

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PONCIANO ARPON, ET AL., DEFENDANTS, PONCIANO ARPON,
DEFENDANT AND APPELLANT.**

G. R. No. L-9044. January 29, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

The herein appellant, Ponciano Arpon, seeks the reversal of a decision of the Court of First Instance of Leyte finding him guilty of robbery with homicide and sentencing him to resclusidn perpetua with the accessories provided by law, to indemnify the heirs of Manuel Sulla in the sum of P4,000, plus P140, the stolen amount, without subsidiary imprisonment in case of insolvency, and to pay the proportional costs. The appeal is predicated on the grounds that the court erred (1) in appreciating the shaky testimonies of prosecution witnesses Matilde Dellera, Luciano Bacolbas, and Anacleto Bacolbas, which are inherently replete with self-contradictions; (2) in not giving credit to the testimonies of accused Ponciano Arpon and his witnesses Ex-Lt. (PA) Emilio Palsi, Auxiliary Barrio Lieutenant Agapito Rubia, and Felix Morales; (3) in not taking into account the resentments existing between Anacleto Bacolbas and his son Luciano Bacolbas, on one hand, and accused Ponciano Arpon on the other, due to confiscation of Anacleto Bacolbas unlicensed gun (rifle) upon the information of Ponciano Arpon who acted as guide to the MPs at Leyte, Leyte; and (4) in not acquitting the accused Ponciano Arpon.

The evidence on record conclusively shows that on December 11, 1940, at about 7:00 o'clock in the evening, while Manuel Sulla, his common law wife Matilde Dellera, their six children and their nephew, Luciano Bacolbas, were taking their supper in the kitchen of their house in barrio Salog, municipality of Panholgan, province of Leyte, Ponciano Arpon, armed with a carbine, and accompanied by two persons whose identities were never known, forced open the kitchen door then closed from inside by a broken table and suddenly entered the house exclaiming:

"Come up all of you, we will not give any quarters to these persons because these are the brave persons", and aimed his carbine at Manuel Sulla. The latter then crawled towards the door of the sala and raising his left hand said to Arpon: "Do not do this as there might happen misfortune"; and-as Sulla tried to stand up to take a bolo, Arpon fired his carbine at him thrice hitting him at the left side at the level of his waist, as a result of which Sulla fell in a sitting position leaning against a post. At this instant, Matilde Dellera hurriedly[^] left the house with her children. Then Arpon grabbed the bolo which Sulla tried to get and With it struck the right foot of the latter and thereafter gave the bolo to one of his companions. Immediately thereafter Arpon kicked the lamp and his companions opened a big trunk in the sala wherein they found a flashlight which Arpon focused first on the trunk and looked into the dresses contained therein and later toward the room where he saw Luciano Bacolbas whom Arpon asked where his mother was and Luciano answered that he did not live in the house, whereupon Arpon stuck his carbine at Luciano's head and left him. Luciano then went to a place at the rear of the house where he could watch the movements of the robbers and saw them take a small trunk from the sala and give it to their companions outside the house. In the yard of the, house the intruders forced open the small trunk with a bolo and

found therein a small box containing money which Arpon took and put it in the back pocket of his trousers. Thereupon Arpon and his companions left the place bringing with them the bolo. Luciano Bacolbas remained in the house and stayed with Manuel Sulla until the following morning when the municipal authorities came to the place to investigate the incident.

After leaving their house, Matilde Delleria went to the house of the barrio lieutenant of Salog, Agapito Bubia, to whom she told what happened at their house and asked him to escort her to the house of the councilor, but as the night was too dark and the roads muddy and slippery she did not proceed to that house, instead she spent the night in the house of one Meni in Macopa, more than a kilometer from her house. In the following morning Matilde Delleria returned to her house and there saw her husband lying, dead, on the floor, face down, near the door of the sala. She also found her two trunks forced open, the big trunk in the sala and the small one outside the house in the yard, and the amount of P140, placed in a small box in the small trunk, missing. In the same morning, Matilde Delleria was investigated in their house by the Constabulary agents and she told them that Ponciano Arpon fired at her husband and that he had two companions with him. Luciano Bacolbas was likewise investigated by the authorities and he related to them the gruesome event that happened at Sulla's house. At about 9:00 o'clock that morning, Sanitary Inspector Epifanio Dalde examined the body of Manuel Sulla and found the wounds which he described in his medical certificates as follows:

"(A and C) A bullet wound (carbine) entering from his left side of his body and exit at his back right side. Through and through wound."(B) A bullet wound (carbine) entering from his left side of his body and the said bullet, did not come out."(D and E) A bullet wound (carbine) through and through entering from his left foot and exit on the right as shown in the sketch at the back."(F) A wound caused by sharp pointed instrument, measuring Wi inches in length, 1/4 inch wide and 2 inches deep at his right foot shown in the sketch in the back."

The foregoing facts were established by the testimonies of Matilde Delleria, Luciano Bacolbas, Anacleto Bacolbas and the Sanitary Inspector Epifanio Dalde. - The evidence for the appellant in no wise refuted the facts testified to by these witnesses for the only defense offered by him was alibi, in the sense that at the time of the robbery he was sick, at his house situated six kilometers away from the house of Manuel Sulla, and therefore he could not have committed the crime at bar.

