

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIA GUILLERMA PALISOC, SERVILIANO CARIÑO, AND VICENTE ADUAN, DEFENDANTS AND APPELLANTS.

G.R. No. 11696. March 15, 1917

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Pangasinan condemning the defendants, Serviliano Carino and Vicente Aduan, to twelve years and one day of cadena temporal and Maria Guillerma Palisoc to twelve years and one day of reclusion temporal, to jointly and severally indemnify Librada Villarin in the sum of P4,000, to suffer the accessory penalties provided by law, and to the payment of the costs of the cause for the crime of robbery.

The defendants were tried separately. The testimony in the first case was, by agreement, introduced in the second and third. The trial court disposed of the three cases in one opinion. The defendants have filed three briefs and the Attorney-General one. We will consider the three cases together. The assignments of error in each case relate almost exclusively to questions of fact. The decision of the trial court, in so far as these questions are concerned, reads as follows:

"The facts may be condensed in the following statement: On the morning of September 2, 1914, Catalina Salvador, a girl of 15 or 16 years of age and servant of Librada Villarin, was called by the accused herein (Maria G. Palisoc). This latter asked her about the money belonging to her mistress, asked where she kept it, and finished by offering her the sum of P100 if she would leave open one of the windows of her mistress' house so that some thieves might enter therein. The girl accepted the proposition and the defendant pointed out to her the men who were to commit the crime. These were Serviliano Carino, who was standing by the window of the kitchen of her house, and Vicente Aduan, who was then chopping wood in front of the staircase. Both of these men were tenants of the accused. On the following day, September 3, 1914, about 4o'clock in the afternoon, Maria Guillerma Palisoc went to Dimas Olpindo's house and asked the latter to loan her a ladder, which he had in the house. The said ladder was secured that same evening, at about the time of vespers, by Tomas Literato, another tenant of the accused, and by Serviliano Cariño. At about 12 o'clock at night of the 3d of September, Serviliano Carino and Vicente Aduan climbed into the house of Librada Villarin. The servant, Catalina Salvador, went to meet them with a light. Carino waited on the ladder and Vicente Aduan, armed with a bolo, passed within. He went to Librada Villarin's room and picked up a trunk belonging to her, which trunk contained more than P4,000 in money and more than P3,000 in jewels. Both thieves then carried it out by the ladder, but it fell to the ground and the noise awoke the old lady, Librada Villarin's mother, who was sleeping in the house, and the theft was thus discovered. A little girl, Corazon, Librada's daughter, related the occurrence to her mother, whom she found at the convent playing burro (a game of cards) and who had been there since 11 o'clock of the previous morning. The latter then went to the presidencia to give information and from there she went to the house of her relative and neighbor, Juan Moran, husband of the accused, to seek protection. According to the victim, she bade Moran to fire his revolver in the air in order to intimidate the thieves, but Moran paid no attention to her. Search was commenced and at about 8 o'clock on the morning of

September 4, 1914, the trunk was found on a lot belonging to the accused. The trunk, with its exterior covering, was found in a well, covered with leaves and trunks of banana plants, and a tray, with compartments, was found in another well near the water-closet of a house occupied by Rufino Cariño. From these wells jewels, money, and clothing were recovered to the amount of P3,000.

"These are the facts. Juliana Villanueva, a neighbor of Librada Villarin, across the street, declared that in the early morning of the day in question she saw the accused sally from her door, together with Tomas Literato, Serviliano Cariño, and Vicente Aduan, the last two of whom carried a trunk between them by means of a pole. Fernando Manauis testified that about 4 o'clock of that morning he also saw the accused, with her skirts gathered up, and wearing a cloak. Marta Villegas also testified that very early on the morning of the 4th of September, 1914, she saw the accused going in the direction of her lot. And lastly, Benito Bulusan, a municipal prisoner, who the previous evening about twilight met Literato and Carino carrying the ladder, testified that early on the morning of the day in question he was visited by the accused, who asked him not to speak of what he had seen, either to his father or to his mother. By stipulation it was agreed between the parties that one Costes would testify that Exhibit O, that is to say the ladder, was recognized by Dimas Olpindo as being his, was taken from the house of Librada Villarin, that there it had been placed against one of the windows of the house, and that he took it to the presidencia.

"Even though we disregard the testimony of Juliana Villanueva, Fernando Manauis, and Marta Vinegas, the testimony of the servant, Catalina Salvador, is corroborated by that of Dimas Olpindo, Benito Bulusan, and also by circumstantial evidence. These witnesses have no interest whatever in injuring any of the accused. Dimas Olpindo, an old man 67 years of age, positively declared that Maria Guillerma Palisoc asked him for the ladder; that later Tomas Literato and Serviliano Carino took it away in her name. Benito Bulusan met these two carrying the ladder in question. On the following morning the said ladder was found propped against one of the windows of the house where the robbery was committed. On being taken thence and carried to the presidencia, it was afterwards perfectly recognized by its owner. On the morning in question the accused went to see Bulusan and asked him to say nothing of the affair to anyone. The trunk, together with the jewels, were found on land belonging to the accused and when the find was made Catalina Salvador, an accomplice, immediately pointed out the accused as being the principals of the crime. The accused were immediately arrested. Vicente Aduan, in his testimony, admitted that he was immediately pointed out by Catalina Salvador as being one of the thieves.

