

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NICOLAS CARPIO ET AL., DEFENDANTS. PABLO MAURICIO AND
MANUEL APRUEBO, APPELLANTS.**

G.R. No. 46109. September 22, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In the Court of First Instance of Nueva Ecija, Nicolas Carpio, Felino Constantino, Emiliano Santos, Nicanor Constantino, Cirilo Santos, Briccio Sarenas, Pablo Mauricio and Manuel Apruebo (alias Maning) were prosecuted for the complex crime of robbery with homicide, by virtue of the following allegations in the information:

"That on or about the 23d day of July, 1937, in the municipality of Munoz, Province of Nueva Ecija, Philippine Islands, and within the jurisdiction of this court, the above-named defendants, Nicolas Carpio, Felino Constantino, Emilio Santos, Nicanor Constantino, Cirilo Santos, Briccio Sarenas, Pablo Mauricio and Manuel Apruebo alias Maning, together and in connivance with Gonzalo Matias who has not as yet been arrested, all armed with shotguns, revolvers, bolos and clubs, conspiring together and mutually aiding one another and taking advantage of the darkness of the night and by means of violence against and intimidation of persons and force upon things, did then and there voluntarily, maliciously, illegally and criminally enter the dwelling house of Percy A. Hill, and once inside thereof break an iron box, a valise and other receptacles, and take therefrom, with intent of gain and against the will of the owner thereof, money in cash amounting to P1,063, two pairs of jewelry valued at P100, one shotgun caliber 12, valued at P150, one kris and three bolos valued at P21, belonging to said Percy A. Hill, and by reason and on occasion of the robbery the said defendants, Nicolas Carpio, Felino Constantino, Emiliano Santos, Nicanor Constantino, Cirilo Santos, Briccio Sarenas, Pablo Mauricio and Manuel Apruebo, alias Maning, together and in connivance with Gonzalo who has not as yet been arrested, all armed, conspiring together and mutually aiding one another, with treachery and evident premeditation, and taking advantage of the darkness of the night, did then and there voluntarily, maliciously, illegally and criminally attack and assault with firearms and bolos and clubs said Percy A. Hill in his own dwelling house, inflicting upon him several mortal wounds which caused his instantaneous death as a consequence.

"All contrary to law."

The first six accused voluntarily pleaded guilty upon arraignment, wherefore, they were found guilty of said complex crime and sentenced each to reclusion perpetua, with the accessory penalties provided by the Revised Penal Code; to return to the heirs of the deceased the sum of P494.64, to indemnify said heirs jointly and severally in the sum of P10,000, and to pay each one-eighth (â...) of the costs. Pablo Mauricio and Manuel Apruebo pleaded not guilty, but after the trial they were found guilty of the same crime and sentenced, the former to death, with the accessory penalties provided in article 40 of the Revised Penal Code, and the latter to reclusion perpetua with the accessory penalties provided in article 41 of the same Code; both to return to the heirs of the deceased the sum of P494.64, to indemnify said heirs jointly and severally in the sum of P10,000, and to pay the proportionate part of the costs. Both accused appealed from this sentence.

