

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BENJAMIN IRANG ET AL., DEFENDANTS. BENJAMIN IRANG,
APPELLANT.**

G. R. No. 45179. March 30, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The accused Benjamin Irang appeals to this court from the judgment of the Court of First Instance of Nueva Ecija finding him guilty beyond reasonable doubt of the complex crime of robbery with homicide, the robbery having been committed in the house of Perfecto Meloeotones and Maximiniana Vicente, and the homicide on the person of Perfecto Meloeotones, and sentencing him to the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the sum of P500, with the proportionate part of the costs of the trial.

In support of his appeal the appellant assigns the following alleged errors as having been committed by the court a quo in its decision in question, to wit:

"1. The lower court erred in holding that the defendant Benjamin Irang had been sufficiently identified beyond reasonable doubt, and in not giving due weight to the testimony of, the witnesses for the defense.

"2. The lower court erred in not acquitting the defendant Benjamin Irang on the ground of reasonable doubt."

The following undisputed facts have been established during the trial, to wit:

Between 7 and 8 o'clock on the night of November 9, 1935, seven individuals, with white stripes upon their faces, two of whom were armed with guns and two with bolos, went to the house of the spouses Perfecto Melocotones and Maximiniana Vicente, where three lights were burning, one at the balcony, another in the room and another on a table. Some of said individuals went up and others remained on guard downstairs. Those who went up approached Perfecto Melocotones immediately and ordered him to bring out his money. Melocotones answered in the affirmative but before he could do what was ordered him he was attacked with bolos until he fell to the floor. Later another armed with a gun went up and approaching Maximiniana Vicente, wife of Perfecto Melocotones, struck her in the face with the butt of his gun, making her lose consciousness momentarily. When she regained consciousness she saw her husband already dead. One of the assailants then said to her: "Bring out the money and jewelry." Maximiniana Vicente turned over to the man who had struck her with the butt of his gun P70 in cash and jewelry valued at P200, which she had kept in a trunk. During the short space of time that she was turning over the money and jewelry, she looked at the man's face and saw that he had pockmarks and a scar on his left eyelid. That same night the house of Juana de la Cruz was assaulted by malefactors who had been firing shots before arriving at and going up the house. All of them had white striped upon their faces. Juana de la Cruz noticed that one of them had pockmarks and a scar on the left eyelid and was dressed in a maong-colored suit. It was he who opened her trunk.

After the malefactors had left Perfecto Melocotones' house, the latter's son Toribio Melocotones, who had seen

the assailants arrive but without recognizing them, immediately reported the matter to the municipal authorities and to the constabulary, who went to the scene of the crime without loss of time. Maximiniana Vicente informed Lieutenant Roman Alejandre of the Constabulary that the person who had struck her with the butt of his gun and taken her money and jewelry was a man of regular stature, with a lean body and pockmarked face. With this description, said lieutenant went in search of said individual. Having arrested a group of persons, he brought them to Maximiniana Vicente's house so that the latter might identify among them the one who had struck her with the butt of his gun, but she did not find such man. Later another group was presented to her but neither could she find therein the man who had robbed her. Finally another group was presented to her and in it she identified the herein accused-appellant Benjamin Irang as the one who had struck her with the butt of his gun and demanded delivery of her money and jewelry. He was likewise the same man arrested by Lieutenant Alejandre at midnight on November 9, 1935; in the barrio of Tampac which is five or seven kilometers from Maturanoc to which he was taken and brought to the house of the deceased. Juana de la Cruz also recognized Benjamin Irang, through his pockmarks and scar on his left eyelid, as one of the men who had gone up to her house that same night. Once under arrest, the accused-appellant Benjamin Irang made an affidavit in Tagalog (Exhibit B), stating that while he was in the barrio of Tampac, municipality of Guimba, Province of Nueva Ecija, on November 9, 1935 at about 7 o'clock in the evening, Fidel Estrella and Ignacio Sebastian arrived; that Fidel Estrella invited him to go to the house of Ignacio Sebastian's brother-in-law named Angel Talens because Estrella had something to tell him; that upon arriving at Angel Talens' house, Fidel Estrella invited him to go to Maturanoc to look for business; that the appellant asked Fidel Estrella why he wanted to bring him and the latter told him to stop asking questions otherwise he would slash him with his bolo; that Fidel Estrella carried a bolo and Ignacio Sebastian an unlicensed firearm; that they went to the house of Perfecto Melocotones in the barrio of Maturanoc, Guimba, Nueva Ecija, and upon arriving there Fidel Estrella, who acted as the ringleader, assigned to each and every one of them his corresponding place, designating those who should assault the house of Perfecto Melocotones and those who should assault that of Ursula Cabigon; that Benjamin Irang was in the group formed by Fidel Estrella and Ignacio Sebastian, which assaulted the house of Perfecto Melocotones, having been assigned to stand guard on the stairs of said house; that Fidel Estrella, once inside the house, slashed Perfecto Melocotones thrice with his bolo; that Fidel Estrella later told him that they had succeeded in taking money and a shotgun; and that after the assault they dispersed, each returning to his own home. This affidavit (Exhibit B) was sworn to by Benjamin Irang before the deputy clerk of the Court of First Instance of Nueva Ecija, in the presence of Graciano Pingol, the constabulary soldier who accompanied him. Before Irang affixed his thumbmark and took his oath, the deputy clerk of court asked him if he understood Tagalog and when he answered in the affirmative said deputy clerk read the contents of the document to him. Asked whether he had any thing else to add thereto, the appellant answered that he had nothing more to say.

