

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ALEJANDRO BUMATAY, CASIMIRO OBILLO, CAMILO DINGLE, ALFREDO VALDEZ, MARCELO ORPIANO, MARCELINO OBAR AND SALVADOR MONTILLA ALIAS BADI...

G. R. No. L-16620. April 30, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by defendants Alejandro Bumatay, Camilo Dingle, Alfredo Valdez, Casimiro Obillo, Marcelo Orpiano, Marcelino Obar and Salvador Montilla alias Bading Chan, from a decision of the Court of First Instance of La Union convicting them of the crime of robbery in band with homicide and frustrated homicide, with which they are charged, and sentencing each of them to the death penalty and to jointly and severally indemnify Alfonso Chan Pinco and the heirs of the deceased Salvacion Ostrea in the sums of P5,000.00 and P6,000.00, respectively, as well as to pay the costs proportionately.

It is not disputed that late in the evening of July 15-16, 1958, a band of thieves, armed with firearms, broke into the bakery and "sari-sari" store of Alfonso Chan Pinco, in the municipality of Balaoan, La Union; that, as some of the malefactors were trying, after firing a Volley of shots, to force their way up to the second floor, where Chan Pinco, his family and members of his household had taken refuge, and the police department could not be contacted by telephone, because Chan Pinco's telephone line turned out to have been cut off, presumably by the malefactors, he opened the fire escape and jumped to the street; that, as Chan Pinco reached the ground, someone fired at him, hitting him on the left foot; that he, thereupon, rolled to the pavement, on the opposite side of the road, lay still and feigned that he was dead; that he then heard somebody remark "patay na, patay na" and noticed that there were three (3) persons—a boy and two (2) grown up men—posted near the door of his house; that when he deemed it safe to move away, he did so and hid under the house of one Mr. Libid, until about 4:30 a.m., when he asked the help of its dwellers, one of whom was a nurse who treated his foot; that, meanwhile, as one of the shots fired by the malefactors broke a window pane of the house across the street, which belonged to Salvacion Ostrea, the latter focused her flashlight at said window pane; that, at this juncture, one of the malefactors in the house of Chan Pinco fired his gun, hitting Salvacion Ostrea on the breast and perforating her lungs, thereby producing a hemorrhage that caused her death soon thereafter; that, after tying the hands of the persons found in the house of Chan Pinco, and compelling them to lie down on the floor face downward, the malefactors broke the safe and took and carried away the cash found therein and in other parts of the premises, as well as a rifle caliber .22, several watches and pieces of jewelry, 50 cartoons of cigarettes and 2 fountain pens, the aggregate value of all of which amounted to P4,500.00; and that the injured foot of Chan Pinco required medical treatment for over a month.

Relying upon information secured from the persons living in the houses of Salvacion Ostrea and Alfonso Chan Pinco, the Constabulary investigated, soon thereafter, one Norberto Paguirigan, a boy eleven (11) years of age, and appellant Marcelino Obar, who made the statements, Exhibits G, G-1, G-2 and H and H-1 to H-3 respectively,

and subscribed and swore to the truth thereof before the Justice of the Peace of San Fernando, La Union, in which statements Paguirigan and Obar admitted having assisted, in the perpetration of the crime above mentioned, appellants Alejandro Bumatay, Camilo Dingle, Alfredo Valdez, Casimiro Obillo, Marcelo Orpiano and Salvador Montilla, who were accordingly apprehended and charged, in the Court of First Instance of La Union, together with Paguirigan and Obar, with robbery in band with homicide and frustrated homicide. Upon arraignment, Paguirigan pleaded guilty, whereupon he was committed to the National Reformatory School, pursuant to Article 80 of the Revised Penal Code. The other defendants—including Obar, who retracted his aforementioned confession—entered a plea of not guilty, in view of which said court proceeded with the reception of evidence, and, in due course, subsequently, rendered the aforementioned decision. Hence, this appeal.

