

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FEDERICO BAUTISTA, ET AL., DEFENDANTS. ERNESTO VELASCO, DEFENDANT AND APPELLANT.*G.R. No. 12090. April 30, 1960*

Ponente: BARRERA, J.

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This is an appeal interposed by Ernesto Velasco from a judgment of the Court of First Instance of Negros Occidental, Judge Jose Teodoro, Sr., presiding, in which he was found guilty of robbery with homicide and sentenced to life imprisonment and to indemnify the heirs of the deceased Marcelino Buenafe in the sum of P6,000.

Originally appellant was charged with seven others, one of whom, Ildefonso Larit, was upon motion of the Provincial Fiscal, with the consent of the court, discharged and utilized as a state witness. Three others were, upon motion of the defense counsel, with the consent of the court, likewise discharged and used as witnesses for their co-accused. Of the four who stood trial, one (Federico Bautista) was acquitted; and two (Diosdado Velasco and Nicanor Dizon) were found guilty of robbery only and given indeterminate sentences and hence did not appeal.

The records disclose that at about 8 o'clock in the evening, on April 4, 1952, Diosdado Velasco went to the house of Ildefonso Larit, at Hacienda Maasin, Bacolod City, looking for Francisco de los Reyes (one of those discharged to be a defense witness), who happened to be at Larit's house at the time. Upon seeing De los Reyes, Diosdado asked the former to accompany him to the house of Marcelino Buenafe at Hacienda Galubcub to get some paia. For the purpose, he requested him (De los Reyes) to bring his carabao, which he did. He also requested Larit to go with him and bring the cart belonging to the hacienda. While De los Reyes was getting his carabao, Larit and Diosdado went ahead. On the way to Hacienda Calubcub, they met the appellant Ernesto Velasco (elder brother of Diosdado), Federico Bautista, Nicanor Dizon, and Lacierto Lobaton (another discharged to be a defense witness). Upon seeing Diosdado, appellant inquired whether he was able to secure a cart, to which, Diosdado replied in the affirmative. Appellant ordered the group to proceed to their destination. Shortly thereafter, De los Reyes, with the cart, caught up with the group. With him was Larit's brother-in-law Teopisto Postrado (the third discharged to be a defense witness). Upon reaching the house of Marcelino Buenafe, appellant called him and asked whether he (Buenafe) had seen a stray carabao (a ruse apparently employed to find out if Buenafe was there). When the old man responded and answered in the negative, appellant told him to come down. When he did, appellant, together with Bautista, Diosdado, Lobaton, and Dizon immediately surrounded him. Upon appellant's order, Buenafe was hogtied by Diosdado and Lobaton and tied to the post of his house. Appellant then directed Diosdado to fetch the cart which was left not far from Buenafe's house with Postrado and De los Reyes. Except these two, who were left with the cart, the rest of the group went upstairs and filled their sacks (15 in all) with Buenafe's palay. Larit, Lobaton, and Dizon held the sacks, while Diosdado and Bautista poured the palay into them. Appellant proceeded to ransack the house. Having filled the sacks with palay and loaded them into the cart, appellant ordered Buenafe's carabao to be taken and for De los Reyes and Postrado to go ahead with the cart. Bautista, Dizon, and Lobaton

followed them. After a while, two shots were heard to have been fired and when Bautista looked back, he saw Diosdado and Larit coming at a distance of about 100 arms length. Farther, at a distance of about 150 arms length, he saw appellant with the rifle Exh. H coming from the direction of the victim's house.

Upon reaching Cabora River, where the group separated, appellant ordered De los Reyes and Postrado to leave 6 sacks of palay as his, Bautista's, and Lobaton's share; and to load 1 sack on the victim's carabao which they had taken, for Dizon. He then directed the remaining 8 sacks to be left in the cart as Diosdado's, De los Reyes', Postrado's, and Larit's share.

