

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DELFIN BAYOT ET AL., DEFENDANTS. DELFIN BAYOT, APPELLANT.*G. R. No. 44564. March 30, 1937*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-44564/>**DIAZ, J.:**

At midnight of May 10, 1935, five men went to the house of Emilio Luit and Beatriz Montoya, who were then living as husband and wife in the sitio called Mulawin, barrio of Buenavista, municipality of General Trias, Province of Cavite, to ask the latter, after waking them up, to show them the house of one surnamed Bermudez. After Emilio Luit had told them to go eastward, one of the five men requested him to be kind enough to accompany them; but Emilio Luit excused himself saying that he could not leave his wife alone. They then asked him for water to drink and Emilio Luit went down the house to comply with their request. After drinking-, the five men, instead of going away, remained near the house to talk among themselves, some stating that they should proceed eastward, the others insisting that, on the contrary, they should rest because they were tired, having come from Indang. After a while, they again requested Emilio Luit to please come down because they desired to ask him another question. They asked him whether one Tano, who, according to them, was president of the Sakdal party, lived in his house, making him understand at the same time that they were soldiers from Indang. When Luit answered that said person referred to by them neither lived nor went there, they then requested him to give them lodging in his house for the night. Although Luit had only one mat, he decided to welcome them; and when he was about to open the door of his house for them, one of the five men fired at him thereby causing a wound which pierced his body from the epigastric region to the opposite side. After Luit had already been wounded, three of the above-mentioned five men went up his house to demand money. As they were not able to obtain any amount, because Luit and Beatriz Montoya were penniless, they carried away a lamp valued at P1.50, a pig under the stairs valued at P9, and a bolo the value of which the prosecuting attorney could not determine due either to poor memory or neglect. Luit was taken to the Philippine General Hospital in the City of Manila, where he died two and a half hours later.

Inasmuch as Beatriz Montoya, the day after the crime, pointed to Delfin Bayot and Lazaro Dinglasan as two of the five men who had attacked them, the complaint which gave rise to the case was filed in the justice of the peace court of General Trias against them and Ponciano Amparo, John Doe and Richard Doe, the latter two being the supposed names of the unknown persons who had also participated in the crime. The lower court, to which the case was forwarded later, tried the case only against Delfin Bayot because the accused Lazaro Dinglasan had not been arrested earlier; Ponciano Amparo had not theretofore been located; and the other two had not been identified. The lower court, after hearing and receiving all the evidence presented by both the prosecution and the defense, rendered judgment finding Delfin Bayot guilty of the crime of frustrated robbery with the aggravating circumstances of nighttime, band and dwelling, and sentencing him to suffer an indeterminate penalty of from 6 months of arresto mayor to 4 years and 2 months of prision correccional with the corresponding accessory penalties, with costs.

Delfin Bayot appealed from the judgment and now assigns the following four alleged errors as committed by the lower court, to wit: (1) In overruling his demurrer to the complaint; (2) in giving credit and much weight to

Beatriz Montoya's testimony which, according to him, is improbable and contradictory; (3) in disregarding the testimony of the witnesses for the defense; and (4) in finding him guilty of frustrated robbery with the aggravating circumstances of nighttime, band and dwelling.

The first alleged error attributed to the lower court is based on the ground that the information charges the appellant with crimes to wit: (1) That of robbery in an inhabited house, and (2) that of robbery in band and in an uninhabited place. However, by reading the information, it is noted that there is no allegation therein of such robberies with the qualifying circumstances of dwelling or inhabited house in the first case, and of band and uninhabited place in the second case. What is very clearly stated in the information is that the crime with which the appellant is charged is the complex one of robbery with homicide, as defined and punished in article 294, subsection 1 of the Revised Penal Code, and committed, as stated therein, with the aggravating circumstances of band and in the dwelling of one Emilio Luit situated in an uninhabited place. The circumstance of dwelling in an uninhabited place, which is impossible because in order that an uninhabited place may be taken into consideration as an aggravating circumstance, it must be selected and intentionally sought, and the circumstance of band, are not qualifying circumstances. They are not even inherent in the crime with which the appellant is charged but merely generic circumstances of said crime. In crimes of robbery, a qualifying or inherent aggravating circumstance should not be mistaken for a merely generic aggravating circumstance. The effect of a generic aggravating circumstance not offset by any mitigating circumstance, is to increase the penalty which should be imposed upon the accused, but without exceeding the limit prescribed by law; while that of a qualifying or inherent aggravating circumstance is not only to give the crime committed its proper and exclusive name but also to place the author thereof in such a situation as to deserve no other penalty than that especially prescribed for said crime.