Thus we find that the only question to be determined is whether the alibi offered by the appellant deserves consideration or not. He alleges that on the night in question he was suffering from a chill in his house and could not have withstood a travel of two, hours, on foot, and an hour in a banca, to the house of the victim; and, to corroborate this contention, he presented witness Emilio Palsi who testified that at about 6:00 o'clock in the evening of December 11, 1950, he went to the house of the appellant to ask him if he could help in fixing his (witness') fish corral the following day, and that the appellant answered in the negative because he was suffering from fever, and that the house of the appellant is about six kilometers from that of Manuel Sulla. This witness seems to be an impartial one for he is not related to the appellant, but his testimony cannot certainly prevail over the positive testimonies of Matilde Delleria and Luciano Bacolbas who identified the herein appellant as the leader of the marauders who went to the house of Manuel Sulla and killed and robbed him. From the testimonies of both, it appears that there was a light in the house of Sulla when the appellant and his two companions went up; hence their testimony to the effect that they were able to identify the herein appellant cannot be disputed. Moreover, according to Luciano Bacolbas, the appellant poked him on the head with his carbine, a fact which could not but help Luciano in recognizing the herein appellant as the leader of the intruders who entered the house of the deceased Manuel Sulla and committed the crime at bar.

Appellant contends, however, that the testimony of Matilde Delleria should not be given credence because she testified that she had not recognized the two companions of the appellant who also went up the house; but

certainly her failure to recognize appellant's companions in the commission of the crime at bar will not necessarily indicate that she was not able to recognize appellant. Again, the testimony of this witness is also assailed on the ground that she did not tell the truth when she testified that when she went to Meni's house Luciano Bacolbas was not with her, for her testimony was belied, according to the defense, by Agapito Rubia who declared that Luciano was with her when she went to Meni's house. On this disputed fact, there is, however, the convincing testimony of Matilde Delleria that Luciano did not go with her to the house of Meni and the positive testimony of Luciano Bacolbas that he remained in the house and never left it that night; and between the testimonies of these witnesses and that of Agapito Rubia we are more inclined to find for the former. The defense also assails the testimony of Luciano Bacolbas on the ground of improbability, claiming that "a boy of his age could not have braved the horrible scene and experience knowing that while he was watching the alleged robbery, the two-year-old son of the deceased could have cried bitterly and the supposed leader of the robbers may have likewise killed them both". This contention merits no serious consideration for it is predicated on speculation which does not respond to realities. On the other hand, there is every reason to believe that Luciano remained in the house and hid himself in a room, as he so testified, for the appellant stuck his carbine on the head of this witness who should have become afraid to leave the house for fear of being killed. At any rate, whether or not Luciano remained in the house, after Manuel was shot by the appellant, would not affect his testimony that the appellant and his companions entered the house and killed Manuel Sulla and opened the trunk in the sala of the house. The testimony of Anacleto Bacolbas is also attacked on the ground that it is against common sense. This witness testified that upon hearing shots coming from the direction of the house of Manuel Sulla, he went to that place and stopped at about 5 brazas from the house from which he heard the moaning of a dying man; that he saw Ponciano Arpon and his companions opening the trunk in the yard of the house; that as he was afraid, he left the place and returned to his house; that at dawn he went back to the house of Manuel Sulla and saw the trunk forced open in the yard of the house; that he likewise saw Manuel Sulla already dead, so he went to the poblacion to report the incident to the authorities. On cross-examination, he testified that he did not go up the house of Manuel Sulla, but he saw the latter already dead; that he did not care to look for his son Luciano Bacolbas despite the fact that he went to that house to look for him; that he saw the robbers although the night was dark; and that he was not afraid when he stayed 5 brazas from the said robbers in the yard of Manuel Sulla. It is contended that the testimony of this witness[^] is incredible for he claims that he saw the robbers when the night was dark, that he did not care to look for his son at the house of Sulla when his prime object in going there was to see his son. It is also alleged that this witness lied when he testified that his wife did not say a word when she heard the first shot nor did she inquire for her son's whereabouts upon his return. This witness explained, however, that he did not get into the house of Manuel Sulla because the accused were at the yard of the house; that he saw the robbers because they were using a flashlight and that he could get near them at a distance of 5 brazas because he was at the West side of the house while the robbers were at the East. We find this explanation satisfactory, hence his testimony cannot be entirely disregarded. But even brushing aside the declaration of this witness, there are still the positive and convincing testimonies of Matilde Delleria and Luciano Bacolbas which clearly show appellant's criminal responsibility for the crime at bar.

Lastly, the defense contends that this case was initiated against the appellant because of an alleged resentment of Anacleto and Luciano Bacolbas towards him due to the fact that appellant gave information to the MPs about the unlicensed rifle of Anacleto and caused its confiscation. This fact was categorically denied by Anacleto Bacolbas. But even granting that Anacleto and Luciano's testimony is tainted with malice, still there is that of Matilde Delleria who positively declared that Ponciano Arpon, accompanied by others, went to the house of Manuel Sulla, killed him and ransacked two trunks, from one of which disappeared the P140 placed in a small box.

The facts of the case constitute the crime of robbery with homicide with the aggravating circumstances of trespass

to dwelling and nighttime; therefore the appellant deserves the penalty of death, but for lack of sufficient number of votes for the imposition of this penalty, the lesser one of reclusidn perpetua, imposed upon the accused by the lower court, should be affirmed. And, in accordance with the doctrine of this Court in *People vs. Amansec*, 80 Phil., 424; 45 Off. Gaz. (9) 51, the indemnity to be paid by the appellant should be raised to P6,000.

Wherefore, modified as above indicated, the decision appealed from is hereby affirmed in all respects, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador; Concepcion, Reyes, J. B. L., and Felix, JJ., concur.

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