentes Hermosilla and his wife Macaria Capuyan heard voices emanating from outside their isolated house in "barrio Capotolan, municipality of Danao, province of Cebu, demanding that the door be opened to the "harianon" (ruler), Hermosilla did not comply with the persistent demands of the visitors, saying that he was tired. Someone from the outside asked whether Hermosilla was going to resist, whereupon the latter went to the kitchen to fetch his wife. As they were entering the door leading to the hall, several shots were fired from the outside. Hermosilla, who was hit on several parts of his body, instantly died. The malefactors cut the rope which fastened the door, after which Tomas Sasing, Guillermo Alcordo and an unidentified companion, all armed with pistols, entered the house while the others remained below. Tomas Sasing and his two companions then took from the family trunk clothings worth P100.00, P235.00 in cash and P18.00 worth of jewelries, aside from three fighting cocks which the marauders carried away.

One of the two principal witnesses for the prosecution is Gervasio Ygot, appellant's co-accused who was excluded from the case at the instance of the fiscal for the very purpose of becoming a state witness. This witness, in the first part of his testimony, disclaimed any knowledge of the facts alleged in the information. Upon being reminded by the fiscal of his extrajudicial confession (Exhs. F and P-I), however, Ygot began to relate" the recitals in his confession Incriminating the appellant and all the other accused. Upon cross-examination, Ygot reverted to his first statement that he did not know anything about the crime. After conferring with Ygot, the fiscal announced to the court that this witness was ready to tell the whole truth, whereupon the latter, allowed to take the witness stand again, testified in accordance with his confession.

The other principal witness for the prosecution is the wife of Hermosilla who testified that although she did not actually see the persons who entered her house on the occasion in question, she recognized the appellant as being one of them because of his voice.

We are unable to find the appellant guilty upon such kind of evidence. Gervasio Ygot, who was as unpredictable as the changeable weather, certainly does not deserve credence. The explanation that he refused to incriminate the accused in view of the latter's threats, cannot readily be accepted, since the same moral weakness that may be implied from the fact that Ygot is easily victimized by threats may be invoked in support of the probability that he testified in accordance with his confession because he was maltreated and threatened by the military police; and Ygot's lack of credibility undoubtedly accounted for the acquittal of all the other accused.

The testimony of the window of Hermosilla might perhaps have served as corroborating evidence, if the same is not free from criticism. It is true that one's identity may be established by or gathered from his voice, if familiar to the witness. But where, as in this case, the witness failed to state that the appellant had uttered any specific statement during the commission of the alleged offense which enabled her to recognize his voice, we cannot, without entertaining some doubt, hold the appellant responsible for so grave a crime as that charged in the information. While the window testified that she heard others coming from the outside, this of course does not mean that she heard said orders as having been given or uttered by the appellant.

The alleged discovery in the appellant's house of an empty magazine of a sub-machine gun does not strengthen the case for the prosecution, it appearing that, according to its own version, the appellant was armed with a pistol.

The appealed judgment will therefore be, as the same is hereby, reversed, and the appellant, Tomas Sasing, acquitted with costs de oficio. So ordered.

Moran, C.J., Feria, Perfecto, Bengzon, and Briones, JJ., concur.

PABLO, M., disidente:

Solo dos, Tomas Sasing y Guillermo Alcorido, de los ones que asaltaron la casa de Inocentes Hermosilla, fueron condenados porque los otros no fueron identificados y los otros dos no arrestados aun. Gervasio Ygot, uno de los acusados, previo sobreseimiento de la querrela en cuanto a 61, fue presentado como testigo de la acusación, y el juzgado a quo en cuanto a su declaración dijo lo siguiente:

"The accused Gervasio Ygot signed an affidavit incriminating his co-accused on July 17, 1946, so much so that in the hearing of this case before this Court on October 8, 1946, the Fiscal, invoking Rule 117, Rules of Court, prayed for the dismissal of the case against him—which was granted, and made him testify for the prosecution. He began by denying any knowledge on the occurrence; a recess was had and upon resuming the hearing he declared incriminating his co-accused substantially as follows: that moments before the occurrence they were on a bridge because Sasing told him to be there—where he met the two Heranas, Batalla and Alcorido: Sasing told him they were going to rob a house. Although at first he refused he had to go with them under their threats; that Sasing was carrying a revolver, Venancio Herana and Batalla rifles, and the rest hunting knives; that upon hearing the house he was left behind to watch, while Sasing, Alcorido and Venancio Herana went upstairs, later he heard shots, the rest remained under the house. Later he saw them coming from the house carrying things and heard them say some one died; that he did not get any share from that loot and went his way afterwards. He explained that he had been threatened with death if he revealed the truth. Upon his cross-examination, however, in the following session (October 11, 1946) he upset everything by again denying any knowledge of the occurrence. It may be stated in this connection that all the accused were detained prisoners and that from the Provincial Jail to the Courthouse (a distance of more than two kilometers) the prisoners with their guards have to walk.