Notified by the overseer of Hacienda Calubcub, who in turn was informed by a farmer who came upon the scene of the crime on the following morning, April 5, 1952, Detectives Hofileña, Omogod, and Sumagaysay, and Assistant City Health Officer Ledesma visited the scene of the crime. There, they found the victim's lifeless body, his hands still hogtied with dried banana strips and tied to the post of his house. On the floor of the victim's house as well as on the trail leading thereto, they discovered grains of palay scattered about. They also noticed that his carabao was missing. Detectives Sumagaysay and Hofilena were able to retrieve 2 empty cartridges of a SO caliber rifle on the ground near the victim's cadaver. A post mortem examination made by said Assistant City Health Officer (See Exh. "J"), disclosed that a gunshot wound penetrating the victim's head through and through caused his instantaneous death.

On April 8, 1952, Larit and De los Reyes, apparently remorseful over the brutal and unexpected slaying of the victim, surrendered to the police authorities at Bacolod City Hall. On April 9, 1952, Hortencia Paneho, wife of Diosdado, led the police to the river where several sacks of palay belonging to the victim, partly submerged therein, were discovered and retrieved. On April 10, 1952, appellant, together with Diosdado and Bautista, surrendered to Policeman Abdon at barrio Cabora. Appellant also surrendered the 30 caliber rifle (Exh. "H"), the ownership of which, he admitted, as well as 7 rounds of ammunition (Exhs. "1" to "1-6"). They were then individually investigated by Detective Sumagaysay, who reduced their statements into writing in the form of affidavits (Exh. "A-1" to "G-1"), and which they later acknowledged voluntarily and freely in the presence of Bacolod Municipal Judge Ferrer.

The commission of the crime of robbery is without dispute. Even herein appellant in page 11 of his brief admitted: "True, unfortunately, Ernesto Velasco (herein appellant) has committed robbery, but surely it was not Robbery with Homicide because he tried his best to prevent Federico Bautista from killing his own grandfather." The only question thus raised in this appeal is who killed Marcelino Buenafe and under what circumstances.

There are two versions supplied by the defendants themselves. The defendants who were discharged as well as appellant and the two other accused who were sentenced to indeterminate penalties testified that it was Federico Bautista, the one acquitted by the lower court, who shot the deceased Buenafe. Upon the other hand, Bautista declared that when he and Dizon, Lobaton, De los Reyes and Postrado were some distance away from the house of Buenafe, after they were ordered by the appellant to go ahead, two shots were heard and as he looked back, Bautista saw Diosdado Velasco and Ildefonso Larit coming at a distance of about 100 arms length and behind them and farther still was the accused-appellant Ernesto Velasco with the rifle Exh. H. For the reasons stated in the decision, the lower court gave credence to the testimony of Bautista and found that herein appellant Velasco, being the last person seen leaving the place where the shots were fired, carrying the rifle in his hand, he being the only one thus armed on the occasion in question, must necessarily have been the one who fired the shot that killed the deceased victim Buenafe.[1] It is this finding that appellant has assigned as error committed by the court a quo.

We have reviewed the entire record and found no ground nor reason to depart from the finding of the trial judge,

not only because he has had the advantage and opportunity of observing and evaluating the demeanor and manner of testifying of the witnesses but also because it is amply supported by the evidence on record.

As already adverted to, it is the appellant who had the rifle Exh. H. He was the one who surrendered it. When charged in a separate information with illegal possession of firearms, the rifle being unlicensed, he confessed ownership of it and pleaded guilty to the charge and was sentenced to five years imprisonment.

