

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MANUEL VALDES VACANI, PASTOE BUENAVENTURA Y FLORES, AND ELEUTERIO SUAYAN (ALIAS TERIO), DEFENDANTS AND APPELLANTS.

G.R. No. 43252. August 22, 1935

Ponente: DIAZ, J.

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DIAZ, J.:

The accused Maiiuel Valdes Vacani, Pastor Buenaventura y Flores, and Eleuterio Suayan (alias Terio), in order to have their case reviewed by this court, believing that the judgment rendered therein is not in accordance with law, appealed therefrom assigning in their respective briefs the following alleged errors as committed by the trial court, to wit:

"The trial court erred in finding the accused Eleuterio Suayan guilty as coprincipal by direct participation of the crime charged, notwithstanding the establishment in his favor of an alibi showing his innocence beyond a reasonable doubt, instead of acquitting him thereof.

"The trial court erred in finding the accused Pastor Buenaventura guilty as coprincipal by direct participation of the crime charged and in not acquitting him thereof upon his established alibi fully corroborated by the Government witness Gutierrez, when the court itself convicted the accused Buenaventura relying precisely on other portions of the testimony of said witness Gutierrez.

"The trial court erred in finding the accused Manuel Valdes Vacani guilty as coprincipal by induction of the crime charged, as a result of the conviction of his co-accused Suayan and Buenaventura of a crime of which they are innocent, instead of acquitting him thereof." (Errors assigned by the appellant Manuel Valdes Vacani.)

"The trial court erred in admitting Exhibit I, a supposed confession of the accused Pastor Buenaventura against the opposition of the defense and in not ordering for the exclusion of same from the evidence.

"The trial court erred in finding the accused Pastor Buenaventura and Eleuterio Suayan guilty of the crime charged and in convicting them thereof." (Errors assigned by the appellants Pastor Buenaventura and Eleuterio Suayan.)

Said three appellants were prosecuted for and convicted by the Court of First Instance of Manila of the crime of robbery with serious physical injuries, and were sentenced by said court to an indeterminate penalty of from six years and one day to twelve years; to indemnify the complainant corporation "Liggett & Myers Tobacco Co., Inc." in the sum of P35,311.90, and each to pay the proportionate part of the costs of the suit.

In the information filed in the case, it was alleged that the appellant Manuel Valdes Vacani, in order to dispossess Antonio J. Balunsat and Dionisio Ochoa, cashier and special policeman, respectively, of "Liggett & Myers Tobacco Co., Inc.", of the money which they carried for deposit in the bank, on October 22; 1934, conspired with his coaccused and, for a price, reward or promise, induced them to seize as they in fact seized from the hands of

said Antonio J. Balunsat, after throwing in the latter's face and in that of Dionisio Ochoa who accompanied him, ammonium hydroxide to blind and disable them temporarily, the two portfolios which he carried, containing the sum of P35,311.90 consisting in bills, checks and money orders belonging to said corporation "Liggett & Myers Tobacco Co., Inc." It was likewise alleged that the latter, by reason of said act of the appellants, was damaged in said sum of P35,311.90; and that each and every one of them acted with intent of gain.

This is not a case where there is direct evidence which, if taken into consideration, would show more or less conclusively the participation of each of the appellants in the commission of the crime of which they were convicted. The evidence presented by the prosecution is mostly circumstantial in character.