This case hinges on the identity of the persons who committed the offense charged, for each one of the appellants has set up an alibi. In this connection Leticia Bangaoil, a maid of Chan Pinco, testified that, as she screamed, when one of the culprits embraced and kissed her, in the evening of the occurrence, another malefactor focused his flashlight at them and she recognized Bumatay as the person holding her; that she freed herself from Bumatay by pushing him, whereupon Bumatay proceeded to the window in the living room, from whence he fired his gun at the house of Salvacion Ostrea; and that, when she (Leticia) rejoined the other members of the household of Chan Pinco, she noticed appellant Marcelino Obar near the refrigerator, as his face caught the light coming from Bumatay's flashlight.

Likewise, Bonifacio Valdez, the baker of Chan Pinco, declared that, while he, Mrs. Chan Pinco and other members of her household were huddled inside a room, in the second floor of the house, the malefactors pounded on the door of said room so violently and incessantly that the door began to break; that, to avoid further damage thereto, Mrs. Chan Pineo bade him to unlock it, whereupon three men, each armed with a gun and a flashlight, entered the room; that one of them was appellant Camilo Dingle, who hit him with his (Dingle's) gun on the left cheek, saying "Matigas ang ulo mo"; and that he had seen Dingle several times before in the store of Chan Pinco.

Virginia Bangaoil, an elder sister of Leticia Bangaoil and a sales girl of the Chan Pincos, stated, on the witness stand, that, among the malefactors who entered the room above referred to, when Bonifacio Valdez opened its door, she recognized appellants. Marcelino Obar and Casimiro Obillo, for Obar had placed his flashlight, which was switched on, on the floor, in order to open her trunk and read her diary, Exhibit 2, and Obillo tied her hands and those of the other members of the household, as well as snatched the earrings of Mrs. Chan Pinco.

Rogelio Untalan, another helper of the Chan Pincos, similarly recognized appellant Marcelo Orpiano among the malefactors who entered the store and house of the Chan Pincos and committed the crime charged.

Again, Miguel Ostrea, a brother of the deceased Salvacion Ostrea, and Francisca Laureaga, a sales girl in their store, identified appellants Salvador Montilla and Alfredo Valdez, as the members of the band who, together with a boy (Norberto Paguirigan), stood guard outside the house of the Chan Pincos, across the street, for Salvador Montilla and Miguel Ostrea were childhood acquaintances and Montilla, as well as Valdez, patronized said store of the Ostreas. This testimony was substantially corroborated by that of Alfonso Chan Pinco, whose description of the group posted at the door of his house fits appellants Montilla and Valdez, and the boy Norberto Paguirigan.

Upon the other hand, appellant Alejandro Bumatay claimed to have spent the whole evening of July 15, 1958, in his house, in the municipality of Luna, La Union, due to a wound he allegedly sustained, the day before, between the big and the second toes of the right foot, which was swollen and infected. By way of corroboration, he introduced, also, the testimony of: a) his wife; b) Felix Peralta, who said that he assisted Bumatay in the afternoon of July 15, 1958, in order that he could board a jeepney and go to a dispensary for medical treatment; c) Mariano Aragon, the municipal secretary of Luna, and d) Eugenio Nisco, a member of its police force, who would have us

believe that they saw Bumatay that afternoon, near the Town Hall of Luna, limping on account of his injured foot; and e) Mrs. Rosa O. Lopez, a public health nurse of Luna, who allegedly treated said injured foot in the aforementioned dispensary. Appellant Camilo Dingle declared that he never left his house at Nagsabaran Norte, Balaoan, in the evening of the occurrence, because said house was then leaking on account of the heavy rain and he had to transfer his sick child, Diosdado, from one place to another in the house, to prevent him from getting wet. His wife and Diosdado tried to corroborate him.

