

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARIANO BAUTISTA ET AL., DEFENDANTS. MARIANO BAUTISTA, CLEMENTE BAAL AND PATRICIO SUCIAS, APPELLANTS.

G. R. No. 25095. September 18, 1926

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the prosecuting attorney of the Province of Bulacan on the 23d day of July, 1925, presented a complaint against said defendants, charging each with the crime of robo en cuadrilla con homicidio, which crime, said complaint alleged, was committed on the night of the 3d day of March, 1925, in one of the barrios of the municipality of San Jose del Monte, of the Province of Bulacan. Upon motion presented by the prosecuting attorney of said province, the complaint was referred to the justice of the peace for the purpose of a preliminary examination. The prosecuting attorney of said province also presented a petition, requesting that one Clemente Pila be not included in the complaint in order that he might be used as a witness for the Government. At the close of the preliminary investigation the justice of the peace found that there was reasonable cause for believing that said defendants were probably guilty of the crime charged against them, and held them for trial in the Court of First Instance. Later an amended complaint was presented in the Court of First Instance against the following defendants: Mariano Bautista, Evaristo de Vera, Gregorio Benedicto, Alfonso Suaviso, Clemente Baal, Patricio Sucias and Pedro Biglangawa, accusing each of them of the crime of robo en cuadrilla con homicidio. The complaint alleged:

"That on the night of March 3, 1925, in the barrio of Sapang-palay, municipality of San Jose del Monte, Province of Bulacan, Philippine Islands, the above named defendants, together with Eulogio Sarmiento and Regino Guevan, who have not yet been arrested, and who were armed with revolvers, bolos and clubs, conspired, and acting under an agreement, did willfully, maliciously and unlawfully enter the dwelling of Marcelo Gonza, which was situated in an uninhabited place, and, through force upon things and violence and intimidation against persons, and with intent of gain, did take the sum of P2.51, belonging to said Marcelo Gonza, against the latter's consent; and by reason, or upon the occasion, of said robbery, the said defendants did then and there shoot and kill the said Marcelo Gonza, who, at the time, was in said house, and thereupon assault Potenciana Matias, Encarnacion Gonza and Maria Robles, who were likewise in said house, inflicting injuries upon them, which took thirty days to heal, with the usual medical attendance, said injuries having, moreover, rendered said persons unable to engage in their customary occupation for a like period.

"Contrary to law"

Upon this complaint the defendants were duly arraigned and pleaded not guilty, Mariano Bautista requested a separate trial, which was granted. At the beginning of the trial the prosecuting attorney presented a motion asking that the said Pedro Biglangawa be discharged from the custody of the law, for the reason that in his judgment the proof was not sufficient to show that he was guilty of the crime charged. Said motion was granted, and he was

discharged from the custody of the law. Thereupon the causes were brought on for trial. At the conclusion of the trials the Honorable Emilio Mapa, judge, found that the evidence showed beyond a reasonable doubt that the defendants Evaristo de Vera, Gregorio Benedicto, Clemente Baal, Patricio Sucias and Mariano Bautista were guilty of the crime charged in the complaint and sentenced them as follows: Evaristo de Vera, Gregorio Benedicto, Clemente Baal and Patricio Sucias to be imprisoned for a period of ten years of presidio mayor, with the accessory penalties of the law, to indemnify jointly and severally the offended persons in the sum of P2.51, and each to pay his proportional part of the costs. Mariano Bautista was sentenced to be imprisoned for a period of seventeen years and four months of cadena temporal, with the accessory penalties of the law, to indemnify the offended persons in the sum of P2.51 jointly and severally with his codefendants, and to pay his proportional part of the costs. From that sentence Mariano Bautista, Clemente Baal and Patricio Sucias appealed.

Two briefs are presented on behalf of the appellants; one on behalf of Patricio Sucias and the other on behalf of Mariano Bautista and Clemente Baal. The appellant Patricio Sucias makes the following assignments of error:

First. That the lower court committed an error in admitting the admissions and confessions of his codefendants, especially those of Gregorio Benedicto, Evaristo de Vera and Alfonso Suaviso.

Second. That the lower court committed an error in admitting the declarations of Clemente Pila, one of his co-defendants, who took a direct part in the commission of the crime, without having been included in the complaint.

And—

Third. That the lower court committed an error in not absolving him from all liability under the complaint.

