

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALFONSO HAMIANA, SILVINO JABIN, CEFBRINO DE LA CRUZ,
NORBERTO DE LA CRUZ, EMILIANO DE LA CRUZ, CEFERINO
PARCON AND ANA...**

G. R. Nos. L-3491 to L-4493. May 30, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from a judgment in three cases of the Court of First Instance of Negros Occidental interposed by Alfonso Hamiana, Silvino Jabin, Ceferino de la Cruz, Norberto de la Cruz, Emiliano de la Cruz, Ceferino Parcon and Anastacio Blancada. In criminal case No. 1253, the appellants were found guilty of robbery in band and were each sentenced to an indeterminate penalty of from 4 years and 2 months of prison correccional to 10 years of prison mayor, to indemnify the offended party Vicente Piadoche in the sum of P12.50, without subsidiary imprisonment. In criminal case No. 1255, the appellants were found guilty of robbery in band and were each sentenced to an indeterminate penalty of from 4 years and 2 months of prison correccional to 10 years of prison mayor, to indemnify the offended parties, Fortunata Nobleza and Porfirio Lorenzo, respectively in the sums of P65 and P12, without subsidiary imprisonment. In criminal case No. 1257, the appellants, except Anastacio Blancada, were found guilty of robbery in band and were each sentenced to an indeterminate penalty of from 4 years and 2 months of prison correccional to 10 years of prison mayor. Appellant Anastacio Blancada was found guilty of robbery in band with rape and sentenced to an indeterminate penalty of from 10 years and 1 day of prison mayor to 17 years, 4 months and 1 day reclusion temporal, with legal accessories. The appellants were sentenced to indemnify the offended party Rosita Colantro in the sum of P35, without subsidiary imprisonment. The appellants were sentenced to pay the costs in the three cases. The appealed judgment also provides that the sentences are to be served one after the other.

We have examined the record and found appellants' conviction to be supported by the facts. In criminal case No. 1253, it appears that at about one o'clock in the morning of April 1, 1947, Vicente Piadoche was awakened by a noise while he was sleeping in his house in Hacienda Sta. Rita, Bago, Negros Occidental. Upon opening the door as ordered, Vicente Piadoche recognized appellants Ceferino Parcon and Norberto de la Cruz. Their companions were appellants Alfonso Hamiana, Silvino Jabin, Anastacio Blancada, Ceferino de la Cruz and Emiliano de la Cruz. Alfonso Hamiana and Silvino Jabin each carried a bolo while Ceferino Parcon and Anastacio Blancada were both armed with a rifle. Ceferino Parcon, Norberto de la Cruz, Silvino Jabin and Alfonso Hamiana entered the house and, while Ceferino Parcon trained his rifle at the wife of Vicente Piadoche, Norberto de la Cruz took nine gantas of palay (valued at P4.50) from a receptacle near the kitchen. Ceferino de la Cruz and Emiliano de la Cruz remained below and took hold of the chickens worth P8.

In criminal case No. 1255, the evidence for the prosecution tends to show that at about two o'clock of the same morning of April 1, 1947, the appellants proceeded to the house of Fortunata Nobleza in the same vicinity. A member of the gang ordered Fortunata Nobleza to open the door, but before doing so she hid her oldest daughter.

Alfonso Hamiana, armed with a rifle, and Silvino Jabin and Emiliano de la Cruz, armed with bolos, asked Fortunata Nobleza to give them palay. Appellants actually seized three cavanese of seedlings. Norberto de la Cruz climbed the roof of the house and took away ten chickens, which he gave to Ceferino Parcon, also armed, while the others watched.

No sooner had they accomplished this criminal mission than they proceeded to the house of Porfirio Lorenzo in the same hacienda. The latter, awakened by the barking of his dog, saw from his window the appellants, six of whom approached him. Ceferino Parcon inquired about the name of the hacienda overseer and, aiming his gun at Porfirio Lorenzo, demanded palay and chickens. The appellants were able to get palay worth P4.50, two chickens worth P4, and cassava worth P8. While said articles were being seized, Porfirio Lorenzo was guarded by Anastacio Blancada with a gun.

