

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FORTUNATO RAMOS, MACARIO ANTALAN, MARCELO MIGUEL AND CATALINO AGUSTIN (ALIAS BANONG), DEFENDANTS AND APPELLANTS.

G.R. No. 43558. October 19, 1935

Ponente: RECTO, J.

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RECTO, J.:

The accused Fortunato Ramos, Macario Antalan, Marcelo Miguel and Catalino Agustin appealed from the judgment of the Court of First Instance of Tarlac holding them guilty of the crime of robbery with violence and sentencing them to the penalty prescribed in article 294, subsection 5, of the Revised Penal Code, but after the record had been forwarded to this court, said Macario Antalan and Catalino Agustin withdrew their appeal and therefore said judgment became final with respect to them, Fortunato Ramos and Marcelo Miguel prosecuting their appeal through counsel de oficio who, claiming to have found nothing in the record justifying reversal or modification of the appealed judgment, concurs with the Solicitor-General in recommending the affirmance thereof in all its parts.

The evidence in the case has satisfactorily shown to the court the following facts: On the night of January 9, 1935, some malefactors attacked the house of Miguel Domincel, an old man of 96 years of age, in the barrio of Tangcaran, of the municipality of Gerona, Province of Tarlac, wounding him from a shot and robbing him of his trunk containing documents, jewels and other articles. The trunk was recovered after several hours but some of its contents valued at P147 were missing. Domineers wounds took forty days to heal.

It appeared from the investigation conducted by the Constabulary on the way following the incident that among the attackers Domincel had recognized only Catalino Agustin who, shortly after his arrest, made an affidavit stating that the persons who had taken part in the attack were Fortunato Ramos, Marcelo Miguel, Macario Antalan, Francisco Cielo and himself, with Ramos as the organizer of the band.

All the persons incriminated by Agustin were immediately arrested and, with the exception of Ramos and Cielo, they signed affidavits before the justice of the peace of Gerona confessing direct participation, one way or other, by order of Ramos, in the attack on Miguel Domineers house.

The original charge in the justice of the peace court of Gerona was for "robbery in band with frustrated murder" and included Catalino Agustin and the four persons incriminated by him, or Ramos, Antalan, Cielo and Miguel. After the preliminary investigation, the justice of the peace of Gerona ordered the dismissal of the case with respect to Cielo for alleged lack of evidence relative to his participation in the crime charged, and forwarded the case, with respect to the other four accused, to the Court of First Instance where the provincial fiscal filed a new information charging them with "robbery in band with frustrated homicide".

We are concerned in this instance only with determining whether the appellants, Fortunato Ramos and Marcelo

Miguel should be convicted and sentenced upon the evidence afforded by the case.

As regards the former, the only competent evidence of record is Domineers testimony that he had recognized Ramos' voice when, after having been wounded from the second shot fired at him by Agustin, he heard Ramos ask "were you able to take the trunk?" to which Agustin, who was the person addressed, answered in the affirmative, after which Domincel immediately fell to the floor unconscious as a result of his wound.

This part of Domineers testimony deserves from us very little credit for the following reasons: (a) In the first place, it seems that Domincel only waited for Ramos and Agustin to engage in said short dialogue about the taking of the trunk before losing consciousness and falling, as if he had struggled to remain conscious and be on his feet until he had satisfied his curiosity to know what Ramos and Agustin would talk about. What should have happened was that

Domincel fell unconscious upon receiving the shot which pierced his body through and, if there had been any conversation between the malefactors, he could not have heard it. (6) Granting that Domincel remained conscious for some time after being wounded, his perceptive faculties would have been so affected by the excitement and terror that it would have been extremely difficult for him to distinguish the tone of Ramos voice even if he knew the latter for a long time, (c) We should not lose sight of the fact that Domincel and Ramos, according to the former, were bitter enemies on account of a suit between them in connection with a parcel of land the title to which was precisely kept in said trunk, and under such circumstances it would not be strange if Domincel, granting his veracity, had been inspired with the idea which would have occurred to him like a flash, that Ramos was with the attackers in order to take possession of the title in question, the former going to the extent of fancying having heard his adversary's voice. (d) Santiago de Leon, of 9 years of age, who lived in Domineers house and was with the latter on the night in question, corroborates Domineers testimony relative to having recognized Catalino Agustin as the person who shot Domincel, but does not state having heard any conversation among the attackers either before or after the shooting. Cristina Pascua, who also lived with Domincel, was not called upon to testify in spite of the fact that her name appeared in the list of the witnesses for the prosecution in the information upon which this proceeding was instituted in the justice of the peace court of Gerona. (e) During the investigation conducted by the Constabulary on the day following the incident, Domincel stated to sergeant Padua that he had recognized Catalino Agustin as the one who had shot him but did not mention having recognized Ramos by his voice as one of the members of the band. Ramos was not arrested upon any revelation made by Domincel but on Agustin's denunciation.

Lastly, we are of the opinion that the complainant's credibility has been seriously affected by his testimony as shown in the following excerpt therefrom:

"Q. Is it not true that there is an enmity between you and said Fortunato Ramos since before?—A. Yes, sir.

"Q. And that same enmity has brought you to testify as you have testified against Fortunato Ramos?

"A. Yes, sir.

"Judge.

"Q. Do you mean to say that you distorted the truth in testifying here?—A. I do not know.

