

## **PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DIONISIO SABUERO AND BENITO MUNION, DEFENDANTS AND APPELLANTS.**

*G.R. No. L-13372. May 20, 1960*

Ponente: MONTEMAYOR, J.

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### **MONTEMAYOR, J.:**

Dionisio Sabuero and Benito Munion are appealing: the decision of the Court of First Instance of Agusan, finding them guilty of the crime of robbery with homicide and sentencing each of them to reclusion perpetua and to indemnify jointly and severally the heirs of the deceased, Bong Chit Chua, in the amount of P6,000.00, and P1,715.00, the latter amount representing the value of the articles and cash taken, subject of the robbery.

Appellants do not question the commission of the robbery with homicide on September 2, 1956 in the house of the deceased, Bong Chit Chua at Cabayawa, Tubay, Agusan. They contend, however, that they did not participate in the commission of said crime.

According to the evidence, the following facts have been fully established. The deceased, Bong Chit Chua, was in the month of February, 1956, residing with his family in Cabayawa, Tubay, Agusan. He kept a store and at the same time engaged in the purchase of copra. On February 2, 1956, a little after midnight, while Patrocinia Plaza and her deceased husband Bong Chit Chua were sleeping with their two minor children under a mosquito net in their living room, and their two older daughters, Consuelo and Edita, were sleeping in another room, she, Patrocinia, was awakened when someone raised and detached their mosquito net. She saw appellants Dionisio Sabuero and Benito Munion with three companions in the room. Sabuero was wearing a red jacket while Munion wore a green jacket. Awakened, Bong Chit Chua was about to stand, but Sabuero shot him and he fell down. He tried to crawl to the other room where the two older daughters were, but Sabuero shot him a second time, causing with both shots mortal wounds which caused his death almost immediately. Patrocinia tried to approach her husband and help him, but she was kicked by Munion. In the meantime, the eldest daughter, Consuelo, awakened by the first shot, hurried to where her parents were, and arrived just in time to see Sabuero shoot her father the second time. Patrocinia, Consuelo, and Edita were then hogtied and were asked by the two appellants where they kept their money. At first, Patrocinia refused to answer, but after being slapped and threatened with death by Sabuero, she pointed to the place where she kept their money and valuables. The two appellants and their three companions ransacked the house for about an hour, after which they left, taking with them P550.00 in cash, and watches and jewelry valued at P11, 165.00. After the robbers were gone, Patrocinia cried out for help. One Fermin Sablas responded to the call and he later sent for their neighbors, and the authorities were duly notified.

The police authorities came to investigate the incident. Patrocinia and her two daughters overwhelmed with grief, failed or refused to answer questions, especially those pertaining to the identity of the robbers, and their reasons given later was that the relatives of Sabuero and Munion were among the persons present at the investigation. However, when the Philippine Constabulary came to investigate, and after they were assured protection and that

the whole family would be evacuated from Cabayawa, Patrocinia revealed the names of the appellants Sabuero and Munion, as among those who committed the crime. Patrocinia and Consuelo were positive in identifying Sabuero and Munion despite the fact that they wore black masks or pieces of cloth over their faces, because the two were well known to them and also because the masks did not fully cover their faces. To show that the two appellants were well known to the family of Bong Chit Chua and also to give an idea of their desperate character, Patrocinia said that sometimes, the two would knock at their house and store even at midnight, asking to be served soft drinks and when Bong Chit refused to comply because of the late hour, they used to curse and insult him; and on another occasion, Munion came to buy cigarettes at the store, but inasmuch as at the time, Bong Chit had stopped selling cigarettes, just to please him, he gave Munion his own cigarettes. After smoking the same, Munion insisted in having some more and when Bong Chit failed to comply, he assaulted him. Bong Chit apparently made a complaint with the authorities, but the case was settled amicably when Munion's father sold his carabao and with the proceeds of the sale, paid Munion's unpaid account with the deceased.

Patrocinia and her daughter Consuelo also told the trial court that they had no difficulty in identifying the two appellants because of their voices when they spoke that night of the robbery, specially when after shooting Bong Chit Chua, Sabuero instructed his companions to "find out if he is already dead or living". Patrocinia and Consuelo also could identify the two appellants by their stature, their appearance from the back and the side, as well as their movements during that night of the robbery. In the course of the investigation of the case, by the police, the latter recovered from defendant Munion a green jacket, later identified to be the same jacket worn by him on the night of the robbery.