The place of the commission of crimes of robbery, defined and punished in article 294 of the Revised Penal Code, is not of such importance as to preclude, if not proven, the imposition of the penalties prescribed therein. If homicide is committed on the occasion of a robbery, the penalty which should unavoidably be imposed upon the accused is reclusion perpetua to death, and no other. The circumstance of place and those of time and manner of commission would only serve to determine whether the penalty of reclusion perpetua or death should be imposed upon the person guilty of said complex crime. In view of the foregoing, this court holds that the first assignment of alleged error attributed to the lower court is unfounded.

As to the other assignments of error, it is clear, after a careful examination of the record, that the facts occurred as above-stated, taking into consideration the testimony of Beatriz Montoya and the other witnesses for the prosecution. Said Beatriz Montoya testified that while it is true that she did not know the appellant by name at the time of the commission of the crime, she nevertheless already knew him by face some days prior thereto, having seen him pass several times by the place where she and the deceased lived, and that it was the appellant who had fired the shot wounding Emilio Luit and causing his death sometime later. It was attempted to impugn her testimony by the argument that she could not have recognized those who had attacked them, citing for said purpose, the statements alleged to have been made by her before the justice of the peace of the municipality of General Trias and before the barrio lieutenant Rufino Buclatin, at dawn and in the morning of May 11, 1935. The two officials in question testified that formerly Beatriz Montoya had stated to said justice of the peace that her husband's aggressor was one Bayot, without mentioning his name; and to the barrio lieutenant, that she did not know the names of those who had attacked them, but would be able to recognize them if she were to see them again. The truth is that at 6 o'clock in the morning of the day after the crime, the appellant was arrested by Lieutenant Rueda of the Constabulary because after questioning Beatriz Montoya and obtaining the description of Emilio Luit's aggressor, he forthwith went in search of Bayot, found him on his land and brought him later to the municipal building of General Trias. Upon his arrival there, and after having been seen by said woman in a line up with several men, the appellant was identified by her as the aggressor. The description of this man given to

Lieutenant Rueda was that he was surnamed Bayot, son . of Isidoro, a little bit pockmarked, and with a coca-cola haircut, which description, according to the testimony of said officer during the trial, tallied with the appellant's. The appellant's arrest shortly after the commission of the crime; the fact that the aggressor's description tallied with his; and the fact that Beatriz Montoya pointed to him as Luit's true aggressor, prove that she did not make the statements attributed to her by Rufino Buclatin, the barrio lieutenant, Florentino Santos, the justice of the peace, and Angel Genuino, the municipal president. They prove furthermore, that she really recognized the appellant at the time of the commission of the crime, She could not have been mistaken in affirming that it was the appellant who had caused Emilio Luit's death, because according to said witness, she saw him fire the shot; she also saw him carrying a revolver in his hand when he went up her house immediately after firing the shot; and furthermore she heard him demand money when he was already inside the house. It is not strange that she could then identify him because there was light, and moreover, she already knew him by face several days before the incident. On the other hand, the deceased himself, before his death, stated that his aggressor was Bayot, son of Isidoro, a habitue of cockpits, and approximately of his age. The appellant was then 22 years of age and the deceased was 29, a difference which may well be considered insignificant because one's age cannot always be determined with certainty just by his general appearance.

