

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BENJAMIN JISTIADO ET AL., DEFENDANTS; BENJAMIN JISTIADO APPELLANT.

G.R. No. L-5478. April 29, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

Benjamin Jistiado, Pedro Floralde alias Pedring, and Timoteo Floralde alias Tiyo were charged in the Court of First Instance of Samar with the crime of robbery with double homicide. After trial, the court acquitted Pedro Floralde and Timoteo Floralde, but convicted Benjamin Jistiado who was sentenced to recluson perpetua, to indemnify the heirs of the deceased Pedro Badillo and Ana Onato in the sum of P4,000, and to pay one-third of the costs. From this judgment Benjamin Jistiado has appealed.

The evidence for the prosecution is substantially to the following effect: At about 7:00 o'clock in the evening of August 2, 1931, the spouses Pedro Badillo and Ana Onato, who were living with their three-month child in barrio Caaguit-itan, municipality of Allen, Province of Samar, were killed and robbed in their house where they also had a sari-sari store.

Avelino Contridas, shortly before the event, met on his way home from the seashore of barrio Caaguit-itan, Benjamin Jistiado and two companions proceeding towards the house of Pedro Badillo. Baltazar Mahinay, a neighbor, went to the store of Pedro Badillo to buy petroleum and he saw then and there Benjamin Jistiado and his co-accused, although Baltazar had returned home unable to discover any unusual occurrence. Florentina Villamor, a mid-wife summoned to the house of a patient, heard Ana Onato cry from her house, "Help, the child"—this scream being heard also by Baltazar Mahinay soon after he had reached home. Florentina rushed to Pedro Badillo's house and, peeping through a hole on the nipa wall, saw Benjamin Jistiado holding a revolver aimed at Pedro Badillo who at the moment told Benjamin, "The key is there, the trunk is there, and the money is there. I did not take anything. Do not kill me, Benjamin." Florentina, who also saw the two companions of Benjamin in the room where Ana Onato was sitting, ran out of fear to the house of Baltazar Mahinay and reported that Pedro Badillo was being robbed. Marciano Ortega, another neighbor who also heard the call of Ana Onato, proceeded to the tatter's house but, as the door was closed, merely peeped through the wall and saw Benjamin Jistiado training his revolver at Pedro Badillo who was then seated on the floor of his store. Marciano thereupon left and accordingly informed his neighbors Julian Ollado, Apolonio Ollado and Meliton Francisco. The four rushed back and, ten meters away from the house of Pedro Badillo, they heard a gun discharge emanating therefrom. Deploying themselves on the ground, they heard two other gun shots, followed by the exit from Badillo's house of three persons who, with their flashlights towards the seashore, walked towards sitio Among.

After Benjamin Jistiado and his two companions had left, Marciano Ortega and other neighbors fetched barrio lieutenant Bonifacio Ciago and together they went to the scene of the crime where they found Pedro Badillo dead near the door of the kitchen and Ana Onato dead in the bedroom, with the three-month child on her left arm. The

locker of the trunk was found destroyed. Eutiquio Badillo, son of Pedro, was thereupon summoned and, arriving at about 9:00 o'clock in the evening, was informed by Marciano Ortega that Benjamin Jistiado was in his father's house shortly before the shooting. Eutiquio immediately sent a telegraphic report to the Philippine Constabulary detachment.

The next day, August 3, 1951, Primitivo Buensalida sanitary inspector, together with the chief of police and two policemen, examined the dead bodies. Pedro Badillo had a bullet wound on the lower left shoulder penetrating through the side of the right back and passing through the heart and this must have been fatal. Ana Onato had seven wounds, two on the right breast and the others on the lower jaw, left face, left ear, right side of the back and on the throat. The wound on the right breast, penetrating the heart, was caused by a bullet, while the other injuries by a sharp instrument

The chief of police in turn conducted an ocular inspection. When the family trunk was opened by Eutiquio Badillo, he found missing the canvass handbag where his father's money was being kept, although another trunk and five Hill Bros. coffee cans containing P220 in coins were intact. At this inspection, Eutiquio relayed to the chief of police the information previously received by him that Benjamin Jistiado was seen in his father's house when the crime was committed.