"It is true that there are some contradictions, but we believe that they are not such as to destroy the testimony of the witnesses. The various declarations of Catalina Salvador agree in all essential points. It was sought to prove that Catalina Salvador had first pointed out Alejandro Aletre (alias Andong Gobernador) as one of the principals of the crime, but this person declared in open court, as witness for the defense, that that was not true. It is also certain that Dimas Olpindo did not testify at the preliminary investigation that Tomas Literato and Serviliano Cariño took the ladder away by order of the accused. But it is necessary to take into account that that investigation was directed exclusively against Serviliano Cariño and not against the accused. It has been sought to prove that Catalina Salvador and Dimas Olpindo gave other testimony contrary to that given by them at this trial and that they were instructed to testify in the manner in which they did, but we do not believe that we can put any faith in the testimony of the witnesses who made these statements. With regard to Benito Bulusan, the chief of the municipal police, and another policeman, they declared that that prisoner could not have left the jail; that the prisoners could not leave the jail except during working hours. Benito Bulusan and another person, who was a fellow-prisoner, positively and categorically affirmed that they left the jail and ate in their own houses. It was alleged that the maintenance of the prisoners was in the hands of contractors, but none of these contractors were put upon the stand.

"By the proofs we believe that the accused are guilty of the crime with which they are charged. We believe that their good reputation is no obstacle to the fact that they actually committed the crime."

We will now set forth briefly the substance of the testimony of the various witnesses.

Librada Villarin, widow, 29 years of age, testified that when the robbery occurred in her house she was in the convent, gambling; that she gambled frequently during the rainy season; that she bet as much as eight pesos at a time in playing burro; that on September 4, 1914, there were living in her house Florencio Salvador, one Francisco, Catalina Salvador, Mariano Franco, Tomasa Franco, herself, and her children; that the robbers took her trunk, which contained more than P4,000 in cash and jewelry worth more than P3,000; that early on the morning of September 4th, while she was gambling in the convent, she was notified by her little girl and the servant girl of the robbery; that on receiving this notice, she left the convent and went direct to the municipal building to inform the police; that after going to the municipal building, she went to the house of Juan Moran, the husband of Maria G. Palisoc, in order to get him to fire a shot, but Moran refused to do so; that she did not see Moran because he did not wish to come to the window; that she then talked with his wife, who was on the stairs; that she was not in the habit of depositing her money in the postal savings bank of her town, but when she sold effects for silver and could not change it for large bills, she deposited it in the postal savings bank; that she had at one time about P9,000 deposited in that bank; that about four months before the robbery she loaned one Ernesto Bautista a certain amount; that the amount was not as much as P850; that the amount loaned Ernesto was not P850, because she did not have that amount; that of the P4,000 which were in her trunk at the time of the robbery she acquired more than P2,000 during the lifetime of her husband; that she had possession of the P2,000 since the death of her husband in 1909; that about the year 1913 she borrowed P100 from Juan Moran for Pastor Sison because Sison was ashamed to borrow it; that she paid interest on this P100 at the rate of P2 per month; that her relations with Moran's family had always been good; and that it is true that when she bought a certain parcel of land a suit might then have been commenced between Moran's renter and one Caspellan.

Gregorio Torio, 30 years of age, single, a sergeant in the Constabulary, testified that on the morning of September 4, 1914, he was notified of the disturbances in Binalonan; that he went immediately to the house of Librada Villarin for the purpose of making an investigation, arriving there about 6 o'clock; that he then talked with Mariano Franco and other members of the household; that the trunk was found in a well near the house of Serviliano Carino; and that they found or recovered some of the contents of the trunk.

Catalina Salvador, a girl 15 years of age and servant of Librada Villarin, testified in the case against Serviliano Cariño substantially as follows:

"I was in the house of Librada Villarin during the night of September 3, 1914, when the robbery occurred. Serviliano Cariño and Vicente Aduan are the ones who committed the robbery. They entered the house through a window. I had already left the window open so they could enter. They reached the window by leaning a ladder up against the house. When one of them entered, I had a light so he could see how to get the trunk. The first time I ever knew Carino was on the 2d of September of that year. The first time I ever knew Vicente Aduan was on the same day. Aduan was then in front of the stairs of the house of Maria G. Palisoc cutting wood and Carino was in the kitchen of the same house looking out of a window. I was in the street talking with Maria, who was in a lot among the banana trees when she pointed out to me Carino and Aduan, saying to me, 'These are the persons for whom you must wait and meet them with a light, because they are the ones who are going to get the trunk.' On that morning I was coming from the market and on arriving in front of Maria's house, I saw her in the lot. She called me and said to me, 'Taling, you are not later to close the window which faces the west of your house, and I will give you P100.' I asked her why. 'Yes, you must not say anything. Do no more and I will give you P100.' And later she asked me, 'Where is the money of your mistress?' I replied that it was in a small iron box, which was in the trunk. She then asked me, 'In what place is the trunk?' I told her that it was in the room near where the drinking water of my mistress was kept. She said that she knew that. She told me then not to go to sleep on that night in order that the two men might have a light. I told her that I would open the window. On that night when I heard the two men coming, I opened the window. I was lying down, but not asleep. They made quite a lot of noise in opening the window. At that time my grandmother Asay and two small children were in the sala with me, but they were asleep, I got up when I heard the noise,