The defense of the accused-appellant is an alibi to the effect that in the afternoon of the day of the commission of the crime, he was in his rice field washing a fishing basket. There he met Roberto Alcantara. Later he went to the house of Buenaventura Javier to return the fishing basket in question and to exercise on the rings (jugar a las argollas) with the latter's son Pedro, and two unmarried sons of the appellant's uncle, in the presence of several persons, returning home at 8 o'clock that night. When he was arrested the constabulary soldiers opened his box but found nothing in it. They later took him in a jitney to the victim's house in the barrio of Maturanoc and upon being brought face to face with the widow Maximiniana Vicente, Lieutenant Alejandre told the widow: "This is the one who slashed your husband and punctured your face." The widow answered saying: "Is it that man, sir." As Benjamin Irang answered that he had not left his house, the lieutenant gave him a blow which made him lose consciousness. Then the lieutenant said to the widow: "He is the same man. It was he to whom you delivered the money and jewelry. Look at him well. Identify him well." In the constabulary barracks in Cabanatuan the soldiers and a sergeant manhandled him from the night of November 9, 1935, until 4 o'clock in the morning of the 11th of

said month and year, for having denied all knowledge of the crime, making him lose his breath and punching him in the stomach. When he could no longer bear the maltreatment, he agreed to tell what they wanted him to tell. Upon being taken for investigation, the constabulary soldiers told him to agree to all that the clerk of court might read to him, otherwise they would again manhandle him at the barracks. He was not present when the affidavit Exhibit B was prepared. Neither are the contents thereof true. He merely affixed his thumbmark upon said document for fear of the soldiers.

Lieutenant Alejandro as well as Sergeant Lubrico denied that the accused had been maltreated in the least

The only question to be decided in the present appeal is whether or not the accused-appellant Benjamin Irang was identified as one of those who assaulted the house of Perfecto Melocotones, killed him and robbed his wife Maximiniana Vicente of money and jewelry.

Maximiniana Vicente, whom the accused-appellant Benjamin Irang struck in the face with the butt of his gun and of whom he demanded delivery of her money and jewelry, scrutinized the latter's face and noticed that he had pockmarks and a scar on his left eyelid. When on that same night of the assault Lieutenant Alejandro, guided by the description given him by Maximiniana Vicente, went in search of the person who might have maltreated the latter and robbed her of her money and jewelry, and presented a group of persona to said Maximiniana Vicente, she said that the man who had maltreated her was not among those who composed that first group. Said lieutenant later presented another group to her but neither did the widow find in it the man who had struck her with the butt of his gun. In the third group presented to her, she immediately pointed at one who turned out to be the herein accused-appellant. The man pointed at protested but when she told him that it was he who had struck her in the face with the butt of his gun, the appellant became silent.

The testimony of Juana de la Cruz to the effect that her house, situated only about one hundred meters from that of Perfecto Melocotones, was assaulted that same night by some malefactors with white stripes upon their faces, and that one of them, with pockmarks on his face and a scar in his left eyelid and dressed in a maong-colored suit, who later turned out to be the herein accused-appellant, opened her box, indirectly corroborates Maximiniana Vicente's testimony that the man of the same description was the one who went to her house and demanded delivery of her money and jewelry, having recognized him later to be the herein accused-appellant. While evidence of another crime is, as a rule, not admissible in a prosecution for robbery, it is admissible when it is otherwise relevant, as where 't tends to identify defendant as the perpetrator of the robbery charged, or tends to show his presence at the scene or in the vicinity of the crime at the time charged, or when it is evidence of a circumstance connected with the crime (16 C. J., 610, 611, sec. 1196).

