

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PASCUAL GALLEMOS, BERNABE PEÑAS, GREGORIO TOLEDANO AND ESTEBAN TOLEDANO, DEFENDANTS AND APPELLANTS

G.R. No. 43382. August 30, 1935

Ponente: RECTO, J.

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RECTO, J.:

On the afternoon of October 2, 1934, when Mariano Granada and four others who were with him happened to enter a house, six hundred yards from the nearest one, and surrounded by trees and bamboo clumps, in the barrio of Tawi, municipality of Jordan, Province of Iloilo, they at once realized that a crime motivated by the most depraved wickedness had been committed therein. The spectacle before them could not be more horrible. Two dead bodies covered with wounds lay face downward, one on the floor under a bed and the other across another bed, with legs dangling. They were of Remigio Bancfo and Cipriana Jimeno, aged occupants of that tragic home. There were bloodstains and splatterings of blood on the sheets and floor. The wardrobe and two suit cases, the one of leather and the other of steel, were empty and apparently had been forced open. On the following day, the body of the adopted son of said spouses, Conrado Canlas, wrapped in a mat, covered with wounds, in a state of putrefaction and worn-eaten, was found outside the house under a plum tree. The three had been pitilessly and brutally murdered and robbed on the night of September 30th last.

The authorities of Jordan conducted the necessary investigations which proved fruitless for several days, until Geronimo Capalonga, a resident therein, on October 8th, gave them the clue to the crime with the information that one Demetrio Esmana was the person seen near the house of old man Remigio on the afternoon prior to the night of the crime. With this information, Constabulary Sergeant Cornell, on October 13th, arrested Esmana and searched his house, finding therein three pawnshop tickets of certain jewels which Esmana, on that same morning, pawned in three different pawnshops of the municipality of Iloilo, for the amount of eighteen pesos. Esmana then revealed that Pascual Gallemos, Feliciano Guerrero, Juan Noquera and Bernabe Penas were those who committed the murder and robbed the house of Remigio Bando on the night of September 30th; that the jewels pawned by him formed part of the booty and were delivered to him by one of them. The original information against said persons for the crime of "robbery in band with triple murder" was filed by the provincial fiscal of Iloilo in the justice of the peace court of Jordan. It appears that the names of Feliciano Guerrero and Juan Noquera were stricken out from said complaint and replaced by those of Gregorio Toledano and Esteban Toledano, respectively. A new complaint was filed in the Court of First Instance against Pascual Gallemos, Bernabe Penas and the two Toledanos for the crime of robbery with homicide. They were found guilty of the crime charged and were sentenced to the penalty of reclusion perpetua with the accessories, to jointly and severally indemnify the heirs of the three deceased in the sum of ₱10,000 and to pay the costs.

The defendants appealed and upon the allegation that the trial judge committed errors in his judgment, pray that they be acquitted of the charges. The Solicitor-General recommends the imposition of the death penalty on each

of them. While this appeal was pending review, the defendants, Toledanos, filed a motion for new trial on the ground of newly discovered evidence consisting of an affidavit of Pascual Gallemos made after the appealed judgment was already promulgated, wherein this defendant exonerates the Toledanos and incriminates himself and the other appellant, Bernabe Penas, as well as Demetrio Esmana, Feliciano Esmana, Victorio Jimeno and Juan Noquera. This motion will be disposed of in the course of this decision.

The evidence for the prosecution with regard to the alleged participation of the appellants in the crime charged, consists of the testimony of Demetrio Esmana, the finding of certain jewels and clothing in the possession of some of them, and their testimony at the preliminary investigation, which testimony has the peculiarity of differing from each other in that in each the witness confined himself to admitting his presence at the scene, denying all participation therein, and attributing the crime to his coaccused.