took a light and met them at the window. Aduan entered and followed me, and Cariño remained at the window. Aduan took the trunk and went toward the window. Before the robbery Maria was not my enemy, but she is now. Early that morning just after the robbery, many people came to the house of Librada Villarin. Among those, Sergeant Torio, but he did not ask me anything about the robbery until the trunk and jewelry were found. On that day I did not see in the house of Villarin, Governor Andong. I don't know this governor. I have not yet seen him. I did not point out this governor on that day as the person who committed the robbery. I told them that the robbers were Cariño and Aduan. From the day I had the conversation with Maria on the morning of the second, I told no one about such conversation until after the robbery occurred and the trunk and jewelry were found. I did not tell anyone about the conversation because Maria told me that if I did she would kill me. I did not go to the barrio of Laog with sergeant Torio, looking for one Darias. I do not know a man by that name; neither do I knew a person by the name of Inong in that barrio. (In the case against Maria G. Palisoc) I have had only two conversations with the defendant Maria in my lifetime. The first conversation was the one I had with her which I have just stated. The second conversation took place in the house of Librada Villarin on the morning of September 4th, shortly after the robbery occurred. This conversation took place on the azotea because I did not want to mingle with the people in the house. While I was on the azotea, the defendant Maria came out where I was and said, 'Taleng, that money that I promised you, when I have it prepared, I will give it to you and if you communicate with anyone, I will kill you.' "

Pedro Franco, another witness for the prosecution, testified that about 7 a. m, on the morning of September 4, 1914, he, being a sanitary inspector, left his house and went to the municipal building; that later he went to inspect some hogs by order of his chief; that he left the municipal building and, going through the plaza, being accompanied by a policeman, he met Maria G. Palisoc, who asked him where he was going; that he replied that he was going to a certain barrio to inspect it; that while inspecting the northern part of this barrio, called Santa Maria, he again met the defendant Maria; that later he and the policeman found the top of a trunk, together with various documents and a P5 bill; that the trunk-top and the jewelry belonged to Librada Villarin; that on that morning he saw the defendant Cariño about 3 meters from the well where he found the trunk-top and jewelry, together with the defendant Maria and an old man named Rufino Cariño, the owner of the land where the top of the trunk was found; that he did not talk with either of the defendants at that place and time; that about an hour transpired from the time he saw the defendant Maria in the plaza until he saw her in the lot where the trunk was found.

Dimas Olpindo, a resident of Binalonan, testified that the defendant Cariño and Tomas Literato came to his house, which is very near those of Librada Villarin and Maria G. Palisoc, to borrow his ladder, saying that they had come to get the ladder which the defendant Maria had asked for; that they took the ladder, but did not return it; that he did not see it again until the 15th of September, when he saw it in the municipal building, being called there by the Constabulary, who showed him his ladder; that the Exhibit O is his ladder which Carino borrowed and which he saw in the municipal building; that when Carino and Literato came to get the ladder, it was under his house; that he talked with the defendant Maria when she came to his house on September 3d to borrow his ladder; and that that was the only time his ladder was borrowed by Maria.

Mariano Franco, 57 years of age, an uncle of Librada Villarin, testified that on the morning of September 4, 1914, he was in the house of Librada Villarin; that he then saw the defendant Maria talking with Catalina Salvador on the azotea; that he heard a part of the conversation; that he heard Maria say to Catalina that she would give her the P100 after the trouble was over; that when he heard this part of the conversation he was then going out of the door dealing to the kitchen; that he was then living in the house of Librada Villarin; that when he heard that conversation he was about 3 brazas away; that the defendant Maria had her mouth very near the ear of Catalina; that Maria spoke in a very low voice; and that he told Sergeant Torio about this conversation on that same morning about 6 o'clock.

Juliana Villanueva testified that she was living very near the house of Librada Villarin; that about daylight on

September 4th, as she was going to the rice fields to take rice to her husband and children, she saw the defendant Maria leave her (the defendant's) door in company with three men, the defendant following behind; that the three men were Tomas Literato, Serviliano Cariño, and Vicente Aduan; that they went in a northern direction; that she followed behind him; that two of the men were carrying a trunk; that when she saw the defendant Maria and the men leave Maria's house it was about 4 o'clock in the morning; that the moon was then shining bright; that about a week later Sergeant Torio came to her house and asked her if she had seen anyone; that this was the first time that she had told anyone about seeing the defendant Maria and the men with the trunk, notwithstanding the fact that she knew of the robbery and that it was being investigated; that in October she went to the store of Tomelden, where she saw the defendant Maria, and had a conversation with her; that Maria told her then that if she would be a witness for her (Maria), she (Maria) would return to her (the witness) the land, but if she was going to be a witness for Librada, she (Maria) would not return the land; that she (the witness) replied that if Maria would return the land first, she (the witness) would be Maria's witness and say what she (Maria) wished. ("Yes, what I said to her was that if she would return the land to me first, then I would be her witness and say what she wished.")

Fernando Manauis testified that about 4 a. m. on the morning of September 4, 1914, while he was in the lower part of his house watching his goats, he saw the defendant Maria going in a northern direction wearing a black skirt, which she held up; that when he saw Maria just north of the plaza in Binalonan at that time he had just awakened; that Maria then had the appearance of a man, as she was wearing an overcoat (capote); that notwithstanding the fact that six months had elapsed, he was sure that the time he saw Maria was at 4 o'clock on the morning of September 4th; that he could not remember (at the time of the trial) of any extraordinary happenings in Binalonan in September, October or November; that he could not remember any other date except that one; that he could not remember the date he testified before the justice of the peace; that all that he could remember was that it was on September 4th, when he saw Maria pass; and that the first time he revealed this fact to anyone was in the court of the justice of the peace, when he was taken there by Sergeant Torio.