"In the interim other witnesses for the prosecution MPC Sgt. Olegario Villarino and the Justice of the Peace of Danao had to take the witness stand and established the circumstances under which accused's extra-judicial confession Exhibit "F" was executed and acknowledged voluntarily. During an interval the Court was informed

(this was during the session of October 14) that the accused Ygot wanted to testify again—which was granted. He declared that his conscience was bothering him; that in his cross-examination of October 11 he had to upset all he had testified to for the Government in his direct examination two days previous because Sasing had threatened other people outside the jail would kill him if he (Sasing) could not and that he used to threaten him every time there was a chance while they were in jail, but now knowing as he well knew that Sasing was the most responsible for all that happened he had to tell the truth: that Sasing was the terror in the mountains, and reiterated what he had testified to in his direct examination of October 8. The Court is aware of the circumstances surrounding the possibilities of contact between the accused in this case: has had full opportunities in observing the conduct of this witness and those of the other accused during the course of the hearings and thus impose itself with the predicament under which said witness had found himself. Between these changes in his testimony, and considering his Affidavit Exhibit "F", the Court would chose what he had testified to in his direct examination of October 8 as the truth."

Y no dando credito a la defensa de coartada, el juzgado a quo condeno a los dos acusados. Estas declaraciones contradictorias del testigo, teniendo en cuenta las amenazas de que fue objeto, no deben ser desatendidas indebidamente. Solamente declaraciones contradictorias no explicadas satisfactoriamente deben rechazarse.

Pero aun descartando la declaracido del testigo Ygot, en mi opinion, hay prueba bastante para confirmar la sentencia impuesta contra Tomas Sasing. La viuda de Tnocentes Hermosilla declaro en preguntas directas lo siguiente:

"P.

¿En la noche de autos donde estaba Tomas Sasing?

—

R.

El subio a los altros de la casa.

"P.

¿Quienes mas subieron ademas de Sasing?

—

R.

Guillermo.

"P.

¿Donde esta Guillermo?

—

R.

Ese (indicando al acusado Guillermo Alcordo).

"P.

¿Y a quienes mas vio Vd. en aquella noche?

—

R.

Eran tres los que subieron a los altos de la casaj yo no sE el noiabre de uno de ellos."
(pag. 6, t.n.t.)

"Sr. Velaquez (Abogado de los otros acusados en repreguntas)

"P.

How did you know Tomas Sasing?

—

R.

During the guerilla bscause he used to go to my house to ask sugar, chicken, rice and eggs.

"P.

How about Guillermo Alcordo?

—

R.

Just recently.

"P.

How did you happen to know him?

—

R.

Because he got married in that place of Caputututan." (pigs. 10-11, t.n.t.)

"Sr. CALVANO(Abogado de liburcio Mariquit, en repreguntas):

"P.

Do you mean to say that the justice of the peace did not investigate you?

—

R.

I was investigated vjhen the remains of the deceased were still there.

"P.

In that investigation made in Danao did you mention any specific person as responsible for the crime?

—

R.

Yes, I testified before the justice of the peace of Danao that I identified Tomas Sasing and Guillermo Alcordo and I could not tell who was the other." (pag. 12, t.n.t.)

"Sr. Calvano (en repreguntas):

"P.

You nean to say that you did not see actually the face of Tomas Sasing but only the voice?

—

R.

Yes sir.

"P.

I am asking you if you can testify whether Tomas Sasing was upstairs or not?

—

R.

He went upstairs.

"JUZGADO:

"P.

Did you see his face?

—

R.

I did not because my face was downward.

"P.

The other accused Guillermo Alcordo, did you see him came up?

—

R.

I also heard his voice because I know his voice already.

"P.

—

R.

"Sr. Calvano (En repreguntas)

"P.

You declared before that three men came up the house "by forcing the door and cutting the rope, is that right?

—

R.

Yes sir.

"P.

And you declared before that those three were Tomas Sasing, Guillermo Alcordo and other whom you did not recognise, did I get you?

—

R.

Yes sir.11 (pgs. 13-14, t.n.t.)

"JUZGADO;

"P.

You had no occasion to look at those three parsons?

—

R.

Because my face was downward due to my fear. I could only recognize them due to their voice.

"P.

None of those three approached you?

—

R.

No." (pg. 14, t.n.t.)

"Sr. Fiscal (En redirectas)

"P.

You said that you are familiar with the voice of Tomas Sasing, how long have you known Tomas Sasing up to the night of incident?

—

R.

Long time ago, since the Japanese invasion because they used to rest in my house because Tomas Sasing and my husband were good friends.

"P.

You said that Tomas Sasing took rest in your house, is he not connected with any organization or group of men?

—

R.

For the army." (pag. 1?, t.n.t.)