The circumstances disclosed by the evidence for the prosecution are briefly as follows: Some minutes before 3 o'clock in the afternoon of the day in question, October 22, 1934, when the alleged robbery took place on Ronquillo Street of the City of Manila, appellants Pastor Buenaventura and Eleuterio Suayan were seen in a Chinese store near the offices of Liggett & Myers Tobacco Co., Inc., having been seen also in said place for several days prior to said date. After said Balunsat and Ochoa were attacked and momentarily blinded with the liquid thrown in their face, two men were seen fleeing from the place, running through Ronquillo Street toward Isero Cegado and P. Fatermo Streets, Rizal Avenue, Bustos Street and Plaza Santa Cruz, one of them wearing a shirt with colored stripes and pants similar to gabardin, and the other a silk coat and white pants. When Eleuterio Suayan and Pastor Buenaventura were in the Chinese store, the former was wearing a shirt with colored stripes and colored pants very similar to gabardin, and the latter a white shirt (*camisa de chino*), the witnesses for the prosecution not having ascertained the material of which it was made and the color of his pants. Several minutes after the commission of said acts, two empty cans wrapped in a Chinese newspaper and a felt hat now appearing of record as Exhibits D, D-I and J, were found at the scene of the aggression and robbery. Said two cans were still moist when they were picked up from the ground and they strongly smelt of ammonia, according to Dr. Waterous and Arcadio Laperal who claimed to be an expert of the Manila Secret Service, to whom they were shown that afternoon a few minutes after 4 and between 5 and 5.30 o'clock respectively. About dawn or early in the morning of October 23, 1934, Pastor Buenaventura was found sound asleep in Bonifacio Gutierrez's house at No. 390 Santa Mesa Street. The two, Buenaventura and Gutierrez, with a brother of the latter and another whose identity was not proven at the trial, were driving through the City of Manila in the family car of said Gutierrez, and they also were in a Paranaque dance hall for several hours, returning home at 1.30 o'clock in the morning. Upon retiring some minutes after 1.30 in the morning, Bonifacio Gutierrez received from Pastor Buenaventura a roll of bills which, if all consisted of onepeso bills as the visible one which served as wrapper for the others, would amount to P30, the diameter of the roll formed thereby being approximately an inch.

At the third search of Manuel Valdes Vacani's car on the morning following the night when it was at the disposal of the police at their own station, having compelled said Vacani to leave it there after questioning him on the robbery in question, a jar containing solution of ammonia in a quantity not proven at the trial, was found in the pocketflap of the left rear door thereof, together with some rags more or less soaked in ammonia. Said pocket-flap notably smelt of ammonia. The police twice searched Valdes Vacani's house at No. 20 Murillo Street, first on October 23d and lastly on the 24th, and also searched the house of Antonio Zaragoza, Vacani's father-in-law, at No. 32 on the same street, having found in Valdes Vacani's house during the last search made on October 24th, if the testimony of the policemen who testified on this point should be given credit, the newspaper, Exhibit N, which, according to Arcadio Lapera's testimony, was part of the newspaper which served as wrappers for the cans, Exhibits D and D-I; Exhibits E, E-I, P, G, H and H-I which are respectively an envelope on which the names of Eleuterio Suayan and "Terry" were written in pencil; an application for a driver's license prepared for Eleuterio Suayan's signature; a notebook on one of whose pages appear the following notes:

7.00 Pastor -20.20-2-1-20-4-3 20

Terio -20.20-20- 25

Tayong -20.20-20- 20

10

10

10

Luz - P22-1-7-2

95

and on another, the following:

Tomas 0.20

.20

1.00

.05

.10

1.55

3 Tapalodos 14.00

3 Corn lings 2.50

2 Tablas .85

4 Tirantes AI 3.60

Clavos & Tor. .85

Chaps .10

Dif & Aceite 10.00

33.45;

Exhibit G consisting of P22 in bills and P15.05 in coins inside a hand-bag of Manuel Valdes Vacani's wife, and two toy-revolvers.

In the same house were also found Exhibits O, O-l and Q which are respectively two cans appearing to have contained asphaltum varnish paint and a small bottle with a capacity of 3J cc. whose slightly erased label, shows that it formerly contained 30 cc. of ammonium hydroxide at 10 per cent bought from the Farmacia Legaspi. The two toy-revolvers and the two cans, Exhibits D and D-l are painted with asphaltum varnish, the latter two on the inside; but the expert presented by the prosecution could not determine whether or not the asphaltum varnish with

which said objects are painted is the same as that contained in the cans Exhibits O and O-l.

In May, 1934, a person bought the ammonium hydroxide contained in the bottle Exhibit Q from the Farmacia Legaspi. In the opinion of Dr. Waterous, based on the fact that the wet clothing of Balunsat and Ochoa when they were brought to his clinic after 4 o'clock in the afternoon in question smelled of ammonia, the liquid thrown in their face was concentrated solution of ammonia; and on October 28, 1934, appellant Pastor Buenaventura was detained at the Luneta Police Station for violation of the Revised Ordinances of the City of Manila, and appellant Manuel Valdes Vacani had then also been detained already two days at the same station for counterfeiting.

The facts just stated, which are inferred from the testimony of the witnesses for the prosecution at the trial and from the confession of the appellant Pastor Buenaventura before the police on October 24, 1934, constitute the circumstantial evidence with which the prosecution attempted to prove the guilt of the appellants.