Marta Viniegas testified that on the morning of September 4th she was in her house, which is situated on the northern part of the plaza of Binalonan; that on awakening she arose, opened a window facing north and then saw the defendant Maria going in the direction of her lot; that she remembered that it was before daylight on the morning of September 4th, because a member of the Constabulary came to investigate the robbery, which took place in the house of Villarin; that Sergeant Torio came to her house three times, but she could not remember the dates; and that she told the sergeant about seeing the defendant Maria at that time. On being questioned with reference to the contents of Exhibit No. 3, which is an affidavit made by this witness on the 6th day of November, 1914, she testified that on account of being sick about the time when the affidavit was executed and on account of having received a summons from the justice of the peace of Lingayen, she went to Attorney Garcia to ask him if she could answer the summons without having to go to Lingayen; that shortly thereafter Juan Moran arrived; that an affidavit was then prepared; that she put her cross to it without knowing its contents; that she heard the contents of the affidavit, but that they had not put in the affidavit any of her statements; that they read the affidavit to her, but she did not understand Spanish; and that they translated it to her, but that they did not put therein all of her declarations.

Benito Bulusan testified that he knew Tomas Literato and Serviliano Carino; that on the 3d of September, 1914, he saw those two men carrying a ladder; that he remembered that when he saw the two men with the ladder, it was on the night of September 3d; that on that night he had gone to his house to eat and on returning to the municipal building, Literato and Carino came very near running into him with the ladder on account of it being about 8 or 9 o'clock at night and the night being dark; that he was then a prisoner in the municipal jail, but the policeman allowed him to go alone to his house to eat; that about daylight on the morning of September 4th, Maria came

secretly to the municipal building and said to him from the outside, "Come out here, I wish to talk with you;" that he went outside; that she then asked him if the police patrol had gone out; that on answering her in the negative and asking her why she came to the municipal building, she said, "Whom did you see last night?;" that he told her that he saw Literato and Cariño; that she then told him to say nothing about that and come to her house on the following day; that at that time Librada Villarín arrived at the municipal building, crying; that Maria said to him, "Librada may continue to cry, as her things have all disappeared ;" that on going out of the municipal building, when he was called by Maria, he had to pass through the door, but was not stopped by any of the policemen; that the only reason Maria came to the municipal building at that time was to talk with him about whom he had seen the night before; that that was the first time he had ever talked with Maria in his life; that he remembered that it was on September 4th, but he could not remember any other dates, such as when he was born or when he was married; that he told no one about Maria's coming to the municipal building and about the conversation until he just happened to meet Sergeant Torio in the street; and that the sergeant asked him, and he told him.

Ambrosio Bautista, the first witness for the defense, testified that he was in the house of Librada Villarín early on the morning of September 4th, just after the alarm had been given of the robbery; that a number of people were in the house at that time, among them being Nicolas Velarmino; that he heard a conversation between Villarín and Velarmino wherein Velarmino said to Villarín that it would be better to accuse Maria G. Palisoc, as Maria was rich and the value of everything lost could be recovered, and for the further reason that the trunk was found in Maria's lot; that Villarín answered, saying that it was better to do that because if they charged a poor person with the crime, such person could not pay for the things; that this conversation took place in the sala, there being present only Velarmino, Villarín, and himself, the others being in the kitchen investigating the servants and the other people having gone down out of the house.

Genoveva Cardona, after stating that she knew Nicolas Velarmino and the people who were living in the house of Librada Villarín, testified that she went to the house of Villarín on the morning after the robbery and while there she heard Velarmino say to Catalina Salvador that when they took her declaration, for her to say that Maria G. Palisoc told her to leave the window open so that the robbers could enter, and by saying it she (Catalina) could be revenged for the manner in which Maria had treated her; and that Villarín said to Catalina, "You accept what Nicolas has said, because in this manner we can collect for the robbery from Maria."

Teresa Moran, daughter of Juan Moran and Maria G. Palisoc, testified that she was in the house of Librada Villarín on the morning just after the robbery had been made known and while there she heard Sergeant Torio ask Catalina Salvador if Alejandro Aletre, who was present, was one of the robbers; that Catalina said yes; that Alejandro denied the charge that she (the witness) asked Catalina if she heard the robbers enter the house; that Catalina said no, because she was asleep; that when she (the witness) arrived in the house of Librada Villarín, Librada was crying; that she asked Librada how much she had lost; that Librada replied P15,000; that she then suggested to Librada to send a telegram to the Constabulary informing them of the robbery; that Librada then asked her to prepare the telegram, which she did; that Librada signed the telegram; that her mother Maria G. Palisoc, never left the house on the night of September 3d; that she was awakened by the call of Librada on the morning of the 4th; and that when she woke up her mother was asleep in the room.

Adela Moran, sister of Teresa, testified that about daylight on the morning of September 4th she was awakened by Librada Villarín calling her (the witness') father; that she, her sister, and mother went to the window and asked Librada what she wanted; that Librada answered that she had been robbed; that shortly she also went over to the house of Librada; that on arriving there she observed that Librada was reprimanding Catalina Salvador, saying that it was the duty of Catalina to close the windows; that she (the witness) then asked Catalina why she had not closed the windows; that Catalina replied that she was cold and was asleep; and that her mother never left the

house during the night of September 3d.

Filadelfo Perez, justice of the peace of Binalonan, testified that he went to the house of Librada on the morning of September 4th; that while there he heard Sergeant Torio ask Catalina Salvador if Alejandro Aletre alias Andong was one of the robbers; that Catalina said yes; that Alejandro spoke up and denied the charge, saying that Catalina was lying; that Alejandro was the person called Governor; and that Alejandro arrived at Librada's house that morning in charge of a Constabulary soldier.