With reference to the first assignment of error, to wit, that the admissions, confessions and declarations of the witnesses in question should not have been admitted, it may be said that while the declarations and confessions of co-defendants should be examined carefully and received, if received at all, with great caution, yet the courts have universally held that such declarations and confessions are admissible when they are corroborated by other indisputable proof. In the present case there is an abundance of corroborative testimony supporting the declarations and confessions of the witnesses in question. Gregorio Benedicto and Evaristo de Vera, who were included in the complaint, testified as witnesses during the trial of the cause, were found guilty by the lower court and sentenced to be imprisoned for a period of ten years. They did not appeal from the sentence of the lower court. With reference to the witness Alfonso Suaviso, it may be said that he was called as a witness on behalf of the defense and under oath admitted the truthfulness of all the extra judicial statements which he had made. Finding, as we do, that the testimony, confessions and declarations of the witnesses in question were fully corroborated by other proof of the record, we find no reason nor justification for changing or modifying the sentence of the lower court based upon the first assignment of error by Patricio Sucias,

With reference to the second assignment of error above noted, the appellant Patricio Sucias strenuously argues that under the provisions of Act No. 2709, in relation with section 2 of General Orders No. 58, the lower court committed an error in not including Clemente Pila in the complaint. This is not the first time that question has been presented on appeal. The same question has been presented various times, and each time resolved against the contention of the appellant. Very soon after the adoption of said Act the same question was presented on appeal and in each case the conclusions were contrary to the contention of the appellant. (U. S. vs. De Guzman, 30 Phil., 416; U. S. vs. Abanzado, 37 Phil., 658.)

In the latter case it was held that said Act leaves the manner of the enforcement in the sound discretion of the court. (U. S. vs. Enriquez, 40 Phil., 603; People vs. Panaligan and Andulan, 43 Phil., 131, 140.)

In view of the foregoing decisions and jurisprudence announced by this court, we deem it unnecessary now to discuss the question raised by this appellant at greater length. Considering said second assignment of error and the jurisprudence cited, we find no reason for reversing or modifying the decision of the lower court upon said assignment of error.

With reference to the third assignment of error relating to the sufficiency of the proof upon which the lower court found the defendant guilty of the crime charged in the complaint, it may be said that "the record shows beyond a reasonable doubt, and is convincing beyond the last degree, that the appellant Patricio Sucias was a member of the band composed of more than four persons armed with guns, clubs and bolos and did, at the time and place mentioned in the complaint, take a direct part and participated in the commission of the crime charged in the complaint in the manner and form therein described. A further detailed statement of the evidence would serve no useful purpose, in view of the fact that the sentence of the lower court contains all of the essential acts and facts in relation to the commission of the crime, and which have heretofore been pronounced to the defendant. We find that the lower court committed no error in finding the defendant guilty of the crime charged in the complaint.

With reference to the appellants Mariano Bautista and Clemente Baal, it may be said that their attorney presents but one question, and that relates only to the sufficiency of the proof adduced during the trial to show that they are guilty of the crime charged. No other question is presented by them. The only proof presented by the defendants or any of them during the trial of the cause was for the purpose of establishing an alibi. An examination of the record establishes the following facts, in our judgment, beyond a peradventure and beyond a reasonable doubt:

That early in the evening of March 3, 1925, Evaristo de Vera, Gregorio Benedicto and others were passing from one point to another (the names of the places not being important) and on the road or highway they met Mariano Bautista and four or five other persons; that they were all armed with guns, clubs and bolos; that Mariano Bautista invited Evaristo de Vera and his companions to go with him and his companions; that Evaristo de Vera and his companions refused at first to accompany the band headed by Mariano Bautista; that later Evaristo de Vera and his companions stopped at the house of a friend and obtained something to eat; that after they had left the house of their friend they again met Mariano Bautista and his companions and were again invited to accompany them; that after some persuasion Evaristo de Vera and his companions accompanied Mariano Bautista and his companions to the home of one Marcelo Gonza; that after the band thus formed had arrived at the house of Marcelo Gonza, Mariano Bautista ordered one of the band to make a noise in order to awaken the occupants of the house; that the noise was made; that a call was made by one of the occupants of the house for assistance; that immediately Mariano Bautista fired the revolver which he was carrying up into the house of Marcelo Gonza; that Mariano Bautista immediately ordered some of his companions, including Evaristo de Vera and Gregorio Benedicto, up into the house of Marcelo Gonza; that said persons entered the house of Marcelo Gonza and there found Marcelo Gonza suffering from a gun-shot wound; that those who entered the house, after abusing the occupants thereof, committed the crime of robbery described in the complaint; that thereafter Evaristo de Vera and his companions came out of the house and after the money which had been obtained had been divided, Evaristo de Vera and his companions left the scene of the crime, going in one direction, while Mariano Bautista and his companions went in another direction; that from the effects of said wound Marcelo Gonza died.

