

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN ENTRINA AND FEDERICO ANTIPOLLO, ACCUSED-APPELLANTS.*G.R. No. L-21603. April 15, 1968*

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Five persons, namely, Juan Entrina, Federico Antipollo, Ireneo Antipollo, Teodoro Antipollo and Dioscoro Antipollo, were indicted for robbery in band with homicide before the Court of First Instance of Zamboanga del Sur and docketed therein as Criminal Case No. 1830. After trial, the court acquitted the last three-named accused on the ground of reasonable doubt, but convicted the first two-named for the said crime, imposing the penalty of reclusion perpetua. This appeal by the remaining two accused, Juan Entrina and Federico Antipollo, from the aforesaid judgment, was originally brought to the Court of Appeals, but was forwarded to this Supreme Court in view of the penalty involved.

As to the facts of the case, it is either admitted or not controverted that in the afternoon of 16 April 1961, Fortunata Robles left her husband, Blas Dago-oc, in their house at San Vicente, Mahayag, Zamboanga del Sur to go to Ozamis City to purchase a galvanized iron sheet for the repair of their water tank. Before she left, she and her husband had counted their money, in the amount of P 3,000.00, which she kept in three notebooks and placed inside a trunk. She spent the night in the house of her comadre in Da-o, some eight kilometers from San Vicente. The following morning, Fortunata was informed by Toribio Molijon, a tuba-gatherer, that her husband had been killed. She cut off her trip and returned home to find her husband dead and their money gone.

Sanitary Inspector Jose Laden examined the cadaver of Blas Dago-oc at about 10:00 o'clock in the morning of 17 April 1961 and found six wounds in slightly varying dimensions in different parts of the body, four of them fatal. (T.s.n., p. 13-Salamia). He could not tell how many, but expressed the possibility that different sharp-bladed weapons were used in stabbing the deceased and that he could have died more than twelve hours before. (T. s. n. , pp. 16-17, 21 - Salamia).

Police authorities, who went along with the health official, recovered from the sala of Dago-oc's house a live cartridge, and an empty .45 caliber shell and, by one of the windows, a shotgun. They saw some footprints in the two windows of the sala and also in the window of the bedroom. The windows were forced open. Note-books were scattered and the trunks in the bedroom were ransacked. The body of the deceased lay near some bloodstains in the room adjoining the kitchen, his face upon some gamecock waste. (Exh. "D", T.s.n., pp. 36, 163-171 -Salamia; T.s.n., p. 42 - Pagunsan).

Now, as to who committed the crime, the evidence for the prosecution and the accused part in opposite directions.

The case for the prosecution rests on the extrajudicial confession of Juan Entrina (Exh. B) and the testimony of six witnesses. The gist of their respective testimonies (apart from what had previously been narrated as admitted or not controverted) is as follows:

Ricardo Diacosa: That at about sunset on 16 April 1961, while he was pasturing his horse near a river, he saw Juan Entrina, Federico Antipolo, Ireneo Antipolo, Teodoro Antipolo and Dioscoro Antipolo squatting and conversing in the cornfield of Juan Entrina; when he passed by them, they stopped talking; that on 17 April 1961, Juan Entrina, while passing by the house of Diacosa, told him to keep quiet so that he would not be involved. (T.s.n. , pp. 94 ,102 -Salamia).

Candido Dacua: That at around eight o'clock in the moonless but starry evening of 16 April 1961 (T.s.n., p. 73-Salamia), when he passed by the unlighted house of the late Blas Dago-oc, he saw Teodoro Antipolo, Ireneo Antipolo, and Dioscoro Antipolo, with bolos tucked around their waists, climbing the window, while Juan Entrina and Federico Antipolo were at the balcony; that when he saw them thus, he hurried away, and when he had gone about fifty meters , he heard an explosion in the direction of the house of the deceased. (T.s.n. pp. 67-74 - Salamia).

Silvestre Bocter: As desk sergeant of police, he witnessed the execution by Juan Entrina of his confession to participation in the commission of the crime, Exhibit "B", which was read and translated to him in Visayan and sworn to by the Justice of the Peace of Mahayag in his office: that the confession was prepared by Patrol-man Guillermo Joaquin in his presence on 27 April 1961; and that he was the one who guided the hand of Juan Entrina, with his consent, so that the thumbmark would be impressed on Exhibit "B", (T.s.n. pp. 110-113, 118-Salamia).