"Q.

Do you mean to say that what you have stated against Ramos is a lie and that you have so testified because Ramos is your enemy, is that what you mean?—A. Yes, sir.

"Q.

Do you mean to say that just because Ramos is your enemy you testified against him although it is a lie?—A. I do not know what to answer.

"Q. Do you not understand the question?—A. I have understood

"Q. Therefore, what you testified against Ramos is a lie?—A. So it is, I mean we are enemies since before.

"Q. But the question is whether you mean to say that what you testified against Ramos is a lie?—A. No, sir.

"Q. And what did you mean when you said yes?—A. That we are enemies.

"Q.

And in view of your enmity with Ramos you are interested in his going to jail, are you not?—A. That is what I should like if it were possible.

"Judge.

"Q. Why?—A. Yes, sir, I like it because he maltreated me.

"Q. When?—A. When we had a quarrel over a piece of land during the time of Governor Agana.

"Mr. Ilagan

"Q.

And that is the only motive which brought you to testify against Fortunato Ramos because you are interested in his going to jail?—A. That will depend on you.

"Q.

Personally, are you interested in that he, that is, Fortunato Ramos, be imprisoned merely because of the fact that he is your enemy, having maltreated you?—A. Let him be punished if you so dispose.

"Judge.

"Q. Punished for what?—A. On suspicion because they said that it was Banong who had struck me."

(Testimony of Miguel Domihcel, pp. 48-50, record of testimonies.)

It is true that the accused Catalino Agustin, Macario Antalan and Marcelo Miguel, in their respective confessions made before the justice of the peace of Gerona, incriminate Ramos, pointing to him as the one who conceived and executed, with the cooperation of the others, the plan to attack and rob Domincel's house; but inasmuch as said confessions are extrajudicial, they can neither affect Ramos nor be taken into consideration in determining the latter's participation in the crime charged, as repeatedly held by this court (U. S. vs. Lim Tico, 4 Phil., 440; U. S. vs. Vega, 43 Phil., 41; U. S. vs. Castillo, 2 Phil., 17; People vs. Gallemos, 61 Phil., 884). We are of the opinion, therefore, that there is no sufficient evidence to hold Fortunato Ramos guilty of the crime with which he stands charged.

As regards the appellant Marcelo Miguel, we have the confession made by him in the justice of the peace court of Gerona that he took part in the attack and robbery in the house of Miguel Domincel on the night of January 9, 1935. Miguel retracted this confession during the trial of the case stating that the Constabulary agents obtained it from him through inquisitorial methods. His coaccused Catalino Agustin and Macario Antalan alleged the same

reason relative to their confessions which were to a great extent made the basis of the judgment of conviction from which they desisted to prosecute their appeal. Lieutenant Mejia and sergeant Padua of the Constabulary, who, it is alleged, coerced these three accused into confessing their participation in the commission of the crime charged, deny having employed improper or illegal methods to obtain said confessions, alleging that the same were made freely and voluntarily. The appellant's allegation to the contrary not having been proven, we believe this allegation to be true because if violence and intimidation had been employed to compel the accused Agustin, Antalan and Miguel to confess their crime, it is not explained why the same thing had not been done to the other accused Fortunato Ramos and Francisco Cielo, who, unlike the former, made no confession, it being a fact that, according to the data in the hands of the Constabulary, Ramos, as organizer and leader of the band, appeared to be the most guilty among them, and Cielo was not less guilty than the others because he was a member thereof and it was he who carried the revolver used in intimidating and wounding Miguel Domincel.

It is a well settled doctrine of this court that when a confession is made extrajudicially and is later retracted by its author, and there is no sufficient evidence of record, apart from the confession, to show the corpus delicti and the commission of the crime, said confession, being uncorroborated, cannot be made the basis of a judgment of conviction. In the case of the herein appellant, Marcelo Miguel, however, the terms of his confession, which is not vitiated by coercion, are confirmed by the undisputed fact that on the night of January 9, 1935, a band of malefactors attacked the house of Miguel Domincel, wounding him by a shot and taking away a trunk containing jewelry, papers and other articles belonging to Domincel. It being admitted by the appellant Marcelo Miguel, in his confession, that he was a member of said band, and that he was present during the attack and cooperated in the execution of the acts of conspiracy resulting in the wounding of Domincel and in the taking away of certain articles belonging to the latter, the conclusion is inevitable that Marcelo Miguel may be held liable as principal for the crime of robbery with violence defined and penalized in article 294, subsection 5, of the Revised Penal Code.

The aggravating circumstance of nocturnity and dwelling being present in this case, which the court at discretion may offset (article 64, subsection 4, of said Code) against the mitigating circumstance of lack of instruction, we sentence Marcelo Miguel to the penalty of from six months of arresto mayor, as minimum, to four years of prision correccional,[1] as maximum, thus modifying the appealed sentence and affirming it in all other respects, as regards said appellant, with the corresponding share in the restitution of the property stolen and the proportionate part of the costs of both instances, and the same is entirely reversed as to the appellant Fortunato Ramos whom we acquit of the information and whose immediate release, in case he is in detention, is hereby ordered.

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

Judgment modified as to defendant Miguel and reversed as to defendant Ramos.

[1] Resolution of the Supreme Court of July 1, 1936.

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