

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PLACIDO SUSANO, ET AL., DEFENDANT AND APPELLANT.***G.R. No. L-19098. March 31, 1964*

Ponente: CONCEPCION, J.

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Appeal by, defendant Placido Susano, from a decision of the Court of First Instance of Rizal convicting him of the crime of robbery with homicide and less serious physical injuries, with which he is charged, and sentencing him to the extreme penalty, to indemnify the heirs of the deceased Gregorio Vergara in the sum of P6,000, and to pay the costs.

It is not disputed that on May 22, 1959, between 10:00 and 11:00 p.m., while Gregorio Vergara and Victoria Rivera were asleep in their house, in the barrio of Bagumbayan or Bagumbong, municipality of Caloocan, Province of Rizal, several persons broke into the house and beat said couple; that one of the malefactors tired the gun with which he was armed; that Victoria Rivera lost consciousness in consequence of the maltreatment; that when she came to, her husband was already dead, and the sum of P25, as well as several pieces of jewelry, valued all together P440, had disappeared; and that a medical examination performed the next day showed that Gregorio Vergara had sustained several lacerated wounds, as well as contusions and fractures, particularly in the occipital and temporal regions, which caused his death due to hemorrhage, intracranial, and traumatic, whereas Victoria Rivera had a contusion which required medical treatment from five (5) to seven (7) days.

About two (2) weeks later, or on June 5, 1959, the corresponding information for robbery with homicide and less serious physical injuries was filed against Placido Susano and two (2) other persons whose identity has not been established. On April 16, 1960, or less than ten (10) months later, and about eleven (11) months after the occurrence, Susano was apprehended in the barrio of Kalina, municipality of Tagkawayan, Quezon. After due trial, under a plea of not guilty, the aforementioned decision was rendered. Hence, this appeal.

The issue in this case hinges on the identity of the person who killed Gregorio Vergara. In this connection, Victoria Rivera and her son-in-law Antonio Zuniga, identified Placido Susano as one of the malefactors. More specifically, Victoria Rivera testified that the person who hit her husband with a gun was said appellant; that as she tried to rise from the floor, a companion held her by the neck; that, at this juncture, appellant fired his gun; then, immediately thereafter, she became unconscious for he kicked her on the face; that, when she came to, the malefactors were gone, her husband was dead and the monovortices above referred to were raised; that she was able to recognize appellant, because there was a lighted gas lamp in her house and the moon was shining, apart from the fact she had known appellant since his childhood, they being neighbors; and that soon after the occurrence, her son-in-law, Antonio Zuniga and other persons came to her assistance.

Zuniga in turn asserted that, while he was asleep in his house, about fifty (50) meters away from that of his parents-in-law, he was awakened by the report of a gun; that, thereupon, he went to his window and looked towards the house of the Vergaras, where the shot had seemingly been fired; that, being unable to see anything

therein, he proceeded to said house; that, when he was about ten (10) meters away from the same, appellant — whom he had known since his childhood — darted from the gate and pointed a gun at him.; that, accordingly, he ran away shouting for help; that, shortly, thereafter, he and several other neighbors went to the house of the Vergaras and there found Victoria Rivera sobbing, with swollen eyes, over the dead body of her husband; and that her "aparador" appeared to have been ransacked and the contents thereof were scattered on the floor.

Upon the other hand, appellant has set up an alibi. He would have us believe that, in the evening of May 20, 1959, he eloped with one Mercedes Marcos, whom he brought from her house in Meycauayan, Bulacan, to that of one Ramon Mendoza, in Santa Maria, Bulacan, where they stayed up to May 27, 1959; that on May 28, 1959 appellant went to Manila, from whence he returned to Santa Maria, Bulacan, on May 31, 1959; and that then he and Mercedes Marcos went to Tagkawayan, Quezon Province, where he was arrested by the Constabulary on April 16, 1960.

However, Bismarco Tuazon, a member of the intelligence section of the Constabulary and a resident of the same barrio in Meycauayan where Mercedes Marcos was living, testified that she had never left that barrio during the month of May, 1959. Moreover, appellant's corroborating witnesses were said Mercedes Marcos, whom he married on August 3, 1959, his mother-in-law and Roman Mendoza, who is also related to appellant, although at first he (Mendoza) tried to deny such relationship.

Considering that these witnesses for the defense have a clear interest in the fate of the accused and that his presence and participation in the occurrence have been established by the positive testimonies of Victoria Rivera and Antonio Zuniga, we are satisfied that the lower court has not erred in finding appellant guilty as charged. For lack of the requisite number of votes, the extreme penalty imposed by the lower court should be and is hereby commuted to life imprisonment. With this modification, the decision appealed from is hereby affirmed, in all other respects, with costs against appellant Placido Susano.

IT IS SO ORDERED.

Padilla, Bautista Angelo, Labrador Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur. Bengzon, C.J., took no part.

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