In order that circumstantial evidence may serve as a basis for conviction, it is necessary, as this court has held on more than one occasion (*U. S. vs. Villos*, 6 Phil., 510; and *U. S. vs. Douglass*, 2 Phil., 461), that the same be complete and that the knowledge produced thereby be such that it leaves no room for a reasonable doubt as to the guilt of the, accused, following the natural and ordinary course of things.

We do not believe that the circumstances proven by the prosecution to show the appellant's guilt are of said nature. In the first place, it should be borne in mind that the evidence does not show that on the occasions when the appellants Pastor Buenaventura and Eleuterio Suayan were seen at the Chinese store, the two were together or that they had an understanding on something, judging from their movements and their attitude; neither does it show that on the afternoon of the crime or shortly before the latter, both or one of them at least carried something justifying the supposition or inference that it was the two who threw the ammonia at the face of Balunsat and Ochoa. Pastor Buenaventura was not seen running inasmuch as the two who ran wore clothing entirely different from that which said appellant had on. One of those who ran away, after the robbery, wore a silk coat and white pants, and the other a shirt with colored stripes and pants similar to gabardin, and Pastor Buenaventura wore only a white shirt (*camisa de chino*), according to the same evidence for the prosecution.

The expert witnesses for the prosecution testified that in order that ammonium hydroxide may produce injuries of the same nature as those inflicted on Balunsat and Ochoa, the concentration thereof must be more than 10 per cent; and the evidence shows that the solution of ammonia which appellant Manuel Valdes Vacani once had in his possession, even granting that the bottle, Exhibit Q, was really found in his house—which he categorically denied—was very weak, being only 10 per cent. On the other hand, the bottle, Exhibit Q, was for only 30 cc, and the supposition that from the contents thereof was taken the solution of ammonia, divided into two cans (Exhibits D and D-l), which the aggressors threw in the face of Balunsat and Ochoa, it would follow that there was not nor could there have been sufficient amount to moisten part of their clothing, much less to cause the injuries which they received, blinding and forcing them to submit to medical treatment for more than one month.

If we assume that appellant Manuel Valdes Vacani added water to the solution contained in Exhibit Q in order to have a greater amount thereof, then its effect would have been nil and it could not have caused the injuries of said Antonio J. Balunsat and Dionisio Ochoa. This would appear all the more certain if we were to believe the insinuation of the prosecution that part of said 10 per cent solution of ammonia was contained in the jar, Exhibit C, found in the pocket-flap of the car of appellant Manuel Valdes Vacani.

The testimony of Bonifacio Gutierrez is unworthy of credit because it is improbable and uncorroborated, and furthermore it differs substantially from his statements to the police on October 23, 1934. Said witness testified that the roll of bills received by him from Pastor Buenaventura amounted to about P30; that he threw it into the water-closet of his house as soon as the detectives arrived to make a search therein, and that he told them this fact

before he was brought to the police station with Pastor Buenaventura. He also testified that the detectives did not search his person and that they allowed him to go upstairs unguarded, while the search was being conducted. However, the truth is that, according to the detectives, they first knew from said witness that Pastor Buenaventura had given him bills for safe-keeping when they were already at the police station; and that said witness as well as the appellant was watched in his house until they were brought to said station. Upon cross-examination said witness stated that he did not reveal what he had done to the roll of bills until he was already at the station.

If the testimony of said witness is to be believed at all, then there is a strong reason to state that Pastor Buenaventura should never have been prosecuted because the alibi proved by said witness cannot be more complete. He testified that after lunch on October 22, 1934, Pastor Buenaventura went to his house to invite him for a walk; that a few minutes later he, his brother, said appellant and another in fact went riding in his family's car, and that they were not separated until the following day when the two of them were brought to the police station. If this is true, and as the robbery, according to the evidence for the prosecution, was committed a few minutes before three o'clock in the afternoon of said day then Pastor Buenaventura did not, and could not have taken part therein, because to assume otherwise would be to grant him the gift of ubiquity.