De esta declaracion de la testigo Macaria Capuyan, viuda del occiso, so desprende que tonia sobrados motivos para conocer la voz de Tomas Sasing y Guillermo Alcordo. No inspira la menor duda; su declaracindn que es positiva, clara y sencilla. Pudiera haber declarado, si su intencion fue solo obtener la condena de los acusados y no para decir la verdad que vio la cara de los acusados porque, despues de todo, estos tenian una lampara cuando robaban el contenido del baul y se apoderaban de los otros efectos de la casa. Si no mintio cuando tenia oportunidad de hacerlo, ello demuestra su veracidad, la honradez en sus propositos. Con toda sinceridad dijo que estaba boca abajo cerca del montion de malz, y por miedo no quiso levantar la cabeza. Bajo aquellas circunstancias y despues del tiroteo en qua su marido cayo muerto, era una imprudencia liacer algun movimiento. Los malhechores podian. liaber matado a ella a nansalva, al nienor movimiento. La declaracion solamente de esta testigo, en mi opinion, es suficiente para llegar al convencimiento Intimo de que el acusado Tomas Sasing era uno de los malhechores asaltantes. Cuando Guillermo Alcordo se allan6 a sufrir la condena y no apel6 es que esta convencido de su culpabilidad. No es el nutnero de testigos el que determina la fuersa probatoria de -on hecho sino la confianza el oonvencliniento que inspira en el anino, teniendo en cuenta las circunstancias bajo las cuales un testigo tuvo conocimiento de 61. El oido es un sentido que transmite la sensacidn de una nanera fiel, y merece tanta confianza corao el 030 si no hay motivos anornales que impidan su libre percepcion. Como la casa era pequefia no era diflcil para la testigo oir la convorsacion que han tenid~5~ los ladrones durante la busqueda de sta presa» No es necesarlo que la testigo repita en la vista las palabras pronunciadas por Sasing. Si al tiempo en que oy6 la voz de Sasing durante el saqueo lleg6 al convencimiento de que era Sasing quien hablaba, asa impresion transmitida al Juzgado bajo juramento, es suficiente prueba en que fundar una condena, tanto mas cuanto que toda su atencion estaba concentrada en la percepcion de su oido. En delitos cometidoS) como en el caso presents en que no habia mas que dos moradores de la casa, no deben exigirse muchos testlgos quo serfa pedir un imposible. Ho es necesario que alguien corrobore el testimonio de ella. Del matriraonlo* el marido falleci6_# C6mo podemos axigir que alguien corrbpore el testimonio de la viuda que es la unica superviviente, sin Inventar o fabricar un testigo?

"Al parecer, el abogado de la defensa es de opinion, quftj segun la doctrlna sentada por esta Corte an las causas de Los Estados Unidos contra Cabe (1 Jur. Fil., 273) y Los Estados Unidos contra Asiao (1 Jur. Fil., 313), la declaracion no corroborada de un testigo en cuanto a la identidad de un acusado no es suficiente para fundar en ella una condena. En el primer caso antes citado la Corte dijo en la pagina

"La singularidad del testimonio no impide un juicio acabado acerca de la realidad del hecho y de la culpabilidad de los delinouentes, porque ademas del tsttgo axisten indicios graves y concluyentes, basados en hschos ciertos y probados, como son las detenciones del occlso y de los testigos Daniel Gascon y Sotero Alquaro * * *.'

"Y en la segunda causa la Corte onuncifi esta doctrina (tomada del syllabus)

"La presuncion de inocencia es bastante para irapedir que se condene al acusado en vlrtud de la. identificacion no corroborada do un solo testigo cuyas declaraciones son desacreditadas por las circunstancias o por contradicciones.'

"En ninguno do estos cases ha dicho la Corte quo la deelaracion no corroborada de ua testigo fidedigno no es suflciente para fundar en alia una condena. El testimonio de un testigo es suficiente para este objeto siempre que convensa al Tribunal, fuera de toda duda racionalj de que el acusado fue ol autor del delito que se le imputa." (E. U. contra Mondejar, 19 Jur, Fil., 169.)

"A mas de lo expuesto, solo es necesario hacer mencin de que la declaracion de un testigo es suficiente para apoyar una sentencia condenatoria, si dicha declaracion es convincente fuera de duda racional. En el presente caso, la declaracion del denunciante es positiva, clara y exenta de contradicciones. (E.U. contra Dacotari [1903], 1 Jur. Pil., 697; E.U. contra Mondejar [1911], 19 Jur. Pil., 109,) (Estados Unidos contra Olais, 36 Jur. Fil., 882).

Voto por que se confirme la sentencia apelada.

TUASON, J.:

I concur.

MONTEMAYOR, J.:

I concur in the foregoing dissenting opinion of Mr. Justice Pablo.

Judgment reversed reversed, appellant acquitted.

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