

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VICENTE RECOLIZADO ALIAS IDOT, ET AL., DEFENDANTS. VICENTE
RECOLIZADO ALIAS IDOT, DEFENDANT AND APPELLANT.**

G.R. No. L-17464. August 31, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Vicente Recolizado, with three other persons, was accused of robbery in band with homicide and physical injuries before the Court of First Instance of Cagayan. Of the four defendants, Valentin Aurelio and Alberto Calaycay pleaded guilty, while the case was dismissed with respect to Ciriaco Tabarreja for insufficiency of evidence. The case was continued with regard to Recolizado who, after trial, was found guilty and sentenced to reclusion perpetua, aside from paying indemnity and costs. He was credited with one-half of the time he has undergone preventive imprisonment, but in a subsequent order the portion of the decision relative to preventive imprisonment was delated.

Recolizado has appealed.

Sometime on December 18, 1958, before twelve and one o'clock in the morning, while Maria Castañeda and her husband Alejandro Umblas were sleeping in their house at Minanga, Gonzaga, Cagayan, Maria was awakened when she heard footstep below the house. She moved the curtain of the bedroom door where they slept and saw Alberto Calaycay and Vicente Recolizado on the last rung of the stairs of the house. The two had their faces below the nose covered with handkerchiefs. Recolizado approached Maria and gave her a fist blow on her left eye which caused her to fall on the floor, while Calaycay entered the room where her husband was. As soon as Maria fell Recolizado hacked her with a bolo causing two wounds on her back one below the right shoulder and the other below the right armpit, which wounds produced scar 4.5" and 2" long. As Maria was lying down on the floor she heard the screams of her husband who was being assaulted by Calaycay. When Recolizado tried to strike Maria again with the bolo she got a pillow and used it as a shield at which moment the money inside the pillow in the sum of P500.00 dropped on the floor wherefrom it was taken by Recolizado with the use of a flashlight. When the two intruders went up the house there was an oil lamp burning but they put out the light when they entered the room. Maria was able to recognize Recolizado because he frequented her store to buy cigarettes and wine besides the fact that they were barripmates. As a result of the wounds that the husband of Maria sustained, he died. According to Maria, in order to gain entrance to their house, the malefactors destroyed three of their doors located downstairs and in the kitchen.

The incident having been reported to the PC detachment in Aparri, Sgt. Jovencio Lagmay went to Minanga to conduct an investigation. He took down in writing the statements of Alberto Calaycay, Valentin Aurelio and Vicente Recolizado which were sworn to before the Municipal Mayor of Gonzaga and the local Justice of the Peace.

Dr. Federico Umayam performed an autopsy on the body of the deceased. He found four stab and incise wounds

which were described in a certificate he issued to that effect. Said wounds caused internal hemorrhage which resulted in the victim's death.

Appellant set up the defense of alibi. He declared that on the night of December 17, 1958 he did not leave his house in San Roque, Gonzaga as his wife had an abortion in the afternoon on the same day, and so he did not go to the house of Maria Castañeda to commit the crime as testified to by the latter; that Maria might have pointed to him as one of the malefactors because he was indebted to her although he eventually paid his debt; that when he signed his written statement he was not given food for a period of three days; that when said statement was read to him by the justice of the peace he protested saying that its contents were not true; and that he admitted knowing his co-accused Valentin Aurelio and Alberto Calaycay because the former borrowed his jacket and the latter used to work for him in his land.

To support his alibi, appellant presented two witnesses, Tarcila Medrano and his mother Susana Recolizado. Tarcila testified that on December 10, 1958 she had requested Susana to buy for her 20 chickens in the town of Gonzaga. It was agreed that she was to get them at the house of Susana which in fact she did on December 17, 1958. Arriving at the house in the afternoon of the same day, she learned that the wife of appellant had suffered an abortion. Because of this incident, she passed the night in the house of the Recolizados. She took supper there and is positive that appellant never left the house that evening because he attended to his sick wife. The next morning she returned to Aparri bringing with her the chickens she had bought. This testimony was corroborated by Susana Recolizado, mother of appellant, who said that she did not sleep that night because she alternated in attending to her sick daughter-in-law.

The contention of appellant that he did not go to the house of Maria Castañeda on the night in question cannot be sustained in the light of the overwhelming evidence of the prosecution. To begin with, said claim is disproved by his own affidavit which he subscribed before Judge Federico Labio of Gonzaga on December 23, 1958. In fact, he tried to mitigate his liability by stating therein that he was merely forced at gun point by his companions to go to the house of Maria. His claim that he did not read the contents of his affidavit before he affixed his signature thereto is also of no avail because judge Labio testified categorically that he read several times said contents and translated them into the Ilocano dialect. No reason was shown why Judge Labio should testify the way he did unless it is in obedience to his duty as a public official. We have, furthermore, the categorical statement of Maria Castañeda that appellant is one of the malefactors who entered her house in the night in question. Indeed, he is the one who boxed and maltreated her while the other companion went to the other room to inflict the wounds that caused the death of her husband. She was positive in her identification of appellant not only because he was a barriomate but because he frequented her store to buy cigarettes and wine. Her testimony was corroborated by Emilio Baay who said that he saw appellant coming out of the house of Maria when he peeped thru the window of his house when he heard her screams in the night in question.

Appellant's alibi, it is true, appears supported by the testimony of Tarcila Medrano, but the latter was not given credence by the court a quo because, "it should be noted that Tarcila Medrano who claims that she went to the house of Vicente Recolizado on December 17, 1958 could not give the dates of the two other times that she went to the same house. She could not connect any event of importance that would remind her that it was December 17, 1958, when she went to the house of Vicente Recolizado." Susana Recolizado's testimony, on the other hand, is inherently weak because of her relationship with appellant.

The evidence, however, is not clear that the malefactors who entered the house of Maria Castañeda were four armed persons or more as to sustain the crime of robbery in band alleged in the information. Since the main witnesses for the prosecution were merely able to identify two of the malefactors, their insinuation that there may be others in the premises who were not seen because of the darkness of the night is insufficient to sustain the

charge. The evidence must be positive that it is so, and this is not the case. However, considering that the crime committed is robbery with homicide aggravated by the fact that it was committed in the dwelling house of the victims, we believe that the penalty of reclusion perpetua meted out to appellant is adequate and should be sustained (Article 294, Paragraph 1, Revised Penal Code).

With this finding, we find correct the ruling of the court a quo that the portion of the decision which credits appellant with one-half of the preventive imprisonment he has undergone should be deleted considering that, under Article 29 of the Revised Penal Code, one convicted of robbery is not entitled to such privilege.

Wherefore, being in accordance with law and the evidence, the decision appealed from is affirmed, with costs against appellant.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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