Alejandro Aletre, merchant and resident of Binalonan, testified that on the morning of September 4th, Sergeant Torio passed by his house and asked him to take a walk; that they went to the house of Librada; that while there he heard Sergeant Torio talking with Catalina Salvador about the robbery; that they were talking in the Pangasinan dialect, which he could not understand; that it is true that he made the affidavit, Exhibit No. 2, wherein it appears that he swore that Catalina pointed him out on that morning as one of the robbers; that he did not know what the affidavit contained; and that he signed it on account of fear.

Antonio Bengson, attorney at law and resident of Binalonan, was then called and testified that the affidavit (Exhibit No. 2) was made before him by Alejandro Aletre; that he interpreted the contents of the Exhibit to Alejandro in the Pangasinan dialect; that Alejandro understands this dialect; that Alejandro understood the contents of the document; and that the Exhibit was made voluntarily by Alejandro. Attorney Manuel Moran was also called and testified that he had a conversation with Alejandro Aletre at the court house; that Alejandro asked him if the Court of First Instance would declare him guilty if he said that Catalina Salvador pointed him out as one of the robbers; that he (the witness) said no; that Alejandro then replied that it would be better to excuse him from testifying because he was afraid; and that he told Alejandro to go on and state the truth before the court.

Lorenzo Gorospe testified that he was taken to the house of Librada on the morning of September 4th by a member of the Constabulary; that when they were in Librada's house, they tried to make him say that he was one of the robbers. Arcadio Paet testified that he saw Sergeant Torio, Catalina Salvador, and Juan Moran in his barrio of Laoagon the afternoon of Friday (September 4th); that they called him and asked him if he knew Inong and Daris; that he answered no; and that they then said that they were looking for these two men because they were the ones who took the trunk of Librada Villarin. Mateo Marques testified that he saw on the morning of September 4th Catalina Salvador in his lot; that he asked her what she was doing there; that she replied that they were looking for the trunk of Librada which had been taken the night before; and that he had asked her who had taken the trunk and that she replied that she did not know because she was asleep.

Dionisio de los Santos, a municipal policeman of Binalonan, testified that he went with Pedro Franco to the barrio of Santa Maria on September 4, 1914, for the purpose of inspecting that barrio; that he found the top of a trunk on that day and in that barrio in the lot of Juan Moran; that when he found the trunk-top he fired two shots which caused a number of people to go where he was; that Pedro Franco was with him at the time; that the only person they saw in the place where the trunk-top was found was an old man (the father of Serviliano Cariño); that they did not see at that place either Serviliano Cariño or Maria G. Palisoc.

Joaquin Ramos testified that he and Dimas Olpindo are neighbors; that on the morning of a Friday he heard Dimas ask his (Dimas') wife where their ladder was or who had taken their ladder; and that Dimas' wife said that she did not know.

Julio Valmonte, chief of police of the municipality of Alava, Province of Pangasinan, testified that he was chief of police of the municipality of Binalonan, Province, of Pangasinan, during the month of September, 1914; that he made out, signed, and swore to Exhibit No. 4, wherein it appears that he collected from the Municipality of Binalonan T1 for food furnished Benito Bulusan, who was a prisoner in the municipal jail from the 1st to the 6th

of September, 1914; that he knows Bulusan; that Bulusan was a prisoner; that Bulusan entered the municipal jail in Binalonan on September 1st and was released on the 6th; that during this time Bulusan ate every meal in the municipal jail; that Bulusan never took any of his meals outside of the municipal jail because this was prohibited and because he (the witness) furnished the food and collected from the municipality; that Bulusan slept every night in the jail; that the prisoners were sent out at 7 o'clock in the morning to work and returned at 11 o'clock; that if they were sent out in the afternoon, they returned at 5 o'clock, when they were locked in the cell, where they were kept until the time to send them out to work on the following morning; and that from the 1st to the 6th of September Bulusan was never permitted to leave the jail alone.

Tomas Literato testified that he never knew Sergeant Torio until the sergeant sent a soldier after him; that while he was in the lower part of the house in Binalonan where the sergeant was staying, he heard the sergeant say to Dimas Olpindo, "When Tomas Literato arrives, say that he was one of the companions of Serviliano Cariño, who took your ladder;" and that Dimas replied, "Why, sir? From the first I told you that I lost the ladder and I did not know who took it."

Juan Moran, husband of Maria G. Palisoc, testified that his wife was at a reunion of some friends until 10 o'clock on the night of September 3d; that after she returned at that hour, she did not leave the house again until after 6 o'clock the following morning; that about 3 or 4 o'clock on the morning of September 4th, Librada Villarin came to the front of his house and called, "Uncle Momoy"; that she did not ask him to fire a revolver because the police with revolvers were there and for the further reason that a municipal ordinance prohibits the firing of revolvers at night; that it is true that the lot where it is claimed the trunk and other effects were found belongs to him; that this lot is about 500 meters from his house; that the public has access to the lot, that is, the people coming from the barrio of Tumayan generally pass through this lot on their way to the town; that the lot is situated in the barrio of Santa Maria; that his wife, during the rainy seasons, never uses a man's over-coat (capote) ; that the affidavit, Exhibit No. 3, was read to Marta Viniegas in the local dialect before she made her mark to it; that Marta thoroughly understood the contents of the affidavit; that at the time the affidavit was made he was the only notary public present in the town of Binalonan; that prior to September 4, 1914, he, as procurador, represented one Esquivel in a civil suit wherein Nicolas Velarmino was the plaintiff and Esquivel was the defendant; and that since that time Velarmino would not speak to him or his family.

