

THE UNITED STATES, PLAINTIFF AND APPELLEE VS. GREGORIO VILLORENTE, MAXIMO VILLORENTE, AND PATRICIO BISLIG, DEFENDANTS AND APPELLANTS.

G.R. No. 10228. March 06, 1915

Ponente: TRENT, J.

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TRENT, J.:

The defendants, Gregorio Villoriente, Maximo Villoriente, and Patricio Bistig, were tried, convicted, and sentenced by the Court of First Instance of the Province of Capiz to be hanged by the neck until dead, to indemnify Engracio Pineda in the sum of P2,000, to indemnify the heirs of Vicente Debina in the sum of P500, and to pay the costs of the cause, for the crime of robbery with homicide.

Engracio Pineda lived in the sitio of Agtongal, barrio of Rozal, municipality of Libacao, Capiz Province. His family consisted of his wife, Maria Gomez, and two daughters named Concepcion, 6 ½ years of age, and Purificacion, 1 year and 2 months old. He also had a servant boy named Vicente Debina, who was about 10 years old. His home was situated on the bank of a river in a level space. He had planted the land surrounding his house with hemp and coconuts. His nearest neighbor was not within reach of the human voice and the houses in the vicinity were widely scattered. He left his home on Friday, July 4, 1913, to go to Mamalampanay, and returned on the following Tuesday, July 8, at about 1 o'clock in the afternoon. The usual and easiest access to his home was by wading the river. As he left the river to go to his house, he noticed some clothes of his wife, used by her when attending church, lying on its bank and showing signs of having been rained on. Arriving at the house he saw blood on the ground underneath the house, and through a hole in the wall of the house he saw the severed arm of his wife. Ascending the stairs and pushing open the door, he saw the servant boy lying dead in the sala (parlor) with his neck half severed, and a wound extending from the shoulder to the abdomen, the intestines hanging out. In the adjoining room near the door he found his wife lying dead with some 32 wounds on her body, some of which had exposed a fetus 7 months old. At her feet lay his daughter Concepcion with her neck entirely severed, save for a small piece of skin. A step away lay his daughter Purificacion with her right leg cut off and a contusion on the neck. The bodies gave forth a putrid smell. He noticed three bloody footprints in the parlor, two on the floor and one on a petate (mat). A chest containing his wife's clothes, valued at P50, jewelry valued at P70, and money to the amount of P155, was spattered with blood, had been broken open, and the contents carried away. The fireplace, located in the parlor, had also been destroyed and P170 secreted therein was gone. Pineda immediately reported to the teniente (lieutenant) of the barrio, who issued a call to all the inhabitants of the barrio to come to his house. On the following day the justice of the peace held an investigation at the Pineda home, his report thereof substantiating the testimony of Pineda as to the wounds on the bodies. In response to the lieutenant's call, all the residents of the barrio reported to him except these three defendants. The lieutenant sent a man to Patricio Bislig, requesting him to come to the lieutenant's house, and immediately after his arrival there, on Sunday, July 13, he was arrested. On the same day, Constabulary soldiers arrested his two codefendants, Gregorio and Maximo Villoriente, father and son. Pineda testified that a few weeks prior to the commission of the crime he

had accused Patricio Bislig of stealing coconuts and that Patricio became very angry because of the accusation. He also testified that about a year previous to the date of the crime, the defendant Gregorio Villorente had stayed at his house one night while witness was absent and that during the night he had entered the room where witness' wife, the deceased, was sleeping, and made indecent proposals to her which she declined to accept, and that she had complained to the authorities. Witness identified the bloody footprints found by him in the parlor of his home as Patricio's. He stated that Patricio used to visit him often and that in coming up the river they had sometimes measured their footprints and that he knew Patricio's footprint because it was unusually large and the big toe of each foot was spread apart from the other toes.