Prior to the date of the crime and on the occasion of the celebration of the saint's day of Genoveva Apruebo, daughter of the coaccused Manuel Apruebo, the accused Cirilo Santos, Emiliano Santos, Gonzalo Matias, who was prosecuted separately, Felino Constantino, Nicolas Carpio and Pablo Mauricio, met at the house of Manuel Apruebo, situated in Puncan, Carranglan, Nueva Ecija, and agreed to commit a robbery. On July 19, 1937, four days before the crime, Manuel Apruebo, Emiliano Santos, Gonzalo Matias, Felino Constantino, Nicolas Carpio and Pablo Mauricio again met in the house of Manuel Apruebo after the failure of a robbery which they had attempted to commit. It was on this occasion that the above-named accused resolved to attack and rob Percy A. Hill who was then residing in the municipality of Munoz of said province. At about 2 o'clock in the afternoon of July 23, 1937, all of the accused, including Briccio Sarenas and Pablo Mauricio, met near the Munoz Agricultural School and there agreed to wait for nightfall in order to carry out the attack in Hill's house. On said occasion Briccio Sarenas was armed with a bolo, Felino Constantino with a revolver known as "paltik", Nicanor Constantino with a bolo, Emiliano Santos with another bolo, Nicolas Carpio with a shotgun, Pablo Mauricio with a club, Gonzalo Matias with another "paltik" revolver, and Cirilo Santos carried a rope. It was Manuel Apruebo who contracted Eduardo Pamintuan's car which brought them to said place and it was also he who had paid the rent for the car to said driver. Between six and seven in the evening of said day, all of the accused, including Gonzalo Matias, with the weapons with which they were provided, went to Percy A. Hill's residence and attacked the latter's house. Gonzalo Matias, Felino Constantino and Nicanor Constantino went up through the main door and surprised Hill seated with his back to the door, reading a newspaper. Briccio Sarenas, who was also in said place, touched Hill on the shoulder and warned him to surrender. Hill rose apparently to seize Sarenas by the shoulder, whereupon the latter stepped backwards, firing a shot at Hill with the revolver which he carried. Hill started to run for a kris perched on the wall of the hall, but Nicolas Carpio discharged his shotgun at him, hitting him in the breast. As a result of this shot, Hill fell to the floor dead. Immediately the accused forced open a valise, the drawers of a wardrobe and the safe, taking possession of all the contents thereof. They likewise took away with them a Winchester shotgun valued at P150, the kris valued at P3 and 3 daggers worth P6. After the robbery had been consummated, they left the house, returning to the place whence they had come, and again finally met in the house of Vicente de Guzman. In said house the accused divided the loot among themselves, each receiving P111. Manuel Apruebo received, besides, P25 to pay for the car used and Vicente de Guzman was given a present at P8, with the request to keep the weapons and with the warning not to disclose the crime under pain of death.

Counsel for Pablo Mauricio assigns the following errors as having been committed in the appealed judgment, to wit: (1) In finding him as one of the conspirators who committed the complex crime of robbery with homicide in the house of the deceased; (2) in the court's failure to give the defense of alibi interposed by him the evidentiary value it deserves and in not acquitting him of the crime charged, and (3) in not sentencing him to reclusion perpetua, instead of the death penalty, in case he was really guilty of the crime charged.

With respect to the first assignment of error, the evidence presented by the prosecution shows that Pablo Mauricio not only directly conspired with his coaccused to commit the crime but was also the organizer and mastermind of the band or gang that attacked the house of the offended party and committed the robbery with homicide. This appellant's conspiracy and previous understanding with his coaccused and his participation in the crime have been satisfactorily established by the testimony of Vicente de Guzman, Eduardo Pamintuan, Susana Domingo, Anastacio Cecilio, Manuel Francisco and Lieutenant Chavez in addition to his own admissions in writing appearing in Exhibits V, V-1, QQ-1 and QQ-2. Vicente de Guzman and Eduardo Pamintuan seated positively that this appellant accompanied his coaccused during the times they met in the house of Vicente de Guzman and agreed on the attack and robbery in the victim's house, and in his written admissions he admitted having conspired and agreed with his coaccused on the attack and robbery perpetrated. Referring to the appellant's written admissions, his allegation that they were obtained by means of force and intimidation is unfounded, because

Lieutenant Chavez and clerk of court Bonifacio Guzman, before whom said confessions were prepared and subscribed, testified that they were voluntarily signed by the appellant after he had been informed of the contents thereof. These confessions are furthermore strongly corroborated, by the testimonies of Vicente de Guzman and Eduardo Pamintuan, so that there is no reason to doubt the veracity of the affirmations contained therein.

The appellant, Pablo Mauricio, contends that he was not present at the meetings held by his co-accused at which it was agreed to commit the crime, nor at the time of the commission thereof. This defense of alibi has not been satisfactorily established and is in conflict with the categorical assertions of Vicente de Guzman and Eduardo Pamintuan, who testified that said appellant was present and took part in the preliminary meetings as well as in the attack and robbery in the house of the deceased. To this may be added the appellant's own admissions wherein he affirmed that he not only was present at the meetings where it was agreed to commit the crime but also took direct part in the commission thereof.