Appellant Salvador Montilla, alias Bading Chan, a former member of the armed forces, from which he was discharged in 1954, testified that he was engaged in the purchase and sale, of tobacco, jointly with his sister, Mrs. Soledad Ladia, of Rosario, La Union; that a birthday party was held in the latter's house on July 15, 1958, from 5:00 p.m. up to midnight; that, during all this time, he was in said house, with the guests; and that, after their departure, he went to bed and slept up to the following morning. Mrs. Ladia, her daughter, Carmencita, and Galicano Espiritu, Jr. and Victoriano Jaravata, Jr., who claimed to be among the guests in that party, testified, also, as Montilla's witnesses.

According to appellant Marcelino Obar, he had spent the whole evening of July 15, 1958, in the house of Juan Valdez in the barrio of Bulbula, Bulacan, where he slept, after working, during the day. time, in the rice field of said Juan Valdez, together with Juan Costales, Juan Raquedan and a third person, likewise, surnamed Valdez. Obar, likewise, introduced the testimony of Juan Valdez and his son, Zosimo.

The version of appellant Casimiro Obillo is that, not feeling well, after working in his rice field during the whole day, he lay in bed in his house, in the evening of July 15, 1958. At about 9:00 p.m., he noticed, however, that the dike near his rice seedlings was breaking due to the heavy rain. Accordingly, he called his neighbor, Tranquilino Ortiz, and his cousin, Demetrio Collado, and urged them to fix the dike. When Tranquilino finished repairing the dike adjoining his own rice seedlings, said appellant joined his brother Benjamin and Demetrio in fixing the dike protecting his (appellant's) own rice seedlings. Thereafter, Tranquilino, Demetrio, Benjamin and said appellant gathered beside a small fire appellant had built under his house, to keep themselves warm and observe the dike for a while. When Tranquilino, Demetrio and Benjamin departed, at about midnight, said appellant went up his house and slept till the next morning. Appellant's wife, as well as said Tranquilino and Demetrio, tried to bolster up his defense.

Appellant Marcelo Orpiano would have us believe that, while he was busy at work in the rice field of one Idong Rigpala, in the barrio of Cabuan Weste, Balaoan, on July 15, 1958, together with Bienvenido Ordon and Cecilio Vietori, they were served some "basi", in view of which he got drunk and felt weak; that between 3:00 and 4:00 p.m., he went home with the assistance of Victori, for he (Orpiano) could not walk by himself; and that, upon arrival at his house, he vomitted, then fell asleep, and did not wake up the whole evening. Orpiano's mother and Victori tried to corroborate him.

Appellant Alfredo Valdez, in turn, maintained that on July 15, 1958, he tilled a farm in the barrio of Guilong, municipality of Santol, La Union, and that at 9:00 p.m. he went to bed and stayed there until the next morning. His father Teodoro Valdez, their relative Jose Orate and a family friend, Damaso Toralba, likewise, took the witness stand, on his behalf.

Considering the nature of the evidence in this case, the issue therein, as regards the identity of the culprits, boils down to one of relative credibility of the testimony of the opposing witnesses. On the one hand, those of the prosecution identified appellants herein as the persons who, together with defendant Norberto Paguirigan, had committed the crime charged. The testimony of the witnesses for the prosecution is clear, positive, straight-forward and devoid of signs of artificiality. Moreover, they could not have committed an honest mistake

in identifying appellants herein as the culprits, for most of them were well known to said witnesses. What is more, it is not claimed or intimated that any one of them had a possible motive to falsely incriminate the appellants. It may not be amiss to note, also, that the testimony of said witnesses has been substantially corroborated by the affidavits of Norberto Paguirigan (Exhibits G, G—1 and G—2), who pleaded guilty to the charge, and Marcelino Obar (Exhibits H and H—1 to H—3)

Upon the other hand, the alibis set up by each one of the appellant—which are inherently weak, and cannot offset the direct and positive evidence regarding their presence at the scene of the crime and their participation therein—are further weakened by the following circumstances, namely:

- Most of the corroborating witnesses for the defense are members of the immediate family or close relations of the appellants herein.