In criminal case No. 1257, it appears that at about ten o'clock in the evening of April 9, 1947, Rosita Colantro, residing at the crossing of Atipulan, Bago, Negros Occidental, heard one of the appellants call for "uncle, uncle". Rosita Colantro did not make any reply, whereupon the appellants hammered at the walls of her house which caused Rosita Colantro to ask what they wanted. The appellants ordered her to light her lamp and not to move. Rosita Colantro saw rifles aimed at her, her house being low. The appellants asked palay, and Rosita Colantro answered that she had a few seedlings. Rosita Colantro was then ordered to go down. With lamp in one hand and her small child in the other, Rosita Colantro met Alfonso Hamiana (her neighbor) with a bolo, Emiliano de la Cruz and Ceferino de la Cruz, armed with rifles, and Silvino Jabin, armed with a bolo. Undaunted by the presence of appellants, she attempted to flee but was caught in the arm by Anastacio Blancada. The latter ordered Rosita Colantro, at the point of his gun, to put her child down. She was taken by Anastacio Blancada to a place away from the house and, throwing her down, Anastacio Blancada, also at the point of his gun, raped her. After Anastacio Blancada had raped Rosita Colantro, the latter proceeded to the house of Federico Nava wherein she stayed during the night. Accompanied by Federico Nava, Rosita Colantro returned to her house the next morning where she found that the appellants carried away her palay worth P35.

The foregoing facts have been established by the testimony of the victims of the robberies committed by the appellants, and there can be no doubt about appellants' identities since their victims were positive in recognizing them. Rosita Colantro, especially, knew appellant Alfonso Hamiana well because he was her neighbor, and appellant Anastacio Blancada by face even before the commission of the crime because he worked near the house of Rosita Colantro. Furthermore, the appellants have not attributed to the witnesses for the prosecution any motive that could have prompted them to make false imputations.

The defense of alibi set up by the appellants cannot prevail over the positive testimony of their victims. Appellant Silvino Jabin claimed that on the night of March 31, 1947, and on the night of April 9, 1947, he was in Dapdap, Silay, Negros Occidental, in the house of his employer, Eufrocino Iligan; that he left said place only on April 11, when he visited his wife in Hacienda Dulao, Bago, Negros Occidental, wherein he was arrested. Eufrocino Iligan testified that appellant Silvino Jabin never left his house at night, contrary to appellant's admission that he used to go out. Eufrocino Iligan could not be certain whether the appellant slept on the nights in question, because Eufrocino Iligan slept regularly from eight in the evening to five o'clock in the morning, and the appellant slept in a room separate from that of Eufrocino Iligan.

Appellant Ceferino Parcon claimed that he was in Hacienda Vista Alegre, Silay, Negros Occidental, on April 1, 1947, from 1 to 3 o'clock in the morning and that he was in Dulao, Bago, Negros Occidental, from April 8 to 11, 1947, on a visit to his sister Dionisia Parcon, wife of appellant Anastacio Blancada. It is significant, however, that while the father of appellant Ceferino Parcon alleged that the latter merely paid a visit to his sister Dionisia Parcon, the latter stated that appellant Ceferino Parcon was sent by his father to look for riceland. Dionisia Parcon

testified that she saw appellant Ceferino Parcon in her house before she slept at about eight o'clock in the evening of April 9, 1947, and at 4:30 o'clock the following morning when she woke up. It is obvious, however, that Dionisia Parcon could not know her brother's whereabouts during the interval when she was asleep.

Appellant Anastacio Blancada testified that he was at his house in Abuanan, in the land of Isidro Villarosa near Hacienda Sta. Rita, from the night of April 1, 1947, until the following morning, and that on the night of April 9, 1947, he was in Hacienda Vista Alegre in the house of his father-in-law upon request of Ceferino Parcon, to inform his father-in-law about a certain piece of riceland. This is, however, at war with the statement of the father of Ceferino Parcon that the latter was not asked to look for riceland. Moreover, his place of residence in Abuanan was only about two kilometers away from Hacienda Sta. Rita, and this therefore did not absolutely preclude his presence at the place of the robberies.

