

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN LIMBO AND PEDRO LIMBO, DEFENDANTS AND APPELLANTS.

*G. R. No. 24810. March 29, 1926*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

This appeal is taken by the defendants Pedro Limbo and Juan Limbo from a judgment of the Court of First Instance of Batangas, convicting them of the crime of homicide, and sentencing each to suffer the penalty of life imprisonment, to indemnify the heirs of Silvestra Vergara in the sum of P1,000, to return to them the amount of P200 and to pay the costs.

While the appeal was pending the defendant and appellant Juan Limbo died, wherefore the appeal as to him had to be dismissed with one-half of the costs de officio and the present appeal is as to Pedro Limbo alone.

As grounds for his appeal, the defendant and appellant Pedro Limbo assigns the following errors, to wit:

1. The court erred in giving credit to the testimony of the witnesses for the prosecution, Calixto Macaraig, Petra Vergara, and Procesa Comia, which was in a large degree incoherent, unbelievable, and contradictory.
2. The court also erred in not holding that the reason why these witnesses testified against the herein defendants was because they were afraid to become involved in a criminal proceeding if they did not accuse other persons as responsible for the death of Silvestra Vergara; and, furthermore, on account of the animosity that existed towards the accused.
3. It also erred in holding that the suppression of the testimony of Pastor Maralit did not in any way prejudice the prosecution.
4. It also erred in not believing the defense of alibi, considering that such defense is corroborated by the testimony of the witness for the prosecution, Petra Vergara, and of Lieutenant Diano of the Constabulary, who investigated this case and started these proceedings.
5. Finally, it erred in not giving the appellant the benefit of the doubt and in not absolving him from the complaint.

The prosecution attempted to prove the following facts:

Juan Limbo was the father of Pedro Limbo and grandson of Petra Vergara, aunt of Silvestra Vergara. The latter was engaged in the sale of pansit (Chinese macaroni) in the market of the municipality of Bolbok, Province of Batangas, and it was her custom to keep her money in a long pouch made of a grayish colored material which she wound around her waist. A few days before the commission of the crime Juan Limbo invited Silvestra Vergara to pick tomatoes and tobacco on the former's plantation. In the afternoon of Easter Sunday, April 12, 1925, after selling pansit in the market, Silvestra Vergara counted her money which amounted to over P200 in cash and bills,

which she placed within the pouch and tied it around her waist. The next morning, Monday, April 13, 1925, Silvestra Vergara took an early breakfast and later left the house carrying two bamboo baskets, one called bilao and the other tacuyan and went towards the barrio of Mareykit in the municipality of Bolbok, Batangas. Upon arriving at the house of Petra Vergara in that barrio, about 10 o'clock in the morning, she inquired of her aunt: "Ka Petra, Ka Petra, has Juan arrived?" Upon hearing her Petra Vergara answered, "He is already there." Before the arrival of Silvestra Vergara, Juan Limbo had been at the house and had asked Calixto Macaraig, husband of Petra Vergara, if they needed some water. As he was informed to the contrary he went to his tomato patch, about 20 meters from the house, accompanied by his son Pedro Limbo. Silvestra Vergara, upon being informed that Juan Limbo was there, proceeded where they were. Shortly after Calixto Macaraig and Petra Vergara, who were in the kitchen of their home, heard the voice of Silvestra Vergara shouting "Why do you treat me this way?" Calixto Macaraig, weak as he was, on account of dysentery, made an effort and left the house to see what the trouble was. Upon reaching the tomato patch of Juan Limbo he saw Pedro Limbo in the act of hitting Silvestra Vergara with a club and the latter fall dead. Juan Limbo unsheathed his bolo and cut the pouch that served as a belt around the waist of Silvestra Vergara and took it. Calixto Macaraig, after witnessing this, asked Juan Limbo why they had attacked Silvestra Vergara. In reply the accused remarked: "If you inform the authorities, you old man, we will kill you" and they ran, Juan Limbo carrying the bilao and Pedro Limbo the takuyan. Calixto Macaraig then called to his wife saying "Come here because Terang has been killed by Pedro and Juan."

Doctor Leon P. Cusi upon examining the body of Silvestra Vergara on April 15, 1925, found contuse wounds in the right temporal region, in the right and left parietals, in the right frontal, in the occipital, on the nose, the bone thereof being broken, one equimosis in the left forearm and a wound on the face. All the contuse wounds were produced by a blunt instrument while the wound on the face was caused by a sharp instrument. The contusion in the occipital region caused her death.