The testimony of Beatriz Montoya, Lieutenant Rueda and the deceased himself when he was at the point of death, together with the fact that the former two did not have the least motive to distort the truth for the purpose of prejudicing the appellant, totally impeach the testimony of the above-mentioned witnesses for the defense: justice of the peace Florentino Santos, barrio lieutenant Rufino Buclatin and municipal president Angel Genuino. Angel Genuino testified that before Beatriz Montoya subscribed before him her statement, Exhibit 1, to the effect that the person who had, fired the shot was a man with a more or less fair complexion, pockmarked, and taller than the deceased, she told him that she had not been able to recognize any of those who had attacked the house. He stated, however, that immediately after she had made such statements to him, Lieutenant Rueda arrived and in turn questioned her. According to said lieutenant, it was on this occasion that Beatriz Montoya gave him the description serving as data and guiding him in arresting the appellant, thereby inferring that said municipal president's testimony is untrue. The contention that the appellant's father, with whom he lived, is well-to-do because he owns 89 hectares of land and several draft and domestic animals, besides a sugar mill; and that the appellant, therefore, could not have committed the crime of robbery because he did not have to rob, does not necessarily prove that he is not guilty of the crime with which he was charged. It cannot be stated that what belongs to the father also belongs to the son.

The contention that the appellant is not Isidoro's but Teodoro Bayot's son (the deceased and Beatriz Montoya stated that the aggressor was Isidoro's son), does not have more force or merit than the former, because "Teodoro" and "Isidoro" are similar names, and it does not appear that the deceased and Beatriz Montoya knew Teodoro Bayot and Isidoro Bayot so that they could not have erred. Furthermore, although it was proven by the defense that in a barrio of the municipality of Amadeo, a municipality adjoining General Trias, there was a man named Isidoro Bayot, who is precisely a cousin of the appellant, it does not appear that said person had a son. This, together with the circumstance that the description given by Beatriz Montoya before the arrest tallied with the appellant's and that she furthermore pointed to him as she saw him in the morning following the incident, proves how weak such contention is to detract from the merits of the testimony of the deceased and that of Beatriz Montoya.

The conclusion arrived at by this court is that the alleged errors attributed to the lower court are unfounded and that the appellant is guilty of the complex crime of robbery with homicide. As the Solicitor-General correctly stated in his brief, the aggravating circumstances of nighttime, dwelling and craft should be taken into consideration without any mitigating circumstance, to offset them. The penalty which should be imposed upon the

appellant is the maximum period of reclusion perpetua to death, but there has been no unanimity among the members of this court in the imposition of said maximum penalty, because one is of the opinion that the appellant should be credited with the mitigating circumstance of lack of instruction which, according to him, is of itself sufficient to offset all the above-mentioned aggravating circumstances.

Wherefore, this court hereby reverses the judgment appealed from, and, finding the appellant guilty of said crime of robbery with homicide, sentences him, pursuant to the provisions of the last paragraph of section 133 of the Administrative Code, as amended by section 2 of Commonwealth Act No. 3, to reclusion perpetua, to indemnify the heirs of the deceased Emilio Luit in the sum of P1,000, plus the sum of P10.50 which is the value of the lamp and the pig robbed, and to pay the costs. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, and Imperial, JJ., concur.

DISSENTING

LAUREL, J.,

I dissent.

I am of the opinion that the herein appellant, Delfin Bayot, has not been satisfactorily identified as the person who shot and killed Emilio Luit and who otherwise participated in the robbery which took place in the night of May 10, 1935, in the sitio of Mulawin, barrio of Buenavista, municipality of General Trias, Province of Cavite.