Appellants Norberto de la Cruz, Emiliano de la Cruz and Ceferino de la Cruz alleged that from the night of March 31, 1947, until the following morning, and on the night of April 9, 1947, they were in their house at Dulao, Bago, Negros Occidental, about three kilometers distant from Hacienda Sta. Rita. The relatively short distance between their house and the place of the crimes did not exclude the possibility of their presence and participation therein.

Appellant Alfonso Hamiana claimed that on April 1 and 9, 1947, he was at his house in Dulao, Bago, Negros Occidental. As his house was only five kilometers from Hacienda Sta. Rita, it was not impossible for him to be present at and participate in the robberies charged against him and his confederates.

The appellants presented on the witness stand Antonio Palmes, a prisoner in the provincial jail of Negros Occidental, who admitted that he, in company with the Bravo gang, committed the robberies in question. This admission is hardly believable. Antonio Palmes is a convict undergoing 38 years of confinement, with another pending case. It is easy to see how he must have been persuaded to admit the offenses charged against appellants, in view of the fact that, at most, the penalty to be imposed upon him would not exceed three times the sentence corresponding to the most severe of the penalties, which may not be more than forty years. In other words, even if he is convicted of the robberies herein involved, only two years will be added to his pending period of confinement for 88 years.

The defense points out the fact that Vicente Piadoche mentioned only six persons in his affidavit, whereas the appellants are seven. Vicente Piadoche explained, however, that while his statement was being taken, he mentioned seven persons. It is also alleged by counsel for appellants that there is a discrepancy between the testimony of Fortunata Nobleza and her affidavit, but this discrepancy is explained by Fortunata Nobleza who stated that she mentioned seven persons while her affidavit was being made. Appellants' counsel also calls attention to the variance between the testimony of Porfirio Lorenzo that seven persons robbed him, and his affidavit in which he declared that six persons came to his house. Porfirio Lorenzo testified, however, that six men immediately approached his window, while one of the gang, the seventh, did not come near.

The Solicitor General contends that in criminal case No. 1255, two separate offenses of robbery in band were charged; that the evidence shows that the house of Fortunata Nobleza was different and separate from that of Porfirio Lorenzo; and that the offenses were committed on different occasions. The appellants not having objected to the sufficiency of the information or to the evidence presented, it is recommended that they be convicted of two separate offenses of robbery in band. We are inclined to take the view favorable to the appellants. The appellants naturally would not have objected to the information which charged only one offense of robbery, or to the evidence presented which was not explicit in pointing out that the testimony of a certain witness was for one offense and the testimony of another witness was for another offense charged in one or more informations.

The Solicitor General also recommends that all the appellants be convicted in criminal case No. 1257 of the

complex crime of robbery in band with rape, because there is no showing that the rape committed by appellant Anastacio Blancada was prevented by the other appellants. The evidence shows, however, that appellant Anastacio Blancada caught Rosita Colantro while the latter was trying to get away and that the rape was committed in a place away from her house, in which the robbery was committed. There is no positive proof in the record that the other appellants were aware of, much less abated, the criminal act committed by appellant Anastacio Blancada against the person of Rosita Colantro.

We are with the Solicitor General in his contention that, in these three cases, the aggravating circumstances of nighttime and dwelling were present, without any mitigating circumstance to offset the same.

It being understood that the appellant Anaatacio Blancada is sentenced, in criminal case No. 1257, to reclusion perpetua, the judgment appealed from in the three cases herein is affirmed in all other respects, subject to the provisions of article 70 of the Revised Penal Code. So ordered with costs.

Feria, Pablo, Bengzm, Tuason, Montemayor and Jugo, JJ., concur.

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