

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

G. R. No. L-3723. April 27, 1951

Ponente: TUASON, J.

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TUASON, J.:

Having been found guilty of robbery with multiple homicide and sentenced to reclusion perpetua, to indemnify the heirs of the deceased in the sum of P6,000 and pay the costs, Angel Gutierrez brought this appeal. Accused with the appellant were four persons given the fictitious names of John Doe, Ricardo Doe, George Doe and William Doe, none of whom had been arrested on the date of the trial of the present case.

The facts in so far as they are uncontroverted are: About two o'clock in the morning of May 5, 1948, armed malefactors broke into the house of Ong San in barrio Caniugan, Pasig, Rizal. Ong San and his wife, Ko Leong, were shot from the effects of which they died soon after, Ong San on the way to the hospital and Ko Leong in the hospital. The assailants made off with P2,000 in cash, which had been kept in a store in the kitchen.

The evidence for the prosecution consists of the testimony of two witnesses who declared having seen and recognized the defendant as he was fleeing from the scene of the crime, and an alleged confession of the accused.

Vidal Salazar, Ong San's neighbor, said that he had known Gutierrez since the accused was a small boy, the latter having been born and raised in Salazar's barrio. He stated that, having heard gunshots and outcries of children, he looked out of his window and saw two men running heads down. When these got near his toilet, Jae asked them who they were, whereupon Gutierrez looked up and fired at him. That was the moment he recognized the appellant. The bullet missed him, he said, but hit a wall of his house. When policemen came he related to them what happened and told them to look for the mark of the bullet inside the house. He said he did not tell the police who had shot at him because he was afraid, Gutierrez being at large and had a firearm. It was only after Gutierrez was arrested, he added, that he mentioned Gutierrez' name to the constabulary.

Bonifacio de los Reyes, who lived in a tent or hut very close to the deceased's house, testified that he was awakened by a commotion in that house. He stood or sat up on a papag after which he heard successive shots. Then he saw the Chinese's kitchen door opened and two men emerge from it running. He recognized the face of one of them but did not know his name at the time. That man was Gutierrez. He had known this accused before, having met him once in a while in a Chinese store. He approached two policemen later in the day but did not tell them or any other person anything, not until the date of the trial. A detective had approached him "the other night" and that was the first time somebody talked to him about this crime. With reference to the defendant's confession, Benedicto T. Potenciano, first lieutenant, 34th P.C. stationed in Rizal, declared that he questioned Gutierrez at the constabulary headquarters at Caniugan and the proceeding was reduced to writing, Exhibit "Q". He assured that neither force, intimidation nor promise of reward was made. He said that having received confidential information that Gutierrez was one of the perpetrators of the robbery and murders, he sent one of his men to Bilibid Prison in

Muntinlupa to secure a photograph of this accused, who had been confined there. A picture was obtained and he turned it over to some of his men.

The defendant's statements, made in Tagalog in answer to questions propounded by Lt. Potenciano and sworn to before the clerk of court, Severo Abellera, recite that the declarant and "his four companions" assaulted the house of Chinaman Julian. His companions, he stated, were Angel Flores, one nicknamed Luis Taruc, one Ambo, and Apolinario Villamor. Three of these climbed up the window while he and Luis Taruc entered through the stairway after the door was opened. When Julian and his wife woke up, they were told to stand aside, blindfolded and tied. Afterward his companions searched the house while he stood with a gun at the door as a watch. After grabbing all they needed, three of his companions went down and then he and Angel Flores shot the spouses.

He declared that in 1947, he and Angel Flores met in a saloon in Pasig and conceived of robbing Julian, one of the deceased. In April, 1948, he and Flores met again in the same place and decided to carry out their plan. He stated that as they were fleeing from the place of the robbery, somebody shouted at them and so he fired upward. The man who shouted was Vidal Salazar, whom he had known since his boyhood. The man who shot Julian's wife was Angel Flores. The loot was P2,000, P500 of which went to him, but all of his share he had already spent.

Severo Abellera, clerk of the Court of First Instance, identified Exhibit "Q" and the accused's signature thereon, which he said had been affixed in his presence. He said he had Lt. Potenciano read the whole declaration while he (witness) was holding a copy of it. He asked for a copy after the accused told him that he did not know how to read. Even as the statement was being read, he told the accused to listen carefully and tell him if his alleged answers as read by Lt. Potenciano were correct; told him that if there were inaccuracies, he should tell Mr. Abellera so. More, according to the clerk of court, after each answer was read, he asked the accused if that was his statement and he invariably answered in the affirmative. Abellera went on to say that he warned the accused to tell the truth and nothing but the truth and not to be afraid because he was before a judicial officer, and that he saw nothing unusual on the defendant's face or body.

The defendant put up an alibi and repudiated his confession. He testified that his confession had been wrung by torture, and denied that he had been apprised of the contents of Exhibit "Q" when he was made to swear to it before the clerk of court. He explained that in May, 1948, he was employed at the Manila Landscape Inc. in Quezon City and slept in the premises of that firm on the night of May 4-5.

There is corroborative evidence of the appellant's employment by the Landscape Company but there is none on the claim that he was in Quezon City in the early morning of May 5. His employer's payroll does show that he worked from 7:00 a.m. to 4:00 p.m. but it is silent on what he did or where he was after, the last mentioned hour. The proof on the defendant's alibi is thus made up of his own testimony exclusively and is far from precluding the possibility of his participation in the crime charged. We do not believe that the court committed any error in not giving credence to this evidence.

As Vidal Salazar and Bonifacio de los Reyes had no personal interest in the case, the correctness of their testimonies can be impeached only on the theory of mistaken identity. However, the finding that these witnesses recognized the accused is not by any means improbable or farfetched. They had known the accused, one of them since the latter was a child, and the time was early morning in May when bright stars were out, as De los Reyes, swore. Their acquaintance with the accused was therefore of such a degree that they could distinguish him from others by his silhouette and movements.

The witnesses' silence before they were questioned by the authorities about the defendant's complicity has been sufficiently explained, in our opinion. One of them said he was afraid, and it is conceivable that the other, though he did not say so, was also possessed of a dread of retaliation. Coupled with all this is the well-known inclination

of the common run of people to keep aloof from matters that do not concern them personally, specially matters that might take them away from their occupation.

Independent of the eye-witnesses' testimonies, the defendant's confession contains the stamp of truth and has been satisfactorily shown to have been made freely. The alleged water-cure does not sound credible at all. Why the prisoner should be maltreated in the provincial capitol when there was a constabulary headquarters where such operation could be carried out with the least danger of being witnessed by strangers is beyond any reason apparent from the record.

By and large, we are of the opinion that the defendant's guilt of the crime charged has been established beyond reasonable doubt. The judgment appealed from will be affirmed with costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Montemayor and Jugo, JJ., concur.

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