It appears clearly from the evidence, including the testimony of those witnesses who said it was Bautista who killed the deceased victim, that all throughout the progress of the incident, from the preparation to the execution of the robbery and the distribution of the spoils, the leader of the group was the herein appellant. Larit, testifying for the prosecution, declared that when the group had assembled after the cart was procured, it was appellant who gave the order to proceed to their destination; that upon arrival at the victim's place, it was appellant who told Diosdado to stop the cart; that it was appellant who called the victim at his house and inquired from him whether he had seen a stray carabao; that it was appellant who asked the victim to come down; that it was appellant who directed Diosdado and Lobaton to hogtie the victim and tie him to the post of his house; that it was appellant who urged Diosdado to get the cart and for the rest of the group to go upstairs and take the victim's palay; that it was appellant who gave the order for De los Reyes and Postrado to go ahead of the group with the loaded cart; that it was appellant who told them to divide the palay among themselves; and that as a whole, it was appellant who gave all the orders on the night in question. In fact, as already stated, it was only appellant who was armed with the rifle (Exh. "H").

The record confirms the observation of the trial court, in rejecting appellant's version, that the testimonies of appellant and the other co-accused "are based on the same pattern, one after the other, using the same expression", and that this uniformity in their testimony (People vs. Pascual, G. E. No. L-4801, promulgated June 30, 1953) is proof that there was a common understanding or agreement before the trial of the case to impute the crime on Bautista. This conclusion of the trial judge is further supported by the proven fact that all seven of the participants are closely related to one another. Herein appellant Ernesto Velasco is the elder brother of the other accused Diosdado Velasco; Ildefonso Larit is the brother-in-law of Francisco de los Reyes; Teopisto Postrado is the first cousin of Larit; Dizon and Lobaton are first cousins of the Velascos. While on the other hand Bautista, a much younger man than appellant Ernesto Velasco, was formerly a mere laborer under the latter in the hacienda and came to know the rest of the group only on the night in question.

It is true that in his affidavit (Exh. "B-1"), Bautista had admitted having shot the deceased. But, on the witness stand, he repudiated the same, and declared that most of the answers were given by the appellant himself and were placed there because the investigator apparently did not believe him (Bautista) and that he signed the affidavit out of fear of appellant who even in jail threatened to kill him should he state otherwise. It is significant that in spite of these allegations by Bautista, the defense failed to ask the investigator, Detective Sumagaysay to take the witness stand, for the purpose of either denying or contradicting the same, with the result that, Bautista's repudiation of his admissions appearing in his said affidavit (Exh. "B-1") must be upheld, as the trial court correctly did. (See People vs. Gomez, et al., 101 Phil., 1056; 54 Off. Gaz. [5] 1368.)

Explaining his presence during the incident, Bautista testified that he was forced to go with the group at gun point by appellant on the night in question; that he was maltreated by appellant who poked him with the rifle (Exh. "H"); that he was hogtied and then loaded on the cart and brought to the deceased's place at Hacienda Calubcub. This testimony of Bautista was corroborated by that of his wife, Marina Salde, who declared that on the night in question, at around 9 o'clock, while they were already asleep, they were awakened by appellant, who forced her husband, Bautista, at gun point to go with him to the deceased's house and hogtied and maltreated him; and that she was, likewise, maltreated by appellant as a result, of which, she delivered prematurely the following day.

After a careful and thorough appraisal of the evidence, we are convinced that the appellant did in fact, as the trial court correctly held, commit the crime of robbery with homicide, covered by Article 294, No. 1, of the Revised Penal Code which is punished with reclusion perpetua to death. The commission of the offense was attended by the aggravating circumstance of dwelling (which is offset by the mitigating circumstance of voluntary surrender) and by the aggravating circumstances of nocturnity, abuse of superior strength, disregard to the age of the offended party, the victim being 60 years of age, and treachery, as the victim was hogtied and tied to a post, thereby insuring the commission of the crime without risk to the appellant. The case, therefore, calls for the application of the maximum penalty provided by law, namely, death. However, for failure to get the necessary votes for the imposition of said penalty, the judgment of the trial court is affirmed, with costs against the appellant. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Gutierrez David, JJ., concur.

[1] See *People vs. Abrina, et al.*, 102 Phil., 695; 54 Off. Gaz., [17] 4958; also *People vs. Peje*, G. R. No. L-8245, promulgated July 19, 1956.

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