Ana Villorente testified that she was the daughter of the defendant Gregorio Villorente, the sister of the defendant Maximo Villorente, and the niece of Patricio Bislig, the latter's sister having married witness' father. Prior to the murder she had lived with her father. On Sunday, July 6, Pineda's wife sent a servant to her asking that she come and stay that night at the Pineda home because Pineda was not there. Her father and brother were at home when the servant arrived and knew where she was going. She arrived at the Pineda home Sunday afternoon and stayed there that night. Sometime during the night and after she and Pineda's wife and children had gone to sleep, the three defendants came to the house and asked leave to enter, saying that they brought shrimps which they wished to exchange for palay. Maria told witness to lower the stairs, which she did, and the three defendants entered and exchanged their shrimps for palay. They then requested something to eat and Maria gave them some rice which they cooked in the fireplace and ate. While they were eating, witness and Maria Gomez and her children sat in the doorway of the room watching them. The two women were somewhat suspicious of Patricio as they knew he was angry because of having been accused of stealing Pineda's coconuts. Witness was also aware that her father was displeased with Maria because she had not acceded to his desires. After the defendants had eaten, Maria Gomez requested them to leave, saying that it was time to retire and that it was not proper for them to stay there inasmuch as her husband was absent. The defendants thereupon entreated her to let them stay until the moon rose and asked for a mat that they might sleep in the parlor. Persuaded by their entreaties and protestations of friendship, Maria gave them a mat and the men lay down in the parlor, while the two women and the two children retired to the room. The servant boy slept by the fireplace in the parlor. Witness was awakened by the heavy tread of Patricio, whom she saw standing in the doorway of the room with a drawn bolo in his right hand and a small kerosene lamp or torch in the other, which latter belonged to the Pineda family. Witness attempted to seize the bolo and received a cut on the thumb in the attempt. (Witness showed scar.) She asked him what he wanted and Patricio replied that she had better get out if she wanted to live. Upon receiving this reply witness aroused Maria Gomez, who, seeing the threatening attitude of Patricio, began to plead for her life, telling him that if he wanted rice he could have the sack of rice which was in the house. To this Patricio replied that he did not care for rice as he could get all he wanted in Mamalampanay. Maria then offered him the money contained in the chest and under the fireplace, and to this he replied that he could get all the money he wanted by gambling. He told her to be silent as the hour had come when she must pay for her fault. He then set the torch down in the doorway of the room, and grasped Maria by the arm and wounded her. When the witness saw this, she seized the child Purificacion and started to leave the parlor. Patricio followed her out and took the child away from her. During the struggle for the child witness received a wound on the right leg. (Witness showed scar 5 centimeters long.) After taking the child away from her, Patricio pushed her and she fell out of the door on to the ground. She immediately got up and made her escape. In coming out of the cuarto (room) into the parlor witness saw her father enter the room with a drawn bolo, and saw her brother Maximo wound the servant boy with his bolo. Just as Patricio took the infant child away from her, her brother Maximo told witness to make her escape if she could do so. On leaving the house she went directly to her sister's house in Naroan, where she has since lived. She told her sister about the crime and who were the authors and told her brother-in-law to explain to the authorities that she was unable to appear before them because her feet were sore and to tell them who had committed the crime. Her brother-in-law met the

Constabulary on Tuesday, July 8. On a Tuesday after she had arrived at her sister's house and while she was in the river washing her wounds, she saw the three defendants on the other side of the river. She asked her brother where they were going and he replied that they were going to Panay. They were carrying a bundle. Prior to the crime she lived with her father, but since that time she had been displeased with them because they did not heed her counsel on the night of the crime.

Tito Andac testified that he knew all the accused because they live in the same barrio. Two days after the lieutenant had requested all the residents to come to his house the three defendants had not appeared and the lieutenant sent him on Friday, July 11, to observe their movements. He came up to Patricio's house after dark and through a crack in the wall could see all three of the defendants there. They were talking among themselves about the murder of the Pineda family and planning their escape. They had a bundle from which came the sound of money. The lieutenant sent to Patricio asking him to come in and Patricio came on Sunday, July 13, when he was arrested.

Epifanio Ricardo, a Constabulary soldier, testified that the defendants were all arrested on July 13. When Patricio was placed under arrest he told the Constabulary that the authors of the crime were his two codefendants. Pineda was present when he made this statement. Pineda also testified that he was present and heard Patricio make this statement. The witness Ricardo further testified that while he was conducting the defendants from the barrio to the poblacion of Libacao it was necessary to swim across a river, and that Patricio reached the other bank first and tried to escape. On seeing this, Gregorio told the witness that the author of the crime was Patricio. The evidence of the defense consists solely of the testimony of the three defendants themselves. They categorically denied all the testimony of Ana Villorente connecting them with the crime and claimed that they did not even know the Pineda family until after they had been arrested. They each denied ever having been in the sitio of Agtongal where the Pineda home was situated. This statement, of course, is contradicted by the testimony of the witnesses Pineda and Ricardo, who heard the counter-accusations of Patricio and Gregorio, and by the testimony of the witness Andac who heard them laying plans for their escape on the night of July 11. Patricio claimed that he did not know Ana Villorente, although Maximo Villorente testified that he was a cousin and on friendly terms with the husband of this woman at the time she and her husband were living together. Maximo testified that he had known Patricio since their arrest, while Patricio states he had known Maximo and his father for about a year previous to the arrest. The defendant father and son testified that Ana Villorente had had a quarrel with her husband, who had accused her of illicit intercourse with his brother, and that Ana's father, the defendant Gregorio, had reprimanded her for her conduct, whereupon she had run away. Since that time her father stated that he did not know where she has lived. Patricio admits crossing a river on the way to Libacao, but denies that he tried to escape. Gregorio and his son Maximo testified that they did not live together, and that on the day of their arrest Gregorio was at home sick and that his son was there attending him.

From the above resume of the evidence, it will be seen that the defendants profess an entire ignorance not only of the commission of the crime, but of acquaintance with the unfortunate family. They produce nothing in the way of evidence to support these assertions save their own declarations to that effect. The trial judge who heard these witnesses testify and observed their demeanor on the witness stand, expressly states in his decision that he was convinced that they were not telling the truth.