The testimony of Demetrio Esmana is substantially as follows: On the afternoon of September 30, 1934, the witness was invited by Pascual Gallemos and Gregorio Toledano to a party which, they said, was to be held that night in the house of Remigio Bando in the barrio of Tawi. They arrived there at seven o'clock in the evening finding the old spouses Remigio Bando and Cipriana Jimeno, their adopted son Conrado Canlas, and Cipriana's nephew Victorio Jimeno. There was no such party. Victorio left before supper after which Bernafoe Fenas and Esteban Toledano arrived and asked to remain overnight. On that occasion all of them, except the witness, were armed with bolos. Shortly before midnight the witness, who was awakened by a noise, saw the four accused attacking with bolos the occupants of the house, the spouses Remigio and Cipriana and the boy Conrado, who were then sleeping. The witness escaped therefrom by jumping out of the window, and went to the barrio of Santa Teresa to hide in a forest. On the following day, he went to the municipality of Iloilo where he met Gregorio Toledano. The latter offered to sell to him for six pesos and fifty centavos certain jewels which, according to Gregorio, formed part of the booty of the robbery committed in the house of Remigio Bando. Demetrio accepted the offer and pawned the jewels at three different pawnshops for the total amount of P18.

We entertain no doubt as to the guilt of the appellants Pascual Gallemos, Gregorio Toledano and Bernabe Penas. Although none of the objects alleged to have been robbed from the house of Remigio Bando on the night when he and his wife and the boy Conrado were murdered was found in Pascual's possession, it appears not only from Demetrio Esmana's testimony but also from Pascual's affidavit made after the judgment of the lower court had already been rendered, that this accused took a direct part in the commission of the crime charged. As to the appellant Gregorio Toledano, not only was he pointed out by witness Esmana as one of those who murdered and robbed the spouses Remigio Bando and Cipriana Jimeno, but it is also a fact that the two skirts (Exhibit R) found by the constabulary agents in the possession of his wife, Petronila Galono, appear to have belonged to the deceased Cipriana, according to the testimony of the latter's daughter-in-law Pilar Galotera. Furthermore, although Gregorio Toledano's wife claimed said skirts as hers stating that she had ordered them made in 1918 while she was still single, when the court, upon motion of the fiscal, ordered her to try them on, it was found that they did not fit her, and this was entered in the record without any objection on the part of the accused or of his counsel.

As to the participation of the accused Bernabe Perias in the crime charged, we have not only the testimony of Demetrio Esmana but also his own testimony at the preliminary investigation before the justice of the peace of Jordan, the provincial fiscal and approximately two hundred spectators, admitting that he was present at the commission of the crime in question, although denying all intervention therein, and pointing at his codefendants and witness Demetrio Esmana as well as Victorio Jimeno, as the authors thereof. Inasmuch as the crime committed is robbery in band and in an uninhabited place, and the accused admits having been present at the commission of the crime without having done anything to prevent it, his responsibility is the same as that of the

principals. (Art. 296, Revised Penal Code.) It is true that Peiias, as the other accused, stated that he had testified in such wise due to the corporal punishment, intimidation and threats he received from Constabulary Sergeant Cornell, but we can not give this claim any credit taking into account, as already stated, the circumstances under which said testimony was given and the fact admitted by the accused that he did not complain of said corporal punishment and threats to anybody, not even to the municipal president of Jordan, his "spiritual brother", who went to see him in jail in order to advise him to tell the truth.

On the other hand, we doubt the correctness of the judgment in so far as it convicts Esteban Toledano. The two rings (Exhibit Q), taken by the constabulary agents from him or his sister Laureana, were not identified by any witness as belonging to any of the deceased. On the contrary, this accused and his sister firmly asserted that said rings belong to the latter. The possession of personal property acquired in good faith is equivalent to a title thereto (art. 464, CC), the possessor's good faith is always presumed (art. 434, id.), and the possessor under claim of ownership has in his favor the legal presumption that he possesses under a just title and he can not be required to exhibit his title. (Art. 448, id.)