The defense tried to prove that the accused Pedro Limbo and his wife had left their house in the barrio of Mareykit, near the house of Calixto Macaraig, because his mother-in-law, Petra Vergara, suspected that her husband was maintaining illicit relations with the former's wife, and for this reason used to scold Pedro's wife; that on Holy Saturday Pedro Limbo stayed in the house of his father in the neighboring barrio of Kalikante, in the municipality of Bolbok, Batangas; that on Easter Sunday and the following Monday and Tuesday he was ill with fever and could not leave the house although he could walk around it. In behalf of the prosecution there testified Procesa Comia, daughter-in-law of Silvestra Vergara with whom she was living at the time and in whose presence she had counted the money in the afternoon of Easter Sunday, afterwards placing it in the pouch; the spouses Calixto Macaraig and Petra Vergara who saw Silvestra Vergara, Juan Limbo, and Pedro Limbo on the morning of the crime when the accused fatally wounded Silvestra Vergara, relieving her of the money she carried, by cutting the pouch in which it was kept.

For the defense of the accused Pedro Limbo there testified his uncle Gervasio Laraya and his father-in-law, Gregorio Magpantay, who affirmed that Pedro Limbo was ill with fever and had to go to the house of his mother where he remained on Holy Saturday, Easter Sunday, and the following Monday and Tuesday, being unable to leave.

It is maintained by the appellant that the testimony of the witnesses for the prosecution, Calixto Macaraig and Petra Vergara is not worthy of any credit as they contradicted their own and each other's testimony. Furthermore, they were afraid to be involved in this proceeding, and that Petra Vergara had a grudge against the wife of the appellant.

The contradictions and discrepancies observed in the testimony of Calixto Macaraig and Petra Vergara given during the trial and in their sworn statements, are due, on one hand, to their relationship to the culprits and their

victim and, on the other hand, to the natural psychological effect of a long and tedious cross-examination, the majority of which consisted of leading questions.

The grandfather of Juan Limbo and the father of Silvestra Vergara were brothers of Petra Vergara. As is natural this relationship, by consanguinity and by affinity, awakened in the heart of both spouses a feeling of sorrow for the deceased and commiseration for the assailants. As both parties were relatives, they thought that the matter could be settled, and so when the first investigations were made they did not tell who had caused the death of the said Silvestra Vergara, and they only revealed their names when they were summoned to testify before the justice of the peace in the preliminary investigation and in the Court of First Instance in the trial of the case.

Everyday life and the result of investigations made in the field of experimental psychology show that the contradictions of witnesses generally occur in the details of a certain incident, after a long series of questionings, and far from being an evidence of falsehood constitute a demonstration of good faith. Inasmuch as not all those who witness an incident are impressed in like manner, it is but natural that in relating their impressions they should not agree in the minor details; hence, the contradictions in their testimony.

As to a witness contradicting himself on the circumstances of an act or different acts, this may be due to a long series of questions on cross-examination during which the mind becomes tired to such a degree that the witness does not understand what he is testifying about, especially if the questions, in their majority are leading and tend to make him ratify a former contrary declaration. In this case the mind, incapable of reasoning, only reflects, like an echo, the idea suggested. Professor Ed. Claparede, Director of the Psychological Laboratory of the University of Geneva in his work "What is the Value of Evidence" says: "In the giving of evidence suggestion plays a most important part. The simple fact of questioning a witness, of pressing him to answer, enormously increases the risk of errors in his evidence. The form of the question also influences the value of the reply that is made to it. Let us suppose, for instance, that some persons are questioned about the color of a certain dog. The replies are likely to be much more correct if we ask the witnesses, "What is (was) the color of the dog?" than if we were to say to them, "Was the dog white, or was it brown?" The question will be positively suggestive if we ask, "Was the dog white?" \* \* \* A leading question propounded to a witness may, by creating an inference in his mind, cause him to testify in accordance with the suggestion conveyed by the question; his answer may be "rather an echo to the question" than a genuine recollection of events \* \* \*." (Moore on Facts, vol. II, pp. 913, 914.)

This same thing that happens to ordinary witnesses is far worse when the witnesses are aged and ignorant and therefore we should not discredit the testimony of a witness who is old just because he has made some contradictions during a long and tedious cross-examination. (Op. Cit, pp. 810-1410.) This is exactly what happened to the government witnesses Calixto Macaraig and Petra Vergara. These witnesses were subjected to a long series of questions on cross-examination, the majority of which were leading. Old age and ignorance, together with weariness, could not resist the psychological influence of those leading questions which, as will be seen by their answers, are but the echo of such questions.

