

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOMINADOR CIDRO, ET AL., DEFENDANTS. GUILLERMO CALLOS, DEFENDANT AND APPELLANT.*G. R. No. 11804. February 28, 1959*

Ponente: BAUTISTA ANGELO, J.

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Francisco CIDRO, Anatolio Calubad and Guillermo Callos were accused with seven other persons of robbery with homicide before the Court of First Instance of Albay. Trial was held against all the accused except Guillermo Callos who was then at large and Francisco CIDRO. and Anatolio Calubad were found guilty as charged while the rest was acquitted for insufficiency of evidence. They were each sentenced to cadena perpetua, to indemnify the heirs of the victims in the amount of P6,000.00, and to pay the costs. The two did not appeal. Subsequently, Guillermo Callos was apprehended and after trial was likewise found guilty of the crime charged and sentenced to suffer life imprisonment, to indemnify the heirs of the victims in the amount of P6,000.00 and to pay the costs. His motion for reconsideration having been denied, he interposed the present appeal.

In evening of February 18, 1949, Segundina Bello, her daughter Adela, 11 years old, and two grandchildren, together with three other persons living with them, namely, Angeles Borromeo, Benedicto and Nemesio Albaniel, were asleep in their house at barrio Cangum, Malinao, Albay. Timoteo Camasis, husband of Segundina, was absent at the time. While thus asleep, they were awakened by voices greeting them and telling them that they were bringing some hemp. Segundina stood up and lighted a small kerosene lamp when a shot was heard from outside. At this moment, one of the intruders kicked open the door and entered the house and then and there began picking some articles that were spread around. Upon seeing Segundina, he fired at her causing her instant death. Then he began ransacking the house taking along rice, sardines, hemp, clothing, jewelry and cash amounting to P200.00. On the same occasion he fired at Benedicto and Nemesio Albaniel and Angeles Borromeo causing also their immediate death. All this time appellant remained at the door and received all the goods which his companion had taken and placed them inside a sack.

In the morning of the next day, February 19, while Sgt. Cristeto Banares of the Philippine constabulary was somewhere in Bantayan, Tabaco, waiting for a bus, he saw a group of persons, among them, appellant, Dominador CIDRO, Francisco CIDRO, Candano Canalita, Canaban and Calubad going towards barrio Ilawad, with their clothes wet. At about 10:00 o'clock that same morning, Banares and other PC operatives to whom the robbery was reported, were ordered to shadow them, whereupon Banares went to barrio Instancia, Malinao, and questioned Calubad who indicated a tamarind tree near which he had buried a can of salmon which formed part of the loot. On that occasion Banares saw appellant holding a rooster, but he disappeared the next day. His other companions were later arrested by Capt. Caringal and his men. Dr. Juan Pagtakhan, President of the 7th Sanitary Division of Albay, conducted the autopsy of the victims having found several bullet wounds which caused their death.

Appellant's defense is alibi. He did not take the witness stand. He sought to prove it merely by evidence aliunde. Thus, Antonio R. Lagos, a foreman of the Bureau of Public Works assigned in Lopez, Quezon, testified that appellant was employed in a project in that place where he worked intermittently from February 22, 1949 to March 31, 1950. Ciriaco Oas, a carpenter residing at Gumaca, Quezon, testified that he saw appellant arrive at that place on February 14, 1949 but began working only on February 22, 1949. Francisco Cidro, a fellow-convict of appellant, testified that the latter was not with them in the commission of the robbery because he and Calubad were the only ones who perpetrated it because of some grudge he (Cidro) had against the victims. He said that it was Calubad who ransacked the house and took the articles stolen.

The facts as above narrated find support in the testimony of several witnesses for the prosecution, namely, Adela Camasis, daughter of Segundina Bello, Cristeto Baiiares, a member of the Philippine constabulary, and Anatonio Calubad, a fellow-convict of appellant. Adela Camasis, 11 years old, was the only survivor of the massacre and saw how the robbery was committed. She said that while they were asleep some people called from outside saying that they had some hemp for sale and when her mother stood up and lighted a kerosene lamp someone entered the house armed with a gun and flashlight. Then several shots were heard hitting her mother and her three other companions. The armed men then took several articles and money and handed them over to appellant who was standing at the door. She was able to recognize appellant because of the flashlight carried by one of the robbers.

Bañares on his part said that in the morning of February 19, 1949, while waiting for a bus, he saw appellant in company with his co-accused going towards barrio Ilawad, and when sometime in the afternoon he went to barrio Instancia to investigate, he saw appellant holding a rooster and when he looked for him the following day, he disappeared. And Anatonio Calubad also testified that in the afternoon of February 18, 1949 he was invited by appellant and the other co-accused to commit the robbery in question and that in the course thereof appellant stood at the door and received the loot from Francisco Cidro.

It thus clearly appears that appellant actually took part in the commission of the robbery. Indeed, he was clearly identified by two eyewitnesses as can be gleaned from the following comment of the trial court: "After a study and consideration of the testimony of the witnesses for the prosecution and the defense, the Court has arrived at the conclusion that Guillermo Callos was one of those who perpetrated the crime of robbery resulting to the killing of Segundina Bello, Angeles Borromeo, Benedicto Albaniel and Nemesio Albaniel. Callos was clearly identified by Adela Camasis, daughter of Segundina Bello. While the defense tried to insinuate that Adela Camasis was at the time of the commission of the robbery, of tender age, hence of doubtful credibility, nevertheless, the Court is fully convinced of her sincerity because of her identification of Callos due to the light of the flashlight which occasionally struck the face of said Callos." There can therefore be no doubt as to the guilt of appellant.

Much stress is laid on the alleged incompetence of witness Adela Camasis who was only 11 years old, the defense claiming that she cannot be expected to narrate what she had seen because of her tender age. This contention is untenable. The rule is well-settled that unless a child's testimony is punctured with serious inconsistencies as to lead one to believe that he was coached, if he can perceive and make known his perception, he is considered a competent witness.^[1] Such a situation does not here obtain, for, as the trial court has observed, Adela showed that she was able to relate well her impression of what she had seen despite the rigid cross-examination she was subjected to by the defense. The trial court, therefore, did not err in giving credence to her testimony.

We find nothing improper for the trial court to consider in the decision the fact that appellant did not testify in his own behalf and that sensing apprehension he disappeared after the commission of the crime. While his failure to testify cannot be considered against him, it may however help in determining his guilt. The act imputed to him is so serious that places in the balance his very life and under such predicament common sense dictates that to testify

in his behalf might at least help in advancing his defense. But he preferred to do the contrary undoubtedly in order not to betray himself. His flight subsequent to the commission of the crime can leave no other impression than that he did it to avoid apprehension. As this Court has aptly said: "The wicked fleeth, even if no man pursueth, but the innocent is as bold as a lion."^[2]

Wherefore, finding the decision appealed from to be in accordance with law and the evidence, we hereby affirm the same, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] U. S. vs. Ambrosio, 17 Phil., 295; People vs. Tumaya, 56 Phil., 589; U.S. vs. Tan Teng, 23 Phil., 145; People vs. Dasota, 52 Phil., 286; U.S. vs. Buncad, 25 Phil., 530.

[2] U. S. vs. Alegado, 25 Phil., 510; U.S. vs. Virrey, 37 Phil., 618, 623; People vs. Cuevas, G. R. Nos. L-5844-45, May 30, 1955.

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