The prosecution attempted to prove that the search made in the house of Manuel Valdes Vacani on October 23, and 24, 1934, was by virtue of two judicial warrants issued by one of the judges of the municipal court of Manila. The corresponding records of said court, however, do not show that a search warrant was issued for the house of appellant Vacani on October 23, 1934. The only warrant issued for said house was the one dated October 24th of said year bearing No. 7297. Said warrant required the search for paints, checks, bills and portfolios. The warrant issued for the search of similar articles on the 23d of October of said year bore No. 7295, but it was not for the house of Manuel Valdes Vacani but for house No. 32 on Murillo Street, then occupied by Antonio Zaragoza.

It is exceedingly strange that the detectives who made said search in the house of Antonio Zaragoza and in that of appellant Valdes Vacani made no return of said warrants to the court which issued them and there is no proof that they really found in and carried from said places Exhibits E, E-1, N, O-and 0-1 above stated. And 'still much stranger is the fact that Roman Pobre, one of those who searched the house of appellant Vacani on the 23d, in the presence of detective Isaac Alfonso and policemen Dayao and others, having stated that in addition to the newspaper Exhibit N, he also found several packages containing counterfeit bills, the prosecution has not presented said packages if only to corroborate the testimony of said policeman.

If we have to give some credit to policeman Pobre's testimony that Vacani in fact had counterfeit bills in his possession, then it is not he who induced the persons who perpetrated the robbery of the ₱5,311.90 belonging to Liggett & Myers Tobacco Co., Inc. Under said circumstances he needed not resort of said extreme as the counterfeit bills in question were sufficient to provide him with profit. This necessarily makes it doubtful and suspicious that things occurred as stated by the policemen who testified at the trial.

The finding of Exhibit N, a piece of Chinese newspaper, in the house of appellant Vacani, has all the earmarks of a pure fabrication by the policeman who claimed to have found it. Perhaps it had been brought there to give some semblance of probability to the suspicion that Vacani had something to do with the robbery in question. If it were true that policeman Pobre found said exhibit inside said house, the natural thing was for him to have so noted it in his return to the court, as the law imposes upon the person making a search the duty not only to issue to the owner of the place searched a receipt for everything found and taken away by him therefrom but also to make a return of the warrant to the court which issued it, together with an-inventory of the property seized. (Sections 103 and 104, General Order No. 58.)

The alleged extrajudicial confession of the appellant Pastor Buenaventura, Exhibit I or 1-1, proves nothing against

him, much less against the other appellants (U. S. vs. Castillo, 2 Phil., 17; and U. S. vs. Urn Tico, 4 Phil., 440) ; because it also has all the indicia of not having been freely and voluntarily made by him. It will be noted that in said document the appellant is quoted as admitting having received from Eleuterio Suayan, as the latter ran away, the portfolios containing the P35,311.90 belonging to Liggett & Myers Tobacco Co., Inc.; that with said booty he went to join the appellant Manuel Valdes Vacani in the place previously agreed upon by them, that is Nagtahan Street; that from said place, he, Vacani and the latter's wife went together in Vacani's car to a certain zacate field (zacatcd) where they threw said two portfolios after emptying them of their contents; and that all that Vacani had given Jiim was the sum of P50.

It is to be assumed that Pastor Buenaventura examined the contents of the two portfolios before delivering them to Vacani, and having seen that one of them contained more than ^10,000 in cash, it is not explained how he contented himself with having received from Vacani only the paltry sum of P50. It should also be borne in mind that detective Isaac Alfonso who took Pastor Buenaventura's confession, Exhibit I, testified that the latter had admitted to him on the same morning of his arrest, October 23, 1934, that he had received from Vacani the sum of 1N300 which was exactly the same sum delivered by him to Bonifacio Gutierrez for safekeeping before the two went to sleep in the latter's house at dawn of said day. When said appellant made his confession in question, Exhibit I or 1-1, on October 24th at 10.08 o'clock in the morning, and stated that he had received only P50 from Vacani, detective Alfonso, however, did not cross-examine him on said inconsistency, although his mission then was precisely to inquire after all the details of the crime.

Another thing quoted in said Exhibit I or 1-1, as stated by Pastor Buenaventura, is that the name of Vacani's wife is Nena, while the truth is that said woman was never called Nena, because her name is Lourdes, and she is called Lulu by the members of her family.

Furthermore, if the portfolios which contained the stolen money were thrown into a zacate field, according to the confession attributed by the policemen to appellant Pastor Buenaventura, and -which they claim was made by him at or shortly after 7 o'clock in the morning of October 23d (Exhibit I), it is certainly inexplicable that the police has not done anything to verify the truth of said fact. This failure impresses us that the statement attributed to,said appellant in his confession is really untrue.