The statements of Pineda, who identified the defendants as having been known by him for nine years; of Ana Villorente, bound to them in the closest relationship, who witnessed the commencement of their horrible crime; of Andac, who heard them talking about the murder and planning their escape; of Ricardo, who heard Patricio and Gregorio in turn accuse each other as the author of the crime; taken together, are too weighty to be overcome by the simple denials of the defendants that they did not know the Pineda family. If the counter-accusations of

Patricio and Gregorio cannot be received as evidence against each other to prove that they actually participated in the killing, such accusations do tend to show that they were testifying falsely in denying all knowledge of the Pineda family. The testimony of the eyewitness, Ana Villorente, is corroborated with regard to the grievances of Patricio and Gregorio by Pineda. The same witness corroborates her testimony to the point that he was absent from his home on the day the crime was committed; and that the family valuables were secreted in the chest and under the fireplace. The witness Andac corroborates her testimony that the three accused were guilty of the crime by his testimony as to the conversation between the three accused which he overheard on the night of Friday, July 11. Pineda and Andac agree that these three defendants were the only ones who did not report to the lieutenant when the latter issued a call to the residents of the barrio to come to his house to discuss the crime. The testimony of the witnesses for the prosecution, and particularly that of the eyewitness, Ana Villorente, we find to have been given in a straightforward manner, without attempt at evasion and without material inconsistencies.

As above indicated, the testimony shows that Pineda had accused Patricio Bislig of stealing coconuts about three weeks previous to the murder; that about a year prior to that time Gregorio Villorente had stopped at Pineda's house on a night when Pineda was absent; that during that night he entered the room where Pineda's wife was sleeping; that he made improper proposals to her, which she declined to accept; that she complained to the authorities on account of these indecent proposals; and that Patricio on the night of the murder declined to accept rice and money, stating that he could get rice in another place and could get all the money he needed by gambling. This testimony tends to show that the motive on the part of Patricio and Gregorio in murdering the Pineda family was revenge. The record fails to disclose any motive for vengeance on the part of Maximo. The crime of robbery, under article 502 of the Penal Code, is committed by any person who, with intent to gain, shall take any personal property by the use of violence or intimidation against any person or force upon any thing. Article 503 graduates the punishment for the crime of robbery when committed with violence or intimidation against the person by taking into consideration the injuries of the person attacked during the commission of the crime, and the penalty imposed depends upon the seriousness of those injuries. The crime is that of robbery, but the punishment is increased by reason of the manner in which it is committed. When a person is charged with robbery, accompanied by violence against persons, it is as essential to prove an intent to rob as it is in the crime of robbery with force upon things. The fact that the injuries inflicted upon persons in the commission of the crime might be punished under other articles of the Code, such as those providing for parricide, murder, homicide, lesiones, etc., is no more reason for convicting the defendant of the crime of robbery, without proof of an intent to rob, than would be his conviction, when charged with robbery by use of force upon things, of arson, malicious mischief, or other crimes against property, because he had burned a house, broken open a door, or otherwise injured property. When a person is charged with robbery, the intent to rob must be proven. It therefore follows that if the defendants in the case under consideration did not intend to commit robbery they cannot be convicted of the crime charged—robbery with homicide. While it is true that Patricio and Gregorio sought to wreak vengeance upon the wife of Pineda, this fact does not necessarily exclude the hypothesis that they also intended, when they went to Pineda's house on that night, to rob the family. The fact that they did rob this family on that night after they had killed the wife, two daughters, and a servant, shows that their object was not only vengeance but also robbery. They had no grievance against the servant Vicente, and the only object in killing the boy was to do away with him as a witness against them for the complex crime which they intended to and did commit. So, we think, upon the whole record, it clearly appears that the defendants' motive in destroying the Pineda family was that of robbery as well as vengeance.

In the commission of this crime there was present the aggravating circumstance of treachery for the reason that it has been shown that the three men, armed with bolos, suddenly attacked this unfortunate family at a time when they were helpless to defend themselves. The defendants knew that they could destroy this family without any risk

of personal injury to themselves. Treachery is further shown by the fact that they killed the helpless children. There was also present the aggravating circumstance of abuse of confidence. The defendants were temporary guests on that night. The deceased wife had been lulled into a sense of security by the soft spoken words of the defendants, so much so that she extended the food and shelter of her humble home and went to sleep, believing that the defendants were not intent upon harm. Other aggravating circumstances might be mentioned, but these are sufficient, in the absence of any mitigating circumstances, to justify the court in imposing the penalty in its maximum degree. There were no mitigating circumstances present arising from the material execution of the crime. In favor of Maximo Villorente, the fact that he was but 16 years of age requires the application of the penalty next lower than that prescribed by law for the offense.

The judgment of the court below sentencing Patricio Bislig and Gregorio Villorente to death is affirmed. The judgment as to Maximo Villorente is modified by substituting for the penalty of death that of seventeen years four months and one day of *cadena temporal*. In all other respects the judgment appealed from is affirmed, with costs against the appellants. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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