The two defendants put up the defense of alibi, claiming that they were in two different places, miles away from the scene of the robbery on the date and hour of the crime, and they presented evidence to corroborate their claim. The trial court was not impressed by their defense of alibi; neither are we. They were positively identified by the widow and the daughter of the deceased. Moreover, to show that they were not far from the scene of the crime on February 2, 1956, a policeman, Rubillos, of the municipality of Cabadbaran of which the barrio of Cabayawa used to be a part, saw Sabuero in front of the public market of Cabadbaran at 10:00 a.m. on February 2, 1956, drinking a mixture of Coca-Cola and Siu Hoc Tong with a companion at a store; and the Chief of Police Dagami also saw Munion at 3:00 p.m. of the same date at the balcony of the cockpit in Cabadbaran, which fact the Chief of Police recorded in his diary.

The trial court, presided by Judge Montano A. Ortiz, in its decision disposes of the defense of alibi of the two appellants, thus:

"It is admitted that Dionisio Sabuero was in Cabadbaran from January 29 to 31, 1956, presumably to attend the fiesta of that town on February 2, 1956. Notwithstanding the annotations in the daily time records and payrolls (Exhs. 7, 9 and 9-A), the Court believes that he was not working in Sibagat on February 1 and 2, 1956. It was unnatural for him to leave the fiesta of his native town. The payroll is not free from suspicion. It was probably manipulated to suit Sabuero's defense of alibi. But, even admitting that Dionisio Sabuero was working in Sibagat on February 1, 1956, the payroll shows that he was already off from his work at 4:00 P.M. of that day. The Court takes judicial notice that the distance from Sibagat, Esperanza to Cabayawa, Tubay, is 47 kilometers, more or less. These two sitios are connected by good roads, over which trucks, jeeps and automobile pass many times daily, back and forth. Although, it is true that in February, 1956, there was still a portion of approximately 5 kilometers of the road on the Sibagat side which was not open to traffic and had to be hiked, this distance could easily be negotiated by a fast walker in less than an hour, so that it is safe to state that in 2 ½ to 3 hours, Cabayawa could be reached from Sibagat and vice versa. The time would even be shorter if one uses or hires a private car and is in a hurry of reaching the place of destination. It was therefore, possible for Dionisio Sabuero to leave Sibagat at 4:00 P.M. on February 1, 1956 and reach Cabayawa at 7:00 P.M. of that day a few hours before the commission of the robbery, and then return after the robbery to Sibagat at dawn

of February 2, 1955 in order to arrive there at 8:00 A.M. on time for his work in the Poblete Construction Co.

"This is also true with respect to the alibi of Benito Munion. This accused testified that he left Cabadbaran on January 31, 1956 for Limigos, Misamis Oriental, arriving in the latter place in the morning of February 1, 1956. Being a native of Cabadbaran, it was also quite unusual for him to leave one day before the town fiesta. But, granting that he was in Linugos on February 1 and 2, 1956, and he said he did not work on these days, this does not preclude the possibility of his being at Cabayawa at 30 minutes past midnight, on February 2, 1956, if it is considered that the distance from Linugos to Cabayawa is only 82 kilometers more or less. These two places are connected by a national highway which is a first class road, and it was easy for the accused, especially if he has his own car, to be in Cabayawa at 12:30 A.M. on February 2, 1956 and later in Linugos at 8:00 A.M. of the same day.

There is, therefore, no doubt in our opinion as to the guilt of the two appellants for the crime of robbery with homicide. The trial court found in the commission of the crime only the aggravating circumstances of disguise and dwelling, which it considered to have been compensated with the mitigating circumstances of lack of instruction or education, as well as the mitigating circumstance of "rare and unusual behaviour of the accused of not abusing the widow and young daughters of the deceased or of not inflicting bodily harm to them and to the small children who were present during the commission of the crime". We agree with the Solicitor General that this alleged unusual behaviour of the appellants is not among the mitigating circumstances enumerated in the Revised Penal Code; also, that lack of instruction cannot be or may not be invoked in crimes against property, such as robbery. We, therefore, have the uncompensated aggravating circumstances of dwelling, nighttime, abuse of superior strength, and craft or disguise. For this, defendants-appellants should ordinarily be sentenced to the extreme penalty of death. However, for lack of the requisite number of votes to impose this penalty, the sentence of reclusion perpetua imposed by the trial court is affirmed.

In view of the foregoing, the appealed decision is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera and Gutierrez David JJ., concur.

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