

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MOISES BENEDICTO, DEFENDANT AND APPELLANT.***CA-G.R. No. 20. March 12, 1946*

Ponente: BENGZON, J.

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Agripino Barrion lived with his family in their house at the barrio of Bancoro, municipality of Taal, Province of Batangas. In the first hours of November 27, 1943, he noticed the presence of many persons, about fifty, in his yard, one of whom inquired whether he had some rope. Having replied in the negative, he was asked for fire to light their cigarettes; he told them to wait, and then he lighted a match and his gas lamps. But the persons outside forced the door open, and three entered the dwelling, followed by others. One of these immediately hit Agripino on the head with the butt of a pistol, and thereby floored him unconscious. His wife, Antonina Villanueva, screamed, even as her daughter, Primitiva, rebuked the assailants. Their attention drawn to the women, the intruders bound and maltreated Antonina, to force disclosure of the money and valuables in the household. Two others pulled Primitiva towards the room, taking undue liberties with her person. While resisting her captors, Primitiva saw and recognized the accused, Moises Benedicto, as the latter peeped through the door of the balcony, and later appeared at the door of the sala. Carried to the room, Primitiva Barrion continued to resist, until she was cuffed in the ear and instantly put out. After the robbers had left, the Barrions found that their money, jewels, and clothing, amounting to P2,770, had been taken away.

That same day, Agripino Barrion, his wife and daughter, went to town to report to the chief of police, Numeriano Manalo, before whom they subscribed the affidavits, Exhibits B, C and P, relating the above incidents of the robbery, and pointing specifically to the herein defendant, Moises Benedicto, as one of the bandits. The result was this criminal prosecution, culminating in a judgment of conviction in the Batangas court. The defendant has appealed, challenging the sufficiency of the evidence. In a motion for new trial, submitted to this court, he proposes to introduce other witnesses to corroborate his defense of alibi.

The only issue is whether appellant participated in the plunder which undeniably occurred at the time and place indicated.

We have no doubt that he did. That very morning, he was mentioned to the chief of police by Primitiva Barrion and her mother. They both recognized his face by the light of the gas lamps, having known him before as a resident of the neighboring barrio of Saimsim. Their testimony immediately after the event should be entitled to much weight, not only because of the freshness of their recollection, but also because such prompt denunciation excluded the probability of fabrication, or the couching by other persons interested against the accused. In the face of such identification, defendant's attempt to demonstrate an alibi had necessarily to fail, what with the circumstance that, at best, he proved his presence in a barrio of Talisay (Binirayan) at 7.30 p. m., November 26, and at 6 the following morning, without showing it was impossible for him, in the interval to proceed to Bancoro and return—a distance of only two kilometers which, according to witnesses, could be covered by sailboat in three hours.

In this connection, it should be stated we deem it unnecessary to grant the new trial applied for. There is no assurance that the witnesses to be introduced could not have been presented at the original hearing. And their testimony will not materially improve defendant's position. It would merely establish the alleged fact that in the evening of November 26, the accused saw Julian Valencia and Fernando Maranan at a meeting of the "Federation." And without specifying the hour they separated, such alleged meeting could not clearly be incompatible with defendant's presence at Bancoro with the gang of robbers.

Wherefore, despite his attorney's earnest efforts to clear him, defendant must be declared guilty, as found by the trial judge.

The crime is punished by article 294, paragraph 5, of the Revised Penal Code, with prision correctional to prision mayor which, in this case, should be imposed in the maximum degree in view of the aggravating circumstances of dwelling and nocturnity.

Pursuant to the Indeterminate Sentence Law, and in accordance with the recommendation of the Solicitor General, appellant is sentenced to imprisonment for not less than six (6) months of arresto mayor nor more than ten (10) years of prision mayor, to indemnify the offended parties Agripino Barrion and his wife in the amount of P2,770, and to pay the costs. Thus modified, the appealed judgment will be affirmed.

Ozaeta, De Joya, Perfecto, and Bilado, JJ., concur.

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