

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIAN MACALALAD ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 2558. October 08, 1907

Ponente: CARSON, J.

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CARSON, J.:

The defendants in this case Avere charged with the crime of robbery with homicide (robo con homicidio), alleged to have been committed as follows:

"On the night of the 28th of December, 1904, the accused assaulted the house of Dalmacio Indap, situated in the barrio of Anilao of the municipality of Pinamalayan in the Province of Mindoro, and by means of intimidation and violence appropriated to themselves 12 pesos and 50 centavos, in silver; a shirt, and a tortoise-shell comb ornamented with gold valued at 4 pesos, the property of the owner of the said house; and killed Rufino Calderon, a servant of the said owner of the house; said crime was committed against the provisions of paragraph 1 of article 503 of the Penal Code."

Before entering upon the trial, the complaint was dismissed as to Julian Macalalad, on motion of the prosecuting attorney, on the ground that he did not have sufficient evidence to sustain the charge as to him.

Gelasio de la Peña, Juan Aguila, Pructuoso Esguerra, and Clem en te Sol is were convicted of the crime with which they were charged and on all and each of them the trial court imposed the penalty of death.

None of the defendants appealed, but, in accordance with the provisions of law in such cases, the record has been forwarded to this court for examination and review. Gelasio de la Pefia having died in Bilibid Prison on the 25th day of October, 1905, the complaint should be, and is hereby, dismissed as to him, with his proportionate share of the costs de oficio.

The following is a summary of the pertinent evidence disclosed by the record:

Salvador Camara testified that he was in the house of Dalmacio Indap on the night of the 28th of December, 1904, and with him at that time were Dalmacio Indap, Dominga Capangyarihan, the wife of Dalmacio Indap, and Rufino Calderon; that on the said night Gelasio de la Pefia, Clemente Sol is, and one Fausto, who was absent at the time of the trial, entered the house and came upstairs; that these persons, being armed, by means of threats and violence, took and carried away the sum of 5 pesos; that Fructuoso, one of the accused, together with Julian, attacked Dalmacio Indap; that the witness and Rufino Calderon were bound and taken downstairs; that when they came downstairs the accused Clemente Solis and Juan Aguila were waiting below; that the accused Gelasio de la Peña and Clemente Soils took the witness and the said Rirftno Calderon out into a field; that the witness was tied to a tree, and that Rufino Calderon was taken some little distance farther away and killed by the said Gelasio and Clemente, for the reason that the robbers believed that Rufino Oalderon recognized who they were. In the course of the testimony of this witness, when called upon to identify the person who struck the deceased, he pointed to a bystander in the court room, one Alejo Reyes, identifying him as the guilty person, and it appears from the" record that in doing so the witness mistook this individual for one of the defendants on trial.

Dalmacio Indap testified that on the night of the 28th of December, 1904, he was sleeping in his house and was awakened by some armed persons, who entered and demanded money; that the persons entering the house were Gelasio de la Peña, Fructuoso Esguerra, and another who was absent at the time of the trial; that after being wounded and abused by said persons, he gave them 12 pesos and 50 centavos, a shirt, and a comb; that in the house with him at the time were his wife, Salvador Camara, and Rufino Calderon; that the persons who entered the house, after tying the said Salvador Camara and Rufino Calderon, took them out of the house into the field; that five persons came to his house, including the three who came upstairs, but that he did not know the two who remained downstairs; that he believed that one of the attacking party had been wounded above the knee with a dagger.

Dominga Capangyarihan, wife of Dalmacio Indap, testified that she and her companions were sleeping in the house on the night of the 28th of December, 1904, when three armed persons entered and by means of threats and violence compelled her husband to deliver to them 12 pesos and 50 centavos, a shirt, and a comb; that the shirt and comb were worth 4 pesos and 25 centavos; that of the three who entered the house she recognized Fructuoso Esguerra; that those who entered the house tied Salvador Camara and Rufino Calderon and carried them out of the house and into the field; and that Rufino Calderon never returned to the house because he had been killed by the persons who carried him away.

Ruperto Macalalad, whose name was included in the original complaint filed in this case, and as to whom the complaint was dismissed for lack of evidence, testified that on the evening of the 28th of December, 1904, Fructuoso Esguerra came to see him and invited him to go to the barrio of Anilao for the purpose of robbing the house of Dalmacio Indap; that the witness asked Esguerra who were his companions; that the latter stated that they were Gelasio de la Peña, Fausto Lualhati, and Juan Aguila; and that he did not accompany the party and did not know whether the party had carried out their plan to rob the house of Dalmacio Indap or not.

Isidro Umali testified that he was a councilor of the barrio of Anilao; that the robbery of the house of Dalmacio Indap had been reported to him as well as the death of Rufino Calderon; that he and others found the dead body of Rufino Calderon near the banks of a river called Papay; that Fructuoso Esguerra confessed to him that he was one of the persons guilty of the said robbery, and that his companions were Gelasio de la Peña, Juan Aguila, Clemente Solis, and another whose name the witness did not remember; that Fructuoso Esguerra testified in his own behalf at the preliminary trial held by the justice of the peace of Pinamalayan; that on that occasion Fructuoso Esguerra again admitted that he was one of the persons who committed the robbery and that he, Fructuoso Esguerra, was present when Gelasio de la Peña, with Juan Aguila, killed the deceased.