- When appellant Bumatay took the witness stand on February 20, 1959, or a little over seven (7) months after the occurrence, His Honor, the Trial Judge, found in his (witness') right foot no scar, or even the slightest trace of a scar of the injury he allegedly sustained therein on July 14, 1958. In fact, Mrs. Lopez, who claimed to have treated said injury, the next day, admitted that Bumatay was "very strong then;" that his right foot was only "slightly swollen" at that time; and that its condition could not have prevented him from walking.

- The testimony of appellant Montilla was contradicted by that of his sister, Mrs. Ladia, on an important point. Contrary to his version, to the effect that he went to the Rosario FACOMA and bought 1,000 kilos of tobacco worth P300.00, in the morning of July 15, 1958, Mrs. Ladia asserted that he had not left her house or purchased any tobacco that morning. Inasmuch as they were allegedly engaged in the purchase of tobacco as a joint venture, it is inconceivable that he could have made the aforementioned deal without her knowledge. Hence, either the deal was a purely imaginary concoction of Montilla, to justify his presence in Rosario, La Union, in the evening of the occurrence, despite the fact, that he is a resident of Bangued, Abra, or Mrs. Ladia overdid herself, in her desire to show that her brother could not have committed the crime charged. In either case, his evidence is unreliable. Indeed, although Montilla claims to be innocent of said crime, he did not ask appellant Obar why he had implicated him (Montilla) in his affidavit Exhibits H and H—1 to H—3.

- Appellant Obar claimed that peace officers had, on July 27 and 28, 1958, boxed him on the abdomen and the mouth, the lips of which were, as a consequence, lacerated, as well as compelled him, at the point of a gun, to sign said statement, before they brought him to the Justice of the Peace of San Fernando, La Union, to swear to the truth thereof, and yet the latter testified that, when Obilla appeared before him on July 28, 1958, said appellant, not only confirmed the contents of the statement, and assured him that it had been made freely and voluntarily, but, also, showed no visible signs of violence upon his person. It is, also, significant that said statement was corroborated, by that of Norberto Paguirigan (Exhibits G, G—1 and G—2), who pleaded guilty to the charge.

- Obillo's witness, Demetrio Collado, affirmed that nobody had asked him to testify in this case and that he had not conferred with counsel for the defense before taking the witness stand, thus making his lack of veracity manifest.

- Appellant Marcelo Orpiano had, admittedly, been convicted of homicide in 1951 and paroled in 1955.

- Roberto Martinez, a barrio lieutenant who tried to vouch for the good character of Alfredo Valdez, likewise, appears to have been previously convicted of estafa by the Court of First Instance of La Union.

In short, upon a review of the records, we do not find sufficient grounds to disturb the conclusion of His Honor, the Trial Judge, who found the testimony of the witnesses for the defense unworthy of credence and, consistently with the established jurisprudence in this jurisdiction, gave more weight to the positive testimony of the witnesses for the prosecution, who had no possible motive to commit perjury. What is more, the latter appeared to be

apprehensive to testify in court for fear of acts of reprisal from the malefactors.

The crime committed and proven is robbery in band with homicide and frustrated homicide, with the aggravating circumstances of evident premeditation, nocturnity and dwelling; Hence, the maximum of the penalty prescribed for said offense—life imprisonment to death (Art. 294, No. 1, of the Revised Penal Code)—or the death penalty, was properly imposed by the lower court. Owing, however, to the absence of the number of votes necessary therefor, the penalty next lower in degree, or life imprisonment, must be meted out to appellants herein. Moreover, the amount of damages sustained by Alfonso Chan Pinco, according to the evidence of record, is P4,500.00, not P5,000.00 as found in the decision appealed from.

Wherefore, modified as to the penalty, which should be life imprisonment, and the indemnity to Alfonso Chan Pinco, which is hereby reduced to P4,500.00, said decision is, accordingly affirmed, in all other respects, with costs against the appellants. It is so ordered.

Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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