Jesus Lerasan: That because in the confession of Juan Entrina, the confessant had deposed that he was given a share of ten pesos which he placed in the wall of his kitchen, field sergeant of police Lerasan, on orders of his chief, accompanied Entrina to his house on 28 April 1961; that Juan Entrina did retrieve a ten-peso bill from the kitchen wall; that when Lerasan confronted Entrina's wife about the money, she admitted non-ownership but asserted that the money was the proceeds of her father's corn and further remarked to her husband: "Anto, you are a traitor to my parents." (T.s.n., pp. 124--137-Salamia); that Juan Entrina escaped from the municipal jail at dawn on 28 April 1961, but was recaptured by his guard in the morning in Parasan, Molave. (T.s.n., pp. 126-127).

Emeterio Bogas: A member of the local police force, he was detailed as guard of the town jail on 3 May 1961; that between nine add ten o'clock in the evening, he overheard detainee Federico Antipolo say to Juan Entrina, who was in another compartment of the cell: "Anto, why did you squeal or tell the authorities about the incident. We have a certain agreement not to reveal the same to any person or to the authorities. Had we known that you will squeal we should have killed you at that time when the offense was committed"; that Entrina replied: "You only gave money, only a small amount;" that he did not see them talking because it was dark, but recognized their voices. (T.s.n., pp. 140-153 - Salamia).

Guillermo Joaquin: Prepared the sketch of the scene of the crime, Exhibit "D", and identified the items indicated therein.

The trial court, however, discredited the testimony of pro-secution witnesses Ricardo Diacosa and Candido Dacua and, in so doing, correctly made the following pertinent remarks:

"Granting that it is true that Ricardo Diacusa saw these accused gathered along the corn field of Juan Entrina, the fact remains that said witness did not hear them planning and conspiring to rob and kill Blas Dago-oc that night of April 16, 1961. Moreover, this fact of Ricardo Diacusa having seen the accused herein as testified to by him in Court is not found in his affidavit, Exhibit 1.

"As to the testimony of Candido Dacua, the truth of his having seen and positively identified the herein accused as the very persons seen by him at 8:00 o'clock in the night of April 16, 1961, in the vicinity of the house of Blas Dago-oc is open to serious doubts. The night was dark without moon, and as may bee seen from

the sketch, Exhibit D, the house of Blas Dago-oc is 15 meters from the nearest trail. Under the condition then obtaining, and at a distance of 15 meters, the Court can not believe that Candido Dacua could have positively identified the persons he allegedly saw that night beyond any possibility of mistake, much more describe their weapons and the apparel they wore as he would want to impress upon this Court. Moreover, the testimony of Candido Dacua is unreliable, considering that he is the son-in-law of one, Juan Dago-oc, and he used to live in Mahayag in the bodega belong-ing to Anselmo Aquino, who as the evidence shows, is the son-in-law of the deceased Blas Dago-oc. Furthermore, defense witness Galicano Saquin, a 50-year old farmer of Mahayag, who lives near the land of Anselmo Aquino, testified that Candido Dacua was no longer living in Mahayag in April, 1961, because he had long transferred his residence to Dampalan in 1955; that the bodega of Anselmo Aquino which was used by Candido Dacua as his residence in Mahayag, was demolished in March, 1961 and therefore, Candido Dacua could not have lived in Mahayag in the follow-ing month of April. Galicano Sequin further testified that in going to Dampalan from the poblacion of Ma-hayag, one has to pass the barrios of San Vicente and Panaga-an. If it is true as testified to by prosecution witness Candido Dacua, that he was in Panaga-an in the afternoon of April 16, 1961, and he went home late in the evening of that day, and since he was already residing in Dampalan, it results that from Panaga-an to his house in Dampalan, he could not have passed by the house of Blas Dago-oc in San Vicente, and therefore, his testimony that he saw persons in the vicinity of the house of Blas Dago-oc is false."

For lack of evidence, the trial Court acquitted three of the five original accused, Ireneo, Teodoro and Dioscoro Antipolo. The result is that the case against appellant Federico Antipolo rests solely on the assertions of witness Emeterio Bogas, who (as previously related) claimed having overheard said appellant blaming Juan Entrina for revealing his participation in the latter's confession (Exh. B), as well as Entrina's reply that he did so because he was only given a small amount out of the loot.