The trial judge himself who has had better opportunity of observing and gauging the credibility of the witnesses makes the following observation in his decision:

"Por otro lado, Beatriz Montoya declaro en su affidavit Exhibit 1 presentado por la defensa que Emilio Luit le dijo a ella cuando se dirigian a la casa de Culas, que fue Bayot, hijo de un tal Doro el que le disparo. En cuanto a la declaracion ante-mortem, Exhibit C, es bastante vulnerable, porque no se menciona en ella el nombre de aquel Bayot a que se referia el occiso, y mas aun, teniendo en cuenta que Teodoro Bayot tiene varios hijos y desde luego con igual apellido que el aqui acusado. Dadas las circunstancias del momento en que tuvo lugar el disparo, no estamos muy convencidos de que Beatriz Montoya pudiera haber reconocido al aqui acusado, como el que disparo sobre el desgraciado Emilio Luit."

That the appellant has not been sufficiently identified is shown by, or is clearly deducible from, the following facts and circumstances of record:

(a) The crime was perpetrated at midnight in a remote barrio; the revolver shot was fired from outside where it was dark; Beatriz Montoya, the only witness who identified the appellant, was inside the house while the assailants were outside; Beatriz testified that immediately upon hearing the detonation she put out the light; the robbers outside of the house were five in number. Considering the optical impairment experienced by a person inside a lighted room looking out into the dark, the finding of the lower court that Beatriz Montoya could not have recognized the accused finds support in the common experience.

(b) Beatriz Montoya appears to have executed an affidavit, Exhibit 1, and yet, in this affidavit no reference is specifically made to the appellant as the person who had shot her paramour, Emilio Luit, or the one who had intimidated them thereafter at the point of a revolver in their house. The deceased, Emilio Luit, had better opportunity of identifying his assailant because he came down the house, talked to him and his companions and gave them water, and yet, in his dying declaration, Exhibit C, he only made reference to one by the name of

Bayot, an old acquaintance of his. It was because of this that, according to Beatriz herself, soon after the robbery she accompanied Emilio to the nearest house and on their way the latter told her that it was a person by the name of Bayot who had shot him (t. s. n., PP. 16,17, II).

(c) The assailant is described by Emilio Luit in his dying declaration, Exhibit C, as follows: "Es mi antiguo conocido, pero ignoro su nombre. Este Bayot que me disparó es un gallerista, blanco, grueso, y con altura regular y la edad es igual que la mía" In the first place, it should be observed that the name Bayot is such a generic description which does not identify the appellant herein. It is not denied that there are many people in the locality by that name and that in the municipality of Amadeo alone there are more than one hundred persons by that name. As observed by the trial court, the appellant himself has many brothers, two of whom are of age according to the record. Even if we were to accept the qualification given by Beatriz Montoya that the Bayot referred to is the son of Isidoro, the qualification does not single out the appellant either because the evidence shows that Teodoro Bayot is the name of the father of the appellant; that in the same barrio of Muzon where the family of the appellant was living there was a man by the name of Isidoro Bayot, a relative of the appellant. It should be observed also that the principal witness for the prosecution, Beatriz Montoya, no less than Emilio Luit before his death, referred, to one Bayot, the son of Isidoro. In the second place, the uncontradicted evidence for the defense shows that the appellant is not a "gallerista" and in fact never entered a cockpit, and that Placido Bayot, Isaac Bayot, Antonio Bayot and Artemio Bayot are the known "galleristas". This identifying detail given by the deceased in his dying declaration does not therefore tally with the appellant. In the third place, the age description does not coincide, nor is there any evidence on record to show that the other descriptive details given by the deceased apply to the appellant. It is true that Lieutenant Rueda of the Philippine Constabulary testified that he had arrested the appellant because of the description given him by Beatriz Montoya, particularly with reference to the appellant having pockmarks, but it should be observed that this detail is not found in the description given by the deceased in his dying declaration and that so many people have pockmarks that this description, like the coca-cola hair cut of the accused, is so uncertain and general to serve as a prudent and reasonable basis for identification.

