

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RAFAEL MENDOZA, FELIPE SUIZO, AMBROSIO GARCIA, ANDRES DE
MESA, JOSE DIMAANO, AND EUSEBIO HERNANDEZ, DEFENDANTS,
FELIPE...**

G.R. No. L-1797. June 30, 1949

Ponente: REYES, J.

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REYES, J.:

In the night of July 13, 1946, an armed band raided the house of Jose Evangelista and his wife, Epifania Cordero, in barrio Del Remedio, or Wawa, of the City of San Pablo, Laguna, robbing them of P20, and shooting both of them to death.

Following an investigation by the city police, six persons were accused of robbery with double homicide for alleged participation in the above raid. Those accused were Rafael Mendoza, Felipe Suizo, Andres de Mesa, and three others who, at the time of the trial, had not yet been apprehended. Andres de Mesa turned state witness and was excluded from the information. Rafael Mendoza pleaded guilty and was sentenced to life imprisonment. Declining to make the same plea, Felipe Suizo went to trial which resulted in his conviction, and the case is now before us on his appeal.

The record shows that appellant's participation in the crime charged is established not only by the testimony of one of his companions in the raid (the accused Andres de Mesa, who turned state witness), but also by that of 18-year old Remedios Cordero, who being one of the inmates of the house raided, was able to recognize appellant as one of the raiders. It would appear from the combined testimony of these two witnesses that on the night in question the six defendants had set out to rob, the defendant Mendoza being armed with a .45-caliber pistol and four of the other defendants with a carbine each. As they came near Jose Evangelista's house, Mendoza asked appellant, who lived in those parts, if they could get anything from there ("makakatipak ba tayo dian?"), and assured that they could, the group went to the said house and tried to gain entrance by calling the owner and asking for some oil or an electric light bulb. As they were told that they could have neither of these, they asked that the door be opened, saying that they wanted to speak to the owner. Once the door was opened, Mendoza went up with three of his codefendants, leaving the other two downstairs as guards. On the balcony they were met by the spouses Jose Evangelista and Epifania Cordero, whom they asked for money. Going into his room, Evangelista soon came back and handed P20 to Mendoza, saying that it was all the money he had. But Mendoza did not believe him and pressed him to give more. Evangelista replied that they could search the house and was welcome to any amount they could find. One of the defendants then searched the bedroom, another posted himself at the door of the balcony, while appellant followed Remedios Cordero into the dining room and, carbine in hand, told her not to move or something would happen to her. Mendoza, on his part, with his hand on his pistol went with the couple to their room and closed the door behind him. Shortly thereafter, there was a commotion in that room followed by a shot, then by the screams of Epifania Cordero and by four other shots. On hearing the shots, the companions of Mendoza fled.

After the robbers had left, the dead bodies of Jose Evangelista and Epifania Cordero, one on top of the other and drenched in blood, were found in their room. Expert examination showed that the couple died from gun-shot wounds. Wear their bodies were found five empty cartridges, caliber .45, which according to a ballistic expert were fired from the pistol identified in evidence as formerly belonging to defendant Mendoza but sold by him to one Juan Pandiclan after the robbery. Andres de Mesa also testified that when he was already downstairs he saw Mendoza jump out of the window, pistol in hand, and that, once they were together, Mendoza told him he had killed the couple.

That same night Remedios Cordero told the chief of police, that she was able to recognize appellant Felipe Suizo (whom she then called Iping Bachoy) as one of the robbers, and on a latter date she was also able to identify, from a group of twenty persons that were lined up before her, both appellant and the defendant Mendoza as two of those who had taken part in the robbery.

Appellant declared that at the time of the robbery he was sleeping in his house and that he was awakened by his wife when the latter heard the shots. This declaration, though corroborated by his wife, is not entitled to much weight in view of appellant's positive identification by the witness Remedios Cordero as the one who watched her in the dining room while his companions were searching the house for money, to say nothing of the testimony of Andres de Mesa, naming him as one of his companions in the raid.

The defense calls attention to the fact that appellant was a person well known to the deceased spouses so that he would not have dared commit the robbery without his face being covered, since there was light in the house. But the circumstance that he was well known to the deceased couple may have been one of the reasons that prompted him to silence them forever by putting them to death. And if he did not dispense the same treatment to Remedios Cordero, it may well be because he was not aware that he was well known to the latter, it not appearing that he had struck an acquaintance with her, while, on the other hand, the evidence shows that she was new in those parts as she hailed from Nueva Ecija, having come to live in the house of the deceased spouses not long before the robbery.

The explanation for the delay in the arrest of the appellant despite the fact that his participation in the robbery was already known to the police on the night of the crime is to be found in the following testimony of the chief of police:

"Q. Can you tell the Court any particular reason why in spite of the fact that Remedios Cordero identified Felipe Suizo as one of the four perpetrators of the crime you did not arrest him until July 29?—A. In the first place, I did not know who is Iping Bachoy, and it took me time to know who he is. At the time I learned who he is, I did not effect the arrest right away knowing from Amy Cordero that he was not the one who killed the couple, so I decided not to effect the arrest right away, because if we did, it may cause the other to be in hiding. So, what I did was to arrest first the other because I knew it was easy to arrest Iping Bachoy." (Pages 55-56, t. s. n. Rañeses.)

Not much importance can be attached to the testimony of Rafael Mendoza denying appellant's participation in the crime. The said testimony was given after Mendoza had already pleaded guilty, well knowing that any attempt on his part to free appellant from criminal liability would not in any way redound to his own prejudice.

There can be no doubt as to appellant's participation as principal in the commission of the robbery in question, it appearing from the evidence that he was the one who led the gang to the house of the deceased spouses, was the one who informed them that they could get something from there, and was also the one who asked the inmates of the house to open the door. In addition, he was the one who watched Remedios Cordero in the dining room while his companions were ransacking the house. And being a participant in the robbery, he can not escape liability for

the killing of the spouses just because he did not actually take part in the killing, there being no proof that he had made any endeavor to prevent it. (Par. 2, Art. 296, Rev. Penal Code; People vs. Morados, 40 Off. Gaz. [9th Sup.], No. 13, p. 75; U. S. vs. Macalalad, 9 Phil., 1; U. S. vs. Tiongco, 37 Phil, 951; People vs. Salumddin, 52 Phil. 670.)

The crime committed by appellant is that of robbery with homicide and falls under the first paragraph of Article 294 of the Revised Penal Code, punishable with reclusion perpetua to death. The crime having been committed with the aggravating circumstances of nocturnity, band, and dwelling, not offset by any mitigating circumstance, the said penalty should be imposed in its maximum degree. But, there being no sufficient votes for the imposition of the death penalty, the sentence of life imprisonment meted out by the court below will have to stand together with the accessory penalties, indemnity and restitution imposed in the decision appealed from.

In so far as the judgment below conforms to this decision, the same is affirmed, with costs against the appellant.

Moran, C. J., Ozaeta, Paras, Feria, Bengzon, Tuason, and Montemayor, JJ., concur.

REYES, J.:

I hereby certify that Mr. Justice Pablo and Mr. Justice Perfecto voted in favor of this decision.

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