Maximiniana Vicente's identification of the herein accused-appellant is likewise corroborated by the latter's own admission under oath that on the night of the crime he had been invited to assault the house of Perfecto Melocotones, which they in fact assaulted, although against his will. The rejection by the lower court of the appellant's admission under oath upon the assumption that it was not made voluntarily, is erroneous, inasmuch as the only evidence that it was not voluntary is the accused-appellant's own testimony that he had been manhandled by the constabulary soldiers and threatened with further maltreatment if he did not testify as they wished., This imputation of torture was categorically denied by Lieutenant Alejandro and Sergeant Lubrico of the Constabulary, before whom the accused-appellant made the admission and who caused it to be put in writing. The imputation is likewise contradicted by the deputy clerk of the Court of First Instance of Nueva Ecija before whom the accused-appellant swore to his admission and who testified that before he administered oath to said accused-appellant, he asked him whether he understood Tagalog and, having been answered in the affirmative, he read said document to him and asked him whether he had anything to add, the appellant affixing his thumbmark upon it after answering that he had nothing more to say (U. S. vs. Zara, 42 Phil., 308). There is no doubt that an

admission made under oath under such circumstances cannot be considered involuntary and therefore is admissible against the person making it.

This court is of the opinion, therefore, that the accused-appellant's identity as one of those who assaulted the house of Perfecto Meloeotones and robbed Maximiniana Vicente of her money and jewelry, is established conclusively beyond reasonable doubt.

The defense of the accused is an alibi and has for its purpose to show that he could not have been at the scene of the crime between 7 and 8 o'clock at night because he was in another place about seven kilometers away at that time. This defense of alibi is contradicted by the above-stated testimony of Juana de la Cruz and by the accused-appellant's own admission under oath Exhibit B.

The facts established at the trial as committed by the accused-appellant beyond reasonable doubt constitute the complex crime of robbery with homicide defined in article 293, in connection with article 294, paragraph 1, of the Revised Penal Code, and punished by reclusion perpetua to death. Taking into consideration all the circumstances of the case, the penalty of reclusion perpetua imposed by the trial judge is in accordance with the evidence and with law. It is not so, however, with the pecuniary liability because, taking into account the gravity of the offense, the indemnity to the heirs of the deceased should be P1,000 and that for the stolen goods not restored P390.

Wherefore, with the sole modification that the accused-appellant Benjamin Irang is sentenced further to indemnify the heirs of the deceased in the sum of P1,000 and to restore to Maximiniana Vicente the sum of P70 and the stolen jewelry and gun, or to reimburse the value thereof in the amount of P390, the judgment appealed from is affirmed in all other respects, with the costs of this instance to the appellant. So ordered.

Avancena, C. J., Abad Santos, Imperial, and Diaz, JJ., concur.

DISSENTING

LAUREL, J .,

I dissent.

The evidence presented by the prosecution consists in the main of (a) Exhibit B, which is the alleged confession of the appellant herein, (b) the testimony of Toribio Melocotones, son of the deceased, (c) the testimony of Juana de la Cruz, (d) that of Lieut. Roman Alejandre of the Philippine Army, and (e) that of Maximiniana Vicente, widow of the deceased.

In his affidavit, marked Exhibit B, the appellant admitted his participation in the commission of the crime charged. This written confession was not given any value by the trial judge. According to the appellant, it was obtained from him by an unknown soldier, through force and violence, under circumstances which makes it involuntary and, therefore, inadmissible as proof of guilt (U. S. vs. Zara, 42 Phil., 308; People vs. Buda Singh, 45 Phil., 676; People vs. Takeo Tabuche, 46 Phil., 28; People vs. Guendo Nishishima, 57 Phil., 26; People vs. Francisco, 57 Phil., 418).

Toribio Melocotones testified that he saw the band of seven robbers on their way to his -father's house; that at that time he did not know who they were but that he now knows five of them to be the accused Fidel Estrella, Jacinto Sebastian, Ignacio Sebastian, Juan Levaste (alias Juan de Caste), and the appellant herein, Benjamin Irang; that he saw the seven men enter the yard of his father's house, where he had planted himself; that the seven men entered the house, one at a time, the smallest in the group, Fidel Estrella, first followed by a bigger man, the appellant

Benjamin Irang, then by Juan Levaste (alias Juan de Caste), by Jacinto Sebastian, by Ignacio Sebastian and, finally, by the two members of the band who were unknown to him; that as soon as they all had entered he followed them but saw one of them standing guard and firing several shots, as a result of which he heard his brothers and sisters shouting; that it was on that occasion when he came nearer the house but was seen by the guard who pointed a gun at him, and he ran away. The trial judge brushed aside the testimony of this witness as unworthy of credence and belief. He said:

"* * * En primer lugar, cada uno de estos acusados fueron sucesivamente llevados a su casa y presentados alli para ser reconocidos en dias y noches sucesivos. Sin embargo, dicho testigo no indico a ninguno de ellos que fuera el que en la noche de autos asalto a su casa. Este testigo, no obstante, no fue llamado como tal en la investigation preliminar de esta causa en el Jtizado de Paz para indicar, de conformidad con los detalles que ha dado, que los acusados eran los asaltantes de su casa, tampoco ha dado alguna, explicacion como lleg6 a conocer que los acusados eran los que asaltaron su casa. Es verdad que esta falta de explicacion no es suficiente para desacreditar su testimonio. Sin embargo, segun su propia indicacion de que el primero que entro era el mas pequeno de aquella cuadrilla, indicando como tal a Fidel Estrella, tal indicacion es suficiente para desvirtuar todo el valor probatorio de su testimonio. Este acusado es uno de los mas altos de entre todos los acusados, por consiguiente, no puede decirse que era el mas pequeno. Atin admitiendo que el testimonio del testigo al hablar de que el primero que entro era el mas pequeno se referia al volumen del individuo, Fidel Estrella tampoco puede considerarse como el mas flaco de entre los acusados. Es de cuerpo regular y se confunde casi como cualquiera de los otros acusados en su volumen, a exception del acusado Emilio de Guzman, que es el mas grueso de entre los mismos. Su testimonio, pues, en opinion del Juzgado, no puede servir ni siquiera como un indicio de que los acusados eran los ladrones que asaltaron su casa en la noche de autos." (Underlining is mine.)

Juana de la Cruz testified that her house had also been assaulted by tulisanes on the same night and that she had recognized the appellant as one of them. The testimony of this witness refers to an event wholly distinct and separate from the criminal act imputed to the appellant in the case at bar, during the commission of which she stated she was at her house about five meters away.

The testimony of Lieut. Alejandro refers to the investigation conducted by him and to posterior occurrences, of scarcely any importance in proving the identity and guilt of the appellant. Lieut. Alejandro arrested the appellant on the strength of the description furnished him by the widow of the deceased. How good the description is may be judged from the fact that prior to the appellant's arrest, Lieut. Alejandro had arrested three other persons, later to release them as "wrong parties!"

The only remaining basis for the conviction of the appellant by the lower court is the testimony of the widow, Maximiniana Vicente. In the opinion of the trial court, this witness has sufficiently identified the appellant herein. Lieut. Alejandro testified that when this witness, Maximiniana Vicente, confronted the defendant she recognized him as one of the assailants. This the appellant denied, stating that the widow identified him "in obedience to Lieut. Alejandro's orders." On cross-examination, the witness stated that she was able to identify the appellant "porque el Teniente Alejandro le habia indicado que era uno de los que tomaron parte en el asalto de su casa." When called again to the witness stand she retracted this statement. I am reluctant to join the trial judge in attributing this contradiction on her part merely to her ignorance.

Two important details in this case deserve more than passing mention. It appears that soon after the band of robbers had departed, Lieut. Alejandro arrived at the scene of the crime and conducted an investigation. The widow, on that occasion, referred to the appellant as a man with pockmarks. About one month later, she testified that she recognized him besides by a scar on his left eyelid. A scar identifies a man more effectively than mere pockmarks, these being common. But I do not know why it took the witness one month to discover this important

descriptive detail. The widow also testified that she recognized the appellant, Irang, because of the light, because it was he who hit her with the butt of his gun and because it was to him that she delivered money and jewelry. It should be observed, however, that the assailants were disguised when they committed the crime. This makes identification difficult, if not impossible, and probably accounts for the fact that the widow made no reference to the appellant's scar in the beginning.

It is true that the findings of fact made by the trial judge are, entitled to great weight and credit and should not be overturned unless grave considerations warrant the taking of such a course. But I am not convinced that appellant has been satisfactorily identified in the case at bar (*U. S. vs. Asiao*, 1 Phil., 304).

The defense interposed by the appellant is an alibi. While alibis are easily concocted and, for this reason, are received by courts with great caution, I express the opinion that conviction should be predicated on the sufficiency of the evidence for the prosecution and not on the weakness of the evidence for the defense. I am, therefore, of the opinion that the appellant is entitled, like his six co-accused in the court below, to an acquittal.

CONCEPCION, J.:

I concur in the preceding dissenting opinion.

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