Furthermore, as stated at the outset it appears that those who were charged in the original information filed by the fiscal in the justice of the peace court of Jordan on October 16, 1934, were Pascual Gallemos, Feliciano Guerrero, Bernabe Peiias and Juan Noquera. In said complaint the names of Feliciano Guerrero and Juan Noquera appear to have been cancelled and substituted by those of Gregorio Toledano and Esteban Toledano. The cancellation and substitution are made with a pen. It was satisfactorily explained that "Feliciano Guerrero" was Gregorio Toledano's alias, and, on the other side, no evidence was presented to the effect that in the municipality of Jordan or in the Province of Iloilo there was in fact a person by that name. But the substitution of Juan Noquera by Esteban Toledano is different. Juan Noquera is a real person who appeared in court proving his existence and testified that he was known by the witness Esmana, having had dealings with him regarding the purchase and sale of cattle on one of the latter days of September, 1934. It will be remembered that all information regarding this case reached the authorities and the provincial fiscal of Iloilo through Demetrio Esmana when the latter was arrested by the constabulary on October 13, 1934. Inasmuch as the original information accusing Juan Noquera, among others, instead of Esteban Toledano, as one of the authors of the crime in question, was filed on October 16, 1934, that is, three days after Esmana was arrested and he squealed, and as Esmana and Juan Noquera already knew each other, it must be assumed that had Esteban Toledano really been present therein, Esmana would not have mistaken one for the other. Esmana tries to explain this confusion by stating that on the night in question Esteban Toledano was introduced to him as Juan Noquera, and for this reason in his version of the incident to the constabulary, he referred to Juan Noquera, whom he says he does not know, and not to Esteban Toledano. But Noquera, as already stated, was later called to the witness stand by the defense, and he stated that he and Esmana were old acquaintances, having sold a cow to the latter about the latter part of September, 1934.

Therefore, Esmana's testimony as regards Esteban Toledano's participation in the crime in question, appears to be vague, uncertain and polluted with falsehood, and the court can not take it into consideration. The only evidence against the accused is his testimony given at the preliminary investigation where he admitted having been present at the commission of the crime, but in the absence of any other competent corroborating evidence or other unquestionable facts of the case disclosing his intervention in the murder and robbery committed in Remigio Bando's house (U. S. vs. De Leon and De Leon, 27 Phil., 506), as in the case of his coaccused, said testimony, which was obtained by means of a questionable method, can not be considered as the basis of a judgment of conviction.

The court's attention has greatly been attracted by the fact that Demetrio Esmana and Victorio Jimeno never were included in the information when in fact all of the accused are unanimous in pointing at them as coauthors of the

crime charged, and there is the voluntary confession of the former that the greater and most valuable part of the booty was found in his possession. There is nothing in the record justifying the exclusion of these men from the charge. We are, therefore, of the opinion that the authorities concerned should further investigate this crime for the proper punishment of the persons, who, in addition to the three herein convicted, should be held answerable before the law for having participated in the commission thereof.

The motion for new trial filed in this instance by the appellants Gregorio Toledano and Esteban Toledano is without merit as to the former. Pascual Gallemo's retraction in the sense that neither Gregorio Toledano nor Esteban Toledano took part in the commission of the crime under consideration, which is the basis of said motion, does not alter the situation as to the other defendants nor affect the result of the case, because the previous incriminatory statement of Gallemos, like that of any of the defendants, made extrajudicially, is valid and may be used in evidence only against the person who made it. (U. S. vs. Lim Tico, 4 Phil., 440; U. S. vs. Vega, 43 Phil., 41; U. S. vs. Castillo, 2 Phil., 17.) With respect to Esteban Toledano, it has already been stated that there is a doubt in the mind of the court as to his guilt. Gregorio Toledano's motion for a new trial is, therefore, denied.

A majority of the members of the court who have taken part in the consideration and determination of this case believe that the death penalty recommended by the Solicitor General in his brief should be imposed upon all of the accused except Esteban Toledano, for the reason that the aggravating circumstances of treachery, in band and uninhabited place were present, and the crime was committed in the dwelling of the offended parties. However, there has been no unanimity of opinion in this respect, and in accordance with article 47, No. 2, of the Revised Penal Code, in connection with section 138 of the Administrative Code, the penalty of reclusion perpetua which is the penalty next lower in degree should be imposed. The judgment appealed from should, therefore, be affirmed as to the appellants Pascual Gallemos, Gregorio Toledano and Bernabe Peñas, and reversed as to Esteban Toledano, who is acquitted. The costs of both instances shall be paid proportionately by the three defendants as to whom the judgment of the lower court has been affirmed. So ordered.

Avanceña, C.J., Abad Santos, Hull, and Diaz, JJ., concur.

Judgment affirmed as to Gallemos, Gregorio Toledano and Peñas and reversed as to Esteban Toledano.

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