Ernesto Bautista, a procurador judicial, testified that on a certain day after the robbery he was in the house of Librada Villarin; that while there he was present and heard a conversation between Sergeant Torio and the old man Dimas Olpindo; that the sergeant was examining the old man and after telling him to state the truth, asked the old man if it were not true that Maria G. Palisoc borrowed his ladder and that the old man answered no; that he (the witness) also asked the old man the same question and received the same reply; that during the time the case was pending a preliminary investigation in Lingayen, he was in the house of Librada Villarin at the time Sergeant Torio was asking Mariano Franco about the case; that Mariano stated to the sergeant that he (Mariano) would testify before the court that he heard Maria G. Palisoc tell Catalina Salvador to say nothing to anybody about the robbery and the P100 would be paid; that the sergeant replied, "How and what way"; that Franco then told the sergeant that he (Franco) would say that he was behind the door leading to the kitchen when he heard the conversation between the defendant Maria and Catalina Salvador; that the sergeant then said, "Let us see if this is creditable;" that then Catalina and the sergeant placed themselves in the door leading to the kitchen and Franco placed himself behind the shutter; that Catalina and the sergeant began to talk low and Franco could not hear them; that the sergeant then told Franco that it would be better for him to say that he was under the stairs when he heard the conversation between the defendant and Catalina; that Franco replied that that would not be creditable because the azotea was too high; that he was in the house of Librada on another occasion when he heard Sergeant Torio ask Librada what he could expect if the case was successful; that Librada replied that she would accept his

(Torio's) love and he could administer her property; and that the reason he was in the house of Librada on these various occasions was due to the fact that he was acting as stenographer for the court of the justice of the peace and he went there to see when the case would be again taken up. Jose Conde, deputy auditor for the Province of Pangasinan, on being called, presented Exhibit No. 4, which shows an account of the municipal treasurer of Binalonan for subsistence furnished prisoners during the month of September, 1914.

Anaclea Sison testified that on a certain occasion, while she was returning from the cockpit in Binalonan and on arriving in front of the house of Librada Villarin, Juliana Villanueva came out of Librada's house; that she and Juliana left the house together; that while they were going along the road Juliana said, "Poor Maria, because they are teaching a young girl to say that Maria had offered her (the young girl) P100;" that Juliana stated to her (the witness) that if the defendant Maria would return the land, she (Juliana) would be Maria's witness; and that this conversation occurred with Juliana after the robbery.

The three defendants, Maria G. Palisoc, Serviliano Cariño, and Vicente Aduan, testifying in their own behalf, denied all of the incriminating testimony presented by the prosecution against them and gave their whereabouts on the night of September 3d.

Tomas Roux, Antonio Sison, Rufo G. Cruz, Macario Favila, Perfecto Sison, Daniel Maramba, Fructuoso Cancino, Cenon Garcia, Jose Sison, and Rodrigo D. Perez, all permanent residents of the Province of Pangasinan and the most of whom had held various offices, testified regarding the good reputation of the defendant, Maria G. Palisoc.

The prosecution recalled a number of its witnesses in rebuttal, whose testimony had been contradicted by the witnesses for the defense. These witnesses, who were thus recalled, denied the acts, conversations, and statements attributed to them and maintained their original testimony. The prosecution also called other witnesses, whose testimony will be noted here. Augustin Ran Lasheras, now a farmer and resident of Binalonan, testified that the reputation of Maria G. Palisoc was bad; that he had heard that she is addicted to smoking opium; that she enters into contracts for the purchase of merchandise and then fails to pay for the same; and that this is the general opinion of the people in Binalonan. On cross-examination this witness stated that about five people had told him that the defendant smoked opium and that about ten people had told him that she entered into contracts without complying with them, but the witness could not give the name of a single one of these persons who had made such statements to him. On redirect examination this witness testified that as Maria was respected in the town of Binalonan, the persons who stated that she smoked opium and refused to pay her debts did so secretly. On being shown the letter marked Exhibit No. 6, the witness admitted that it was in his handwriting; that he had turned it over to counsel, but not to be used. Witness was then asked with reference to Exhibit No. 6 whether the letter was his or not. The court cautioned the witness that he did not have to answer the question if it incriminated him. The witness said that he could not conscientiously answer the question. He was then asked to write a few words, which he did, and this writing was marked Exhibit No. 7. Baldomero Alvear, resident of Binalonan, testified that the general reputation of Maria G. Palisoc in Binalonan is bad; that the predominating, general opinion in Binalonan was that the defendant Maria was suspected of being the author or the person who directed the robbery; that this general opinion is based upon her prior conduct: that he heard that she committed estafas; and that she bought certain amounts of tobacco and delayed in paying for the same. On cross-examination this witness admitted that he was imprisoned for some three months for hiding a will; that Juan Moran testified as a witness against him in that law case; that it was the general rumor from many people that the defendant Maria would not pay, or delayed in paying, for the tobacco which she bought, but he could not remember the name of a single one of the persons who made the complaints. Narciso Cariño (Marcelo) testified that he sold the defendant Maria at one time P25 worth of tobacco; that he went to her house at various times to collect this amount and she would always ask him to wait until she could harvest her palay; that she finally paid him P8 and that she had not yet paid