In the last assignment of error, the propriety of the imposition of the death penalty is questioned. The court held that the aggravating circumstances of dwelling, nighttime and band were present in the commission of the crime. The facts established tend to support this conclusion of the court. However, there being no unanimity of votes of all the members of the court as to the imposition of the death penalty, in accordance with the last paragraph of section 133 of the Revised Administrative Code, as amended by section 2 of Commonwealth Act No. 3, the penalty next lower in degree, which is reclusion perpetua, should be imposed.

The other appellant Manuel Apruebo assigns the following errors as committed by the court, to wit: (1) In holding that his failure to present the coaccused Nicolas Carpio, Cirilo Santos and Briccio Sarenas as his witnesses, after having presented the three accused named Felino Constantino, Emiliano Santos and Nicanor Constantino as witnesses for the defense, gave rise to the presumption that had the suppressed witnesses testified, their testimony would have been against him, instead of holding that the prosecution was guilty of having suppressed said witnesses; (2) in admitting his alleged confessions, Exhibits W and MM, as evidence for the prosecution, and in not holding that they were obtained by force and intimidation; (3) in finding him guilty of the crime charged on the basis of the evidence for the prosecution presented during the separate trials obtained by his coaccused; (4) in holding that he conspired with the other accused in the commission of the crime, and (5) in not acquitting him for the crime charged and in sentencing him to reclusion perpetua.

Manuel Apruebo testified as a witness in his behalf, and presented as witnesses for the defense the accused Felino Constantino, Emiliano Santos and Nicanor Constantino, who were brought to the court from the Bilibid Prisons where they were confined, serving the penalties imposed on them. The prosecution failed to call the accused Nicolas Carpio, Cirilo Santos and Briccio Sarenas as State witnesses and, as they were not present in court, neither did counsel for the defense of Apruebo present them as his witnesses. The court, commenting on this circumstance, stated that the suppression of these last three witnesses by counsel for Apruebo established the legal presumption that had they testified, their testimony would have been adverse to said appellant. The appellant alleges in his first assignment of error that the conclusion so arrived at by the court is erroneous and that it should have held that the prosecution was guilty of suppressing evidence. We find no merit in this assignment of error. It may be agreed with the defense that the nonpresentation of the three witnesses did not create such presumption, basing our opinion on the fact that they were not appellant Apruebo's witnesses but the prosecution's. However, the conclusion in question is immaterial and does not impair the substantial rights of the appellant, on the ground that the court did not base his guilt entirely on said presumption, but rather on the other evidence for the prosecution which establishes his conspiracy and direct participation in the crime. As to the alleged suppression of evidence by the prosecution, aside from the fact that there was no such thing, since it is the privilege of the prosecution to present the number of witnesses which it may deem sufficient, such suppression can neither be

invoked nor assigned as error for the purpose of proving the innocence of the appellant.

It is insisted in the second assignment of error that the court should have rejected appellant Apruebo's confessions, Exhibits W and MM, on the ground that they were obtained by force and intimidation employed on his person. In the first document the appellant admitted that he conspired with his coaccused by agreeing on the crime committed and by taking part in the preliminary meetings held, and in the second he stated that the sum of P64 taken by the Constabulary soldiers from his possession had come from the robbery committed in Hill's house and represented the share allotted to him. Lieutenant Chavez and Justice of the Peace Gregorio Cadhit, before whom the affidavit Exhibit W was made, testified that the appellant Apruebo made the statements appearing therein and signed it voluntarily without the use of force or intimidation on his person. Lieutenant Chavez himself asserted that Exhibit MM was subscribed voluntarily by the appellant without the intervention of force, violence or intimidation. We are of the opinion that the allegation that these documents were obtained by force and intimidation is not supported by any trustworthy evidence, and that the court committed no error in admitting and declaring them to be admissions made voluntarily by the appellant.