If the foregoing considerations should not yet suffice to justify a finding adverse to the prosecution,' we may add that, it not having been rebutted, the fact remains that Eleuterio Suayan, from whom Pastor Buenaventura allegedly had received the portfolios containing the corpus delicti, was detained in the municipal jail of San Juan, Rizal, some minutes after 1 o'clock in the afternoon of October 22, 1934, until past 5 that afternoon, having been suspected as the driver who took a clarinet belonging to a passenger the afternoonbefore. Suayan testified that some ten persons were detained with him in the same jail and that the police sergeant of said municipality was informed of his detention ; and to corroborate his testimony he presented Exhibit 4, an affidavit subscribed before Clemente E. Felix, justice of the peace of said municipality, by Pedro Meneses who claimed to be the owner of the clarinet for the disappearance of which said appellant was detained on that occasion.

To refute Eleuterio Suayan, if he had testified falsely, the prosecuting attorney certainly had many means to do so, as said appellant indicated as follows: The testimony of the police sergeant of San Juan, Rizal; that of some or of all of those who were detained with him; that of the justice of the peace of said municipality; and the very record book of prisoners or detained persons kept therein. However, notwithstanding the fact that the prosecution asked for time to present evidence in rebuttal, it presented none, merely stating that policeman Gabino, who, according to said appellant was the person who arrested him in the afternoon in question, was not at the police station when the summons was served on him. This necessarily means that the prosecuting attorney did not present any evidence in rebuttal because the only ones on which it relied upon were adverse to its cause, or in other words,

because it is true that Eleuterio Suayan was really detained in the jail of San Juan, Rizal, at the time of the robbery of said P35,311.90 belonging to Liggett & Myers Tobacco Co., Inc. Eliminating appellant Suayan from the charges in which he was included on mere suspicion, the entire evidentiary structure of the prosecution crumbles to the ground.

All the probabilities are that, as soon as police inspector Pacheco was informed of the robbery a few minutes after its commission, 'he intuitively thought that the same was committed by the three appellants; this explains why he then immediately ordered Isaac Alfonso and the other policemen under him to search for the three appellants. There is nothing of record to show, even remotely, how the intuition came to him.

The finding of the jar containing solution of ammonia (Exhibit C) in the pocket-flap of appellant Vacani's car is most suspicious. To find it in a third search, they had to wait for him, as if to show purposely that the proceeding was conducted in his own presence. The policemen knew since the afternoon of the robbery that a strong solution of ammonia played an important part therein. However, they did not find the jar in question, Exhibit C, during the first two searches, but only during the third search conducted after the car in question had been at the disposal of the police for one night; nor did they then notice any odor of ammonia as did the police expert immediately after opening the pocket-flap in which said jar was found. It may be inferred from this that an evil-minded person placed it there a few moments before the third search. This is so because one of the doctors presented as a witness for the prosecution testified that a concentrated solution of ammonia loses its odor if exposed to the air for fifteen minutes.

No weight may be given to the notes found in two leaves of the notebook, Exhibit F, because appellant Manuel Valdes Vacani gave a satisfactory explanation thereof. They refer to the expenses for the repair of said appellant's car, and the persons therein mentioned are not the other appellants but Pastor Pascual, Eleuterio Visita, Mateo Santos and Luz, the electrician. The inference of the prosecution that the figures written after the names appearing on said pages of Exhibit F mean the sums in pesos paid by Vacani to his co-accused Buenaventura and Suayan for their cooperation in the robbery, is absolutely unfounded. It cannot be said that the notes in question were made after the robbery because there would be no possible explanation of the fact that the payments were made not only once but on different occasions as may be inferred from said notes. Neither can it be reasonably said that the payments were made before the robbery because it is childish for Vacani to agree to pay for something whose success or failure was still a matter of conjecture.

For all the foregoing, we are of the opinion that the errors assigned by the appellants as committed by the lower court are very well founded.

Wherefore, reversing the appealed judgment, the three appellants are acquitted of the crime with which they were charged, with costs de oficio, and it is ordered that those who are in detention be immediately released unless they are detained for other cause. So ordered.

Abad Santos, Hull, Vickers, and Recto, JJ., concur.

Judgment reversed and defendants acquitted.

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