Bogas, and no other witness, testified on this point; but his testimony is uncorroborated. On questioning by the court, he stated that he was four (4) meters from where Entrina and Federico Antipolo were conversing, through a small hole in the wall of split lumber dividing the compartmented detention cell, but could not see them talking because it was very dark; Entrina was alone in one com-partment, while the four other accused were in the other. When asked what special quality in the voice of Federico Antipolo that made him think that the voice he heard was that of Federico, Bogas evaded the question by an uncategorical and non-responsive "Because of his voice." Yet, there is no evidence that Bogas had gained suf-ficient familiarity with the voice of Federico. And, it is unusual that he should be able to testify that Entrina and Federico talked through a small hole when he could not even see the persons talk-ing through that hole. (T.s.n., pp. 153-154 - Salamia). Uncertainty thus exists as to the veracity of the testimony of this witness as well as to the owners of the voices that Bogas allegedly heard, which could be that of the other persons in the prison cell. The strong pro-bability of a mistaken identification cautions that the doubt be resolved in favor of the accused Federico Antipolo.

We are thus left with the appellant Juan Entrina as sole culprit. But even in his case, the evidence leaves room for considerable doubt.

Entrina lived about 200 yards from the house of the deceased Blas Dago-oc; he was the favorite son-in-law of Blas and had access to his house; Entrina also operated the decedent's corn mill. According to said appellant, in the morning of 17 April 1961, somebody wanted to mill corn. As one of the cans was missing at the mill, he went to his father-in-law's house and called for him. Nobody answered. He peeped thru the wall. He saw him lying, motionless; and, as his face was upon some chicken waste, he concluded that he was dead. He then went to inform the barrio lieutenant and sent Toribio Molijon to bring the news to one of the daughters of Blas Dago-oc in Mahayag. While Molijon was in Mahayag, he met the widow, Fortunata Robles, and accordingly informed her of the tragedy.

On the 26th of Entrina was fetched by a policeman to the municipal building where he was investigated by PC Sgt. Vicente Maderazo in the office of the mayor. Entrina claims that he was told to confess to the crime but, as he refused, he was boxed by Maderazo and the chief of police; they held his hair and inserted the barrel of a pistol into his mouth and inserted a chicken feather into his penis, which pained and weakened him, until he fainted and spat blood; that he did not know the contents of Exhibit "B" nor was it read to him; that his thumb was held and guided to make a print on a piece of paper, after which, he was brought before the judge. When he was brought to the provincial jail at Pagadian, he went to the Justice of the Peace of that municipality and there he subscribed to an affidavit, Exhibit "3", disowning the facts stated in Exhibit "B" and relating the maltreatment received by him in Mahayag. He testified that the ten-peso bill which Sgt. Lerasan described was not taken from the kitchen, but from his own pocket and was the payment for tuba. He also disclaimed any conversation with his co-accused while they were confined in the Mahayag jail, contrary to what prosecution witness Emeterio Bogas had testified.

It is well to note at this point, that all the original accused claimed to have likewise been maltreated, although Entrina alone confessed to participating in the crime. We are not impressed by his failure to disavow the confession to the Justice of the Peace of Mahayag when he acknowledged the document. Being then under custody, it was natural that he should fear retaliatory violence were he to denounce the maltreatment to which he had been subjected.

Yet, assuming that Entrina's confession was voluntary, still it fails to establish satisfactorily this appellant's guilt. For not only does the confession (Exh. B) reveal that Entrina himself re-mained downstairs of Blas Dago-oc's house, without taking a hand in the actual killing, but there is on record no evidence to the contrary. Besides, the acquittal of his alleged co-conspirators leaves the truthfulness of this confession in an extremely sorry state. And yet, unless the confession is believed, no evidence remains to link appellant Entrina to the heinous deed. As already shown, the testimony of Emeterio Bogas about overhearing Federico Antipolo upbraiding Entrina about the crime is not believable.

The theory of the prosecution is not measurably helped by the finding by police sergeant Lerasan of a ten-peso bill (claimed to have been Entrina's only share in the loot of P3,000.00, a circumstance in itself difficult to accept) in the wall of the appellant's kitchen, as stated in the confession. That fact was denied both by Entrina and his wife, who claimed that the P10.00 had been taken from appellant's pocket and not from the wall.

Be that as it may, we are not satisfied that appellants' guilt has been established beyond reasonable doubt as required by law. Hence, our duty is to order the release of herein appellants.

WHEREFORE, the decision appealed from is reversed, and the appellants Juan Entrina and Federico Antipolo are acquitted of the crime charged. Costs de officio.

Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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