We are persuaded that each of the appellants Mariano Bautista, Patricio Sucias and Clemente Baal participated in and took a direct part in the commission of the crime described in the complaint. It was suggested at the hearing of the cause that perhaps Clemente Baal and Patricio Sucias were not aware of the real purpose of the band in visiting the house of Marcelo Gonza. That contention in our judgment cannot be sustained. The band had been together for a number of hours before arriving at the house of Marcelo Gonza. Upon their arrival there they immediately commenced the commission of the crime described in the complaint. There was no hesitation on the

part of any member of the band. They acted promptly. The crime was committed immediately after their arrival. There was no delay nor discussion concerning the commission of the crime or their purpose there. The action of men must be judged by what they do and not altogether by what say. What men do is the best index of their intention. Actions speak louder than words. When men act deliberately they will not be heard to say that their action was not intentional. We think that the defendants are guilty of the crime charged in the complaint beyond any question.

We now come to the question of the penalty to be imposed upon the appellants. The Attorney-General in a very carefully prepared opinion recommends that the three appellants be sentenced with the penalty of death.

In the first place it may be said that the evidence adduced during the trial of the cause clearly shows that the appellants are guilty of the crime of robbery with homicide and must therefore be punished in accordance with the provisions of paragraph 1 of article 503 of the Penal Code. It is clearly established that the appellants, together with an armed band of more than four persons, committed a robbery and that on the occasion of such robbery a homicide was committed. The crime which they committed therefore falls clearly within the provisions of said article. (Decision of the Supreme Court of Spain, July 13, 1871; 3 Viada, Commentaries on the Penal Code, p. 347.) Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide. (U. S. vs. Macalalad, 9 Phil., 1.)

Not only does the evidence clearly show that the appellants committed the crime above described, but they committed the same with the aggravating circumstances of night time, in the house of the offended person and in an armed band composed of more than four persons. The penalty therefore, there being no attenuating circumstance, should be imposed in the maximum degree. There exists also the aggravating circumstance in the commission of the crime on the part of Mariano Bautista, that he was the chief of the band. The record shows that before arriving at the house of Marcelo Gonza, he took command of the band and ordered and directed each and all of them to obey his orders.

The penalty provided for in paragraph 1 of article 503 of the Penal Code for the crime described in the complaint is life imprisonment to death, and by virtue of paragraph 1 of article 504 the penalty for the leader of the band shall be in the next higher degree. In view, however, of the dissent of one member of the court and under existing laws, the death penalty cannot be imposed upon Mariano Bautista. The court, however, is unanimous in its conclusion that each and all of the said appellants should be sentenced with the penalty of life imprisonment in accordance with said article, notwithstanding the existence of said aggravating circumstances, due to the fact that one member of the court objected to the imposition of the death penalty.

Therefore, it is hereby ordered and decreed that the sentences of the lower court are hereby modified, and each of the appellants is hereby sentenced to suffer the penalty of cadena perpetua, with the accessory penalties provided for in article 54 of the Penal Code, to indemnify the heirs of Marcelo Gonza in the sum of P1,000 jointly and severally, and each to pay his proportional amount of the costs. It is so ordered.

Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

Avanceña, C. J., dissenting and concurring in part:

I dissent, so far as the second error assigned by the appellants is overruled, I wish to be consistent with my dissenting opinion in United States vs. Enriquez (40 Phil., 603), for I believe that the doctrine laid down therein defeats entirely the purpose of Act No. 2709. One of the requirements of this law, in order that an accomplice may be admitted to testify as a witness for the prosecution, is that he be included in the complaint (sec. 1, Act No.

2709) and that, thereafter, he be released from the prosecution (sec. 2, same Act). Under section 36 of General Orders No. 58, the order of release has the effect of an acquittal and bars any further prosecution for the same crime. The object of the law is, undoubtedly, to make the accomplice independent of the prosecuting attorney and to combat his natural inclination to gain the sympathy of the person who has the power to prosecute him, so that his testimony shall not be influenced by the desire to obtain his liberty. The witness for the prosecution, Clemente Pila, an accomplice in the commission of the crime, who was admitted by the trial court as a Government witness, without having been included in the complaint, nor released from the prosecution, was not free of these influences.

Considering, however, that even if the testimony of Clemente Pila is ignored, the other evidence in this case is sufficient to establish, beyond a reasonable doubt, the guilt of the appellants. I concur in the majority decision in all other respects.

JOHNS, J., dissenting and concurring in part:

In my judgment, the sentence of the lower court as to the defendant, Clemente Baal, should be affirmed. In all other respects, I agree with the opinion as written by Justice Johnson.

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