On August 1, 1951, Pedro Badillo called his son Eutiquio, then residing in barrio Calagundian, Allen, Samar, and asked the latter to close the former's sale and purchase books and to be present at the execution of a certain mortgage between the Badillo spouses and another. On said occasion Eutiquio counted his father's money and delivered P274 to the mortgagor, leaving a balance of P3,200 including coins which he placed in a canvass bag and kept it in a trunk.

The defense of appellant Benjamin Jistiado is an alibi to the effect that he and his co-accused were in sitio Among, barrio Calagundian, municipality of Allen, Province of Samar, from five in the afternoon of August 2, 1951, upon invitation of Cornelio Fugado, in connection with the celebration of the novena in the latter's house. When the appellant and his companions arrived at Fugado's place, and finding that the prayer was still going on, they went to the house of Ricardo Sabordo where they drank tuba up to about 8:00 o'clock in the evening, when Cornelio Fugado arrived, informing that dinner was ready. The appellant and his co-accused accordingly drank and ate at Fugado's house for four hours, leaving only at about midnight. On their way home they dropped by the house of Timoteo Floralde, conversing and again eating therein until nearly four in the morning, when the appellant returned to his home situated some two and one-half kilometers from that of Pedro Badillo in barrio Caaguititan.

Upon a thorough examination of the record, we have found the judgment of conviction to be correct. Appellant's alibi, a defense commonly and easily resorted to, cannot overcome the positive testimony of various witnesses for the prosecution who were not shown to have had any motive for testifying during the trial. Moreover, as well pointed out by the Solicitor General, inasmuch as there is a trail from appellant's house in sitio Among to barrio Caaguititan which can be covered by a 40-minute walk, it was not impossible for him to have left Fugado's house, committed the crime in question, and thereafter returned to the place of celebration.

Counsel argues that appellant's co-accused were acquitted by the trial court on the ground that the testimony of the prosecution witnesses was not sufficient to connect them with the crime, with the result that the same testimony cannot be relied upon for appellant's conviction. Suffice it to state that the failure of the prosecution witnesses to identify appellant's co-accused, does not necessarily discredit their testimony with respect to the appellant's participation. Obviously, the two co-accused were not known due to varying circumstances under which the three male-factors were seen or observed by the prosecution witnesses.

Certain contradictions in the testimony of Florentine Villamor are adverted to by counsel for the appellant, but we consider the same to be insufficient to outweigh the main detail of her story. Moreover, it is not surprising for said witness, being ignorant and subjected to extensive cross-examination, to fall into the state of confusion as to various details, particularly dates. Her veracity is in a way confirmed by her frankness in admitting that she recognized only the appellant both in her affidavit and during the trial, not to mention the fact that her testimony on appellant's identity counts with corroboration. Marciano Ortega's version is assailed by the defense, because when he was investigated by the chief of police he denied having recognized the persons in the house of Pedro Badillo; but this discrepancy is explained by the witness by saying that he was afraid of the presence of appellant's brother, apart from the circumstance that appellant was still at large. Moreover, Baltazar Mahinay also saw Benjamin Jistiado and two companions when Baltazar bought petroleum from the store of Pedro Badillo, and although he then saw nothing unusual, he also heard the successive shots from the house of Pedro Badillo. The failure of Baltazar to reveal what he knew about the crime when he was investigated by the authorities on the day following the commission of the crime, finds explanation in his apprehension about reprisals both from the appellant and his companions who were still at large and from appellant's brother.

It is further insisted that Eutiquio Badillo filed the charge because he once caught the appellant cutting a piece of bamboo from the property of the Badillos. This alleged incident, admitted by the appellant to be a "small thing", could hardly induce a man in his right senses to falsely accuse another of a capital offense. Upon the other hand, as intimated by the Solicitor General, this might have been the motive for the robbery, as the appellant must have considered the Badillos, by their refusal to spare even a piece of bamboo, as being inconsiderate.

The crime committed is robbery with double homicide, with the aggravating circumstances of dwelling and nocturnity, without any mitigating circumstance; but for lack of necessary votes, the penalty should only be reclusion perpetua. It being understood that the appellant shall pay indemnity to the heirs of the deceased in the sum of P2,980, the amount robbed, and the indemnity of P4,000 imposed by the trial court, the appealed judgment as thus modified is affirmed. So ordered with costs against the appellant.

Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, and Concepcion, JJ., concur.

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