the remainder. On cross-examination witness stated that the tobacco was purchased during the latter part of May, 1913; that he had no receipt for the tobacco; that he had not sued the defendant Maria for the remainder of the P25; and that Pedro, the uncle of Librada Villarin, was present when the defendant Maria bought the tobacco. On redirect examination by the prosecution the witness stated that Anastacio Nacis was also present when Maria bought the tobacco. Honorata Loberos testified that she sold the defendant Maria a carabao for P100; that the carabao is now in the possession of Maria; that Maria has not paid her for the carabao; that this sale took place more than ten years ago; that she has no document evidencing the sale; that she has never sued for the amount on account of shame; that she said nothing to anyone about this sale except her uncle Francisco Loberos, who was present at the time the sale took place. Anastacio Nacis testified that he had a transaction with the defendant Maria about the sale of some tobacco; that he sold Maria P12 worth of tobacco, which she has not yet paid; that this sale took place about three years ago; that he has no receipt evidencing this sale; and that he did not sue Maria because the amount was too small.

Hipolito Bautista, another witness called in rebuttal by the prosecution, testified that he was a prisoner in the municipal jail in Binalonan from the 26th of August, 1914, until the 4th of September of that year; that during the time that he was thus confined, he always took his meals in the house of his sister-in-law; that he never saw Benito Bulusan eat in the municipal jail; and that no food was ever brought to the prisoners in the jail at that time.

The defense recalled Julio Valmonte, who again testified that the prisoners in the municipal jail always took their meals therein. The defense also called Severo Ancheta, another municipal policeman of Binalonan, who testified to the same effect.

In *U. S. vs. Baua* (27 Phil. Rep., 103, 106) this court said:

"It is well settled that we will not interfere with the judgment of the trial court in passing upon the credibility of the opposing witnesses unless there appears in the record some fact or circumstance of weight or influence which has been overlooked, or the significance of which has been misapprehended or misinterpreted. (*U. S. vs. Benitez*, 18 Phil. Rep., 513; *U. S. vs. Ambrosio*, 17 Phil. Rep., 295.) This rule necessarily presupposes that a trial court is not infallible in its conclusions drawn from facts and circumstances, or in its considerations, apprehension, or interpretation of them. It is equally well settled that this court will reverse upon the facts the decisions of trial courts if we find the facts are insufficient to warrant a confirmation. (*U. S. vs. Federizo*, 20 Phil. Rep., 151; *U. S. vs. Samonte*, 20 Phil. Rep., 157.)

"We have often said, and the law so states, that every defendant in a criminal prosecution is presumed to be innocent, and that this presumption stands until it is overcome by competent evidence. This presumption may be overcome and the guilt of an accused person may be established by the testimony of a single witness even though the witness be an accomplice. (*U. S. vs. Sy Quingco*, 16 Phil. Rep., 416; *U. S. vs. Ambrosio*, 17 Phil. Rep., 295; *U. S. vs. Callapag*, 21 Phil. Rep., 262.) But these decisions lay stress on the rule that such testimony must leave no room for reasonable doubt. The lack of corroboration of the testimony of an accomplice affects his credibility as a witness, but it does not affect his competency as such. If his testimony satisfies the court beyond a reasonable doubt, it is sufficient. (*U. S. vs. Callapag*, *supra*.)

"In the case of *United States vs. Ambrosio*, *supra*, this court said: It is unquestionably true that the testimony of an accomplice must be taken with great care and caution. It must be assayed and weighed with scrupulous care. The corroborating testimony must be strong and convincing. It is also true, however, that when the testimony of an accomplice is corroborated by unimpeachable testimony and by strong circumstances, it may be given its true weight and force against the person in regard to whom it is presented.' "

In the instant case the trial court's findings of fact rest almost exclusively upon the credibility of opposing witnesses, and if the robbery were committed in the manner stated by Catalina Salvador, she was an accomplice by direct participation.

The court after, in effect, disregarding the testimony of Juliana Villanueva, Fernando Manauis, and Marta Viniegas says:

"The testimony of the servant Catalina Salvador is corroborated by that of Dimas Olpindo, Benito Buiusan, and also by circumstantial evidence."

The "circumstantial evidence" is stated by the court to be as follows:

"The latter (Labrada Villarin) then went to the presidencia to give information and from there she went to the house of her relative and neighbor, Juan Moran, husband of the accused (Maria G. Palisoc) to seek protection. According to the victim, she bade Moran to fire his revolver in the air in order to intimidate the thieves, but Moran paid no attention to her. * * * The trunk, together with the jewels, were found on land belonging to the accused and when the find was made Catalina Salvador, an accomplice, immediately pointed out the accused as being the principals of the crime. The accused were immediately arrested. Vicente Aduan, in his testimony, admitted that he was immediately pointed out by Catalina Salvador as being one of the thieves."