Gelasio de la Peña, the accused who died in Bilibid Prison pending the review of this case, testified on his own behalf and said that he was a servant of one Atong, and that he made a confession before the justice of the peace because his master ordered him to, and had promised to cancel his debts and give him 300 pesos; that he took no part in said robbery and knew nothing about it. Juan Aguila testified in his own behalf and denied all knowledge of the robbery in the house of Dalmacio Indap, and explained a scar of a wound above his left knee by saying that he had been bitten by a fish on the day he was arrested.

Fructuoso Esguerra testified in his own behalf and said that he did not take part in the robbery of the house of Dalmacio Indap and that on the day in question he was in the house of one Pacio Maliung[1] in the barrio of Cucel; that he remembered having made a statement in the court of the justice of the peace of Pinamalayan, but that the statement he made then was not true and that he had signed the said statement because he feared he would be punished if he did not do so.

The above-mentioned Isidro Umali, councilor of the barrio of Anilao, declared that he was present in the court of

the justice of the peace when Fructuoso Esguerra made his statement, and that no threats, force, or violence of any kind was used to secure the confession made at that time.

From an examination of the foregoing testimony it will be seen that the identity of Clemente Solis and Juan Aguila as members of the party who committed the offense charged in the complaint rests solely upon the testimony of the witness Salvador Camara. This witness appears to have been an ignorant man; in various minor details his testimony is uncertain and confused, and although we are inclined to believe that his testimony during the trial of this case was true, to the best of his knowledge and belief, we do not think that his uncorroborated testimony establishes the identity of these accused beyond a reasonable doubt. The statement of Ruperto Macalalad was, as to these defendants, admittedly hearsay; and the confessions of Fructuoso Esguerra and Gelasio de la Pefia were only admissible as evidence against themselves, and could not be used against their coaccused, unless it were fully established by other evidence that these coaccused were members of the party who jointly committed the crime.

We are of opinion that, though there is much in the record to cast suspicion upon these defendants, a finding of guilty beyond a reasonable doubt can not be sustained as to them.

We are satisfied, however, that the guilt of Fructuoso Esguerra is established by the evidence of record beyond a reasonable doubt. Not only was he identified by Salvador Camara, but also by Dalmacio Indap and his wife, Dominga Capangyarihan. He it was who invited Ruperto Maealalad to join a party which he said was going to commit the crime upon the night of the 28th of December. This evidence of itself would probably be sufficient to identify him with the party committing the offense, but in addition it was shown that he had twice confessed his participation in the crime and that he was one of the party who committed the robbery and was present at the murder of the deceased, Rufino Calderon.

While it does not appear that this defendant himself struck the fatal blow which caused the death of Rufino Calderon, he must be adjudged guilty as principal of the complex crime of robbery with homicide with which he is charged, it having been proved that he was present, aided, abetted, and took part therein. The testimony of the witnesses for the prosecution fully establishes the guilt of the defendant as a principal in the commission of the robbery, and, even were we to disregard his confession, which he repudiated at the trial of the case, and wherein he admitted he was present at the killing of Rufino Calderon, we would, nevertheless, be compelled to find him guilty of the crime of robo con homicidio (robbery with homicide). The supreme court of Spain, interpreting the provisions of the Penal Code touching the complex crime of robo con homicidio has frequently decided that, where the complex crime has been committed, all those who took part as principals in the commission of the robbery are guilty as principals in the commission of the crime of robo con homicidio, unless it appears that they endeavored to prevent the unlawful killing. (Decisions of the supreme court of Spain, April 30 and February 23, 1872, and June 19, 1890. See also Viada, vol. 3, pp. 347, 354, and 356.)

Accepting as true the exculpatory statements of the accused in his repudiated confession, it does not appear therefrom that he made any genuine effort to prevent the murder of Rufino Calderon.

Sentence was imposed in the maximum degree because the trial court was of opinion that the commission of the crime was marked with the following aggravating circumstances: First, alevosia (treachery); second, at night, in a deserted place, and by an armed band; third, ensañamiento (ensañamiento, when means are employed or circumstances brought about which add ignominy to the natural effect of the act). We do not think that the latter circumstance was established by the record, but it was conclusively proven that the crime was committed with "treachery," at nighttime, in a deserted place, and by an armed band, and the penalty was, therefore, correctly imposed on Fructuoso Esguerra in its maximum degree.

Pending the review of this case, a motion for a new trial was submitted by counsel for the appellants on the ground of "newly discovered evidence." It is alleged that at the trial of one Fausto Lualhati, who was arrested some time after the conclusion of the trial of these accused and charged with the same crime, the witness Salvador Camara declared on oath that he did not know or recognize any of those who entered the house of Dalmacio Indap on the night of the 28th of December, 1904, and that the party was composed of but three individuals. The acquittal of Clemente Solis and Juan Aguila renders this new evidence of no importance as to them, and the identification of Fructuoso Esguerra having been established beyond a reasonable doubt, without the aid of the testimony of this witness, we do not think that the introduction of the new evidence could affect the result; hence motion for a new trial for the purpose of introducing it should be, and is hereby, denied.

The judgment of the trial court, in so far as it convicts the defendants Olemente Solis and Juan Aguila, is reversed and they are hereby acquitted of the crime with which they are charged, and will be set at liberty forthwith, with their proportionate share of the costs de oficio.

The judgment of conviction and the sentence of the trial court as to Fructuoso Esguerra is affirmed, with his proportionate share of the costs of the proceedings against him. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

[1] Pacio Maliuanag.

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