(d) While the testimony of the lieutenant of barrio, Rufino Buclatin, is entirely worthless because full of contradictions and incongruities (pp. 33-37, t. s. n., II), I find, on the other hand, no reason for not accepting the testimony of Angel Genuino, municipal president of General Trias, Cavite, who stated that when he investigated Beatriz Montoya in the morning of May 11 or the day following the robbery and before the affidavit, Exhibit 1, was acknowledged by her before him, Beatriz categorically stated that she was not able to identify the person who had shot Emilio. The following is the pertinent portion of the testimony of the municipal president (pp. 43, 44, t. s. n., II) :

"P.

¿No es verdad que Vd. examino a Beatriz Montoya en cuanto al suceso de autos en aquella misma mañana?

—

R.

Si, señor.

"P.

¿Que es lo que usted pregunto y que es lo que ella le
contests?

—

R.

Yo le pregunte a ella quien fue el que causo la herida a su esposo.

"P.

¿Que le contests?

"Sr. FISCAL:

"Quisiera hacer constar que obra en el record el affidavit de la misma Beatriz suscrito y jurado ante el mismo presidente, el cual affidavit es la mejor prueba.

"JUZGADO:

"El affidavit no prueba nada. Puede contestar.

"R. Ella me contesto que ella no pudo reconocer.

"JUZGADO:

"P.

Pero ella le dijo a usted que si usted lo pusiera delante ¿podria ella identificar?

—

R.

Ella me dijo que no podria identificar.

"P.

¿Quien pregunto eso?

—

R.

Yo.

"P.

¿Donde consta eso?; ino se escribio eso?

—

R.

No, senior.

"Sr. IBANEZ (prosiguiendo):

"P. A Beatriz Montoya * * *. Retiro la pregunta.

"P.

¿Quienes estaban presentes cuando listed investigoa Beatriz Montoya?

—

R.

El doctor Arnaldo y el teniente del barrio.

"P.

¿Que cargo tenia entonces ese doctor?

—

R.

Presidente de la Division Sanitaria." (Underlining is mine.)

(e) There is no reason either why the testimony of Florentino Santos, justice of the peace of General Trias, Cavite, should not be accepted. Like the municipal president, Genuino, he appears to be a disinterested person and his intervention in the case appears to have been in the performance of his official duties. He testified (vide his testimony, p. 6, t, s. n., II) that at the investigation made by him Beatriz Montoya "declard que era un tal Bayot nada mas, y le pregunte por que sabia; ella me dijo de que asi le conto su marido en la noche de autos." This appears to be the reason why the said justice of the peace, upon due preliminary investigation, ordered the dismissal of the case against the herein appellant on June 11, 1935. This must be true as Beatriz Montoya herself in her affidavit, Exhibit 1, makes reference to a conversation to this effect between her and Emilio, after the occurrence, on their way to the house of one by the name of Culas (par. 5, affidavit of Beatriz Montoya subscribed before Angel M. Genuino, municipal president of General Trias).

The appellant appears to belong to a fairly well-to-do family. His father owns 89 hectares of land in General Trias

and Amadeo, Cavite, besides a sugar mill worth P12,000 and many draft animals, and had around twenty-five tenants working under him. While, as aptly observed in the majority opinion, the financial condition of the parents is beside the question in cases of this nature, I am hesitant in believing that the appellant, who was apparently living happily with his wife, has had no past criminal record, possessed of means of livelihood however limited, did in fact travel from the barrio of Muzon, Amadeo, to the distant sitio of Mulawin, General Trias, where the crime was perpetrated, walked five long dreary hours in the dark of the night to rob and kill two known poor and helpless persons to get nothing in the end but a petroleum lamp (according to the original complaint filed by Lieutenant Rueda on May 11, 1935) also a small pig worth eight pesos (according to the amended complaint filed by the same officer on May 29 of the same year) and also a bolo (according to Beatriz Montoya, principal witness for the prosecution).

Under the facts and circumstances of this case, it is far better to acquit a man of such a serious crime upon the ground that the evidence is not sufficient to prove his guilt, even though he may be guilty, than to send to the penitentiary during his life-time a man who may be innocent (*People vs. Asinas*, 53 Phil., 59, 71).

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