As to the first point, Juan Moran says that Librada did not ask him to fire a revolver because the police were there with revolvers and for the further reason that a municipal ordinance prohibits the firing of revolvers at night. Before such an act could be considered, if at all, as a circumstance pointing towards the guilt of the defendants, it was first necessary to determine which of the two witnesses told the truth. The fact that the trunk and jewelry were found on land belonging to the defendant Maria or her husband is not evidence of guilt because this lot is some 500 meters from Maria's house and open to the general public. The defense offered witnesses who testified that Catalina Salvador first designated other persons as the guilty parties. Another question of the credibility of witnesses. As to when the defendants were arrested and as to Vicente Aduari admitting that he was immediately pointed out by Catalina Salvador as being one of the thieves, Sergeant Torio testified that as a result of his investigations made in Binalonan, he arrested the three defendants and presented on Saturday, September 5th, a complaint against them in the court of the justice of the peace of Binalonan, but he did not state just when he made the arrests. Vicente Aduan testified that he was taken to the house of Librada on the afternoon of September 4th by a Constabulary soldier; that while he was in Villarin's house he heard Sergeant Torio say to Catalina Salvador that if she was asked by the court if he (Aduan) was one of the robbers, for her to say yes; and that the sergeant then asked Catalina if he (Aduan) was one of the thieves and that Catalina answered in the affirmative. The mere fact that the defendants were arrested on the evening, or night of the 4th or on the following day does not of itself indicate that they were guilty of the crime charged. The reason why Catalina Salvador designated Vicente Aduan as being one of the robbers is another question which goes to the credibility of the witnesses. Therefore, strictly speaking, we find no circumstantial evidence in the record which tends to establish the guilt of the defendants.

Coming now to the main issue in the case, which involves the credibility of the witnesses and the reasonableness of their respective stories, we have on the one hand, as the complaining party, a confessed gambler and on the other a woman (the principal defendant), whose character and reputation for truth and honesty has been established beyond question. It is not denied that Librada Villarin caused to be prepared on the morning of September 4th a telegram to the Constabulary, wherein she stated that the value of the effects taken amounted to P15,000. Later she placed the value at P7,000, P4,000 in cash and P3,000 in jewelry. Although Librada testified that P2,000 of the P4,000 were accumulated during the lifetime of her husband, who died in 1909, she admitted that in 1913 she borrowed P100 on which she paid interest at the rate P2 per month. It is, at least, an unusual practice for a person to borrow money and pay such a rate of interest when he has money on hand, although he pretends to have borrowed it for another person. Is the story of Catalina Salvador reasonable or is it pregnant with inherent weaknesses? Catalina was a servant of Librada. She had never conversed with the defendant Maria until September 2d. She never knew the other two defendants until on that day. She says the defendant Maria called her

and told her to leave the window open and she would give her P100; that if she said anything about it, she would kill her; and that on the following morning Maria told her that the money would be forthcoming and again threatened to kill her if she communicated with anyone. Although Catalina was repeatedly asked while testifying in the case against Serviliano Carino to state all she knew about the matter, she said nothing with reference to this second conversation with Maria. Perez, the justice of the peace of Binalonan, testified that he heard Sergeant Torio ask Catalina on the morning of September 4th if Alejandro Aletre, alias Andong, was one of the robbers and that Catalina answered yes. Mateo Marques stated that he saw Catalina on the morning of September 4th and that he asked her who had taken the trunk of her mistress, and that she replied that she did not know because she was asleep. Arcadio Paet says that he saw Catalina, with others in his barrio, on the afternoon of September 4th looking for Inong and Daris, whom, they stated, were the robbers. There is nothing in the record which indicates that these witnesses had any interest in the case one way or the other.

The testimony of Benito Bulusan is directly contradicted by the official records of Binalonan and also by the testimony of the chief of police and another member of the same force. Joaquin Ramos says that he heard the old man Olpindo ask his wife on Friday morning where the ladder was and that she replied that she did not know. Literato says that he heard Olpindo tell Sergeant Torio that he did not know who took his ladder. The testimony of Pedro Franco to the effect that when he and the municipal policeman found the top of the trunk, various documents, and a P5 bill, they saw the defendants Carino and Maria with the old man, Rufino Cariño, about three meters from where they found these effects, is contradicted by the municipal policeman who was with Pedro at the time. Mariano Franco's testimony, wherein he stated that he heard the conversation between Catalina Salvador and the defendant Maria on the azotea at a distance of about 3 brazas and that Maria placed her mouth very near the ear of Catalina, is unreasonable and cannot be true for the reason that Franco could not have heard the conversation at that distance (about 18 feet), if it be true that Maria placed her mouth very near the ear of Catalina. Furthermore, it is admitted that a number of people were in Librada's house at that time and could have, no doubt, heard the same conversation had it taken place in the manner stated by Mariano Franco. Aside from the fact that the second supposed conversation between Maria and Catalina on the azotea was not, as we have said, brought out in the case against Serviliano Cariño, three witnesses, Ernesto Bautista, Ambrosio Bautista and Genoveva Cardona, testified that they heard Librada Villarin and Sergeant Torio instructing Catalina Salvador to say that Maria told her to aid the robbers in order that Villarin might recoup the losses from Maria, as Maria was rich, and also the testimony of Ernesto Bautista to the effect that he was present when Sergeant Torio was framing up the second alleged conversation between Catalina Salvador and the defendant Maria.

While it is true that circumstantial evidence may be treated by a trier of facts as corroborating the truth of the testimony of the witnesses to the main issue, yet this cannot be done unless the circumstantial evidence, in fact, exists. In the case at bar the court erroneously interpreted certain facts as constituting circumstantial evidence which corroborated the testimony of the prosecution's principal witnesses. The result is that the testimony of such witnesses stands without being supported by any disconnected facts or circumstances which tend to show the truthfulness thereof. Taking into consideration the highly improbable story told by Catalina Salvador and the character of the other principal witnesses of the Government, we must conclude that the trial court failed to give due weight and credit to the testimony of the disinterested witnesses of the defense and that the defendants are not guilty of the crime charged.

For the foregoing reasons the judgment appealed from is reversed and the defendants are acquitted, with costs de officio. So ordered.

Torres, Moreland, and Araullo, JJ., concur.

CARSON, J.:

I reserve my vote.

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