The fact that Petra Vergara, who is over 100 years old, when making her sworn statement to the justice of the peace five days after the commission of the crime, stated that it took place before sunset, seemingly contradicting the testimony of her husband, Calixto Macaraig, to the effect that the crime took place after 10 o'clock in the morning—as in fact it did—cannot be ascribed to a voluntary falsehood but to her forgetfulness of proximate facts and events due to the debility of her senile memory. The testimony of these witnesses to the effect that Silvestra Vergara was clubbed to death and relieved of her money and the basket that she carried deserves credit, inasmuch as their testimony on this point has been corroborated by the contusions and wounds found on the body of the deceased.

The only question to determine is whether Silvestra Vergara was deprived of her life and property by the herein accused or by other persons. The theory that the crime was committed by other persons may be readily discarded. Calixto Macaraig at 60 years of age and Petra Vergara at 100 years, both near relatives of Juan Limbo and Pedro Limbo, would not accuse them of the commission of such a grave crime if, in reality, other people had committed it.

It is true that the defense attempted to prove that Petra Vergara had ill feelings against Pedro Limbo's wife as she suspected that her husband (Petra Vergara's) maintained illicit relations with the former. Petra Vergara, however, denied any such ill feeling stating that all she did was to advise the wife of Pedro Limbo that if her husband was absent and another man came to her house, that she should come down under some pretext as, for example, to sweep the ground, and that she gave this advice because Pedro Limbo's wife was very young and without much experience in life. To those who are familiar with ancient Filipino customs, the advice of Petra Vergara to the wife of Pedro Limbo would seem only natural, especially when we consider that she was the great grandmother of Pedro's wife. But even supposing that there was jealousy in this case, since neither Juan Limbo nor Pedro Limbo was the real and apparent cause thereof, but the wife of Pedro Limbo, it is not reasonable to suppose that a woman one hundred years old and a great grandmother, at that, unheeding the voice of her conscience and the call of the blood, should accuse her great grandson of a capital crime in order to avenge herself of an alleged grievance against her honor as a wife.

Coming now to the defense of alibi, the evidence shows that while it is true that the defendant Pedro Limbo was ill with fever he was able to walk around and it was not physically impossible for him to be at the place where the crime was committed. As to whether or not he left the house of his mother, the only evidence is the testimony of Gregorio Magpantay, father-in-law of Pedro Limbo, that of Pedro Limbo himself and that of Gervasio Laraya. The first two witnesses deserve no credit at all because they are interested parties and consequently partial. As to the third witness, his testimony is too incredible to deserve any credit. Indeed, it is a very strange coincidence that he had to work repairing a rake precisely on Holy Thursday, Good Friday, Holy Saturday, and Easter Sunday,, during which time Pedro Limbo is alleged to have been ill and not working in his own house but in the house of Pedro Limbo's father where the latter was staying, just for the flimsy reason-that he did not have the necessary tool for that kind of work,

The accused-appellant finds support for his alibi in the testimony of Lieutenant Antonio Diano of the Constabulary. The testimony of this witness as to the illness of Pedro Limbo is devoid of any value, because it refers to a statement made to him by other persons; hence, it is hearsay. The defense sets up, as an unfavorable circumstance to the prosecution, the fact that the prosecuting attorney did not introduce as a witness one Pastor Maralit who had seen the corpse and had given information about it to the officers of the law. The prosecuting attorney explained that the non-presentation of such witness was because it was not necessary as, with the evidence already presented, there was enough prima facie evidence to sustain the guilt of the defendant. The prosecuting attorney has the power to determine the amount and kind of evidence that he will present in a case, and when he has considered that what he has presented is sufficient, he is not compelled to present any more even if he has more evidence at his command. The judge trying the case may, however, call other witnesses if, in his opinion, the evidence presented is not sufficient.

For the reasons above stated we are of the opinion that the evidence introduced during the trial shows beyond a reasonable doubt that the herein accused Pedro Limbo and Juan Limbo were the persons who killed Silvestra Vergara and who relieved her of her money. The acts committed by them constitute the crime of robbery with homicide defined and punished by article 402 of the Penal Code, the penalty being from life imprisonment to death. In the application of the penalty there must be taken into consideration the aggravating circumstance of

disregard to age and sex, compensated by the extenuating circumstance of lack of instruction. Wherefore the penalty to be imposed should be in the medium degree, that is, life imprisonment.

In view whereof, and there being no error in the appealed judgment, the same is hereby affirmed in all its parts with costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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