When the case against all of the accused was called for trial, Pablo Mauricio and Manuel Apruebo asked for a separate trial. The court granted it with the notice that the evidence to be presented by the prosecution against the former would not be repeated at the trial to be held in connection with the latter, to which effect it enjoined both accused, together with their attorneys, to be present at the trial against Pablo Mauricio and said attorneys to cross-examine all the witnesses for the prosecution. None of the attorneys for these two accused protested against the condition or limitation imposed by the court and at the trials held, the attorney for Apruebo cross-examined the witnesses presented by the prosecution. It is alleged in the third assignment of error that the trial held against Apruebo was illegal and that the court could not convict him upon the evidence presented by the prosecution during the trial held against Pablo Mauricio, on the ground that said evidence was not actually presented at the trial conducted against him. The right of two or more accused in a criminal case to be tried separately is essential and cannot be denied by the court, according to section 33 of General Orders No. 58 (U. S. vs. Sta. Ana, 4 Phil., 421; U. S. vs. Morales, 8 Phil., 300; U. S. vs. Lira Buanco, 14 Phil., 472; U. S. vs. Raymundo, 14 Phil., 416; U. S. vs. Remigio, 35 Phil., 719; U. S. vs. Gallegos, 37 Phil., 289; People vs. Bermejo, 46 Phil., 252; U. S. vs. Torres, G. R. No. 43606). When a separate trial is demanded and granted, it is the duty of the prosecution to repeat and produce all its evidence at each and every trial, unless it had been agreed by the parties that the evidence for the prosecution would not have to be repeated at the second trial and all the accused had been present during the presentation of the evidence for the prosecution and their attorneys had had the opportunity to cross-examine the witnesses for the prosecution, who had testified. In the case under consideration, the substantial right of the accused-appellant to be tried separately has not been violated because his attorney did not object to the condition imposed by the court, and the appellant was present at the first trial where the witnesses for the prosecution were presented and his attorney had ample opportunity to cross-examine them. For these reasons we hold that the assignment of error is without merit

In the fourth assignment of error, the appellant insists that the court erred in holding that he conspired with his coaccused and participated in the commission of the crime. We do not subscribe to the proposition that there was error in doing so. The fact that the appellant Apruebo conspired with his coaccused and received a share in the stolen articles, collecting the sum of P64 is established by his own admissions contained in Exhibits W and MM and also by the testimony of Vicente de Guzman, the owner of the house in which all of the accused met before the commission of the crime, and by that of Eduardo Pamintuan who testified that it was he who drove the car which brought the accused to the scene of the crime and that it was Apruebo who hired the car and paid the rent thereof.

The fifth and last assignment of error is a mere corollary of the former ones and merits no further consideration.

We have already indicated, in passing upon the appeal of Pablo Mauricio, that the crime committed is robbery with homicide defined and punished by article 294, subsection 1, of the Revised Penal Code. In connection with the appellant Manuel Apruebo, the aggravating circumstances of nighttime, dwelling and band, which are compensated by the mitigating circumstance of lack of instruction and education (art. 15, Revised Penal Code), should be taken into consideration, for which reason the prescribed penalty should be imposed in its medium period, that is reclusion perpetua.

Pablo Mauricio filed a motion for new trial based on the discovery of new evidence. This new evidence is made to consist in the joint affidavit of Felino Constantino, Nicanor Constantino and Gonzalo Matias, who state that said appellant did not take part in the commission of the crime and that if they testified against him, it was because some Constabulary soldiers led them to believe that it was Pablo Mauricio who had exposed and betrayed them, although they came to know after the trial that it was not he, but Nicolas Carpio, who had betrayed them. Considering this joint affidavit as recantations of said witnesses, we are of the opinion that it is insufficient to change the result of the case and that for this reason the motion for new trial should be, as it is hereby denied. Regardless of the testimonies of said three witnesses, other evidence for the prosecution exists to show, beyond reasonable doubt, the guilt of Pablo Mauricio. His admissions, which were made voluntarily and spontaneously, prove that he took part in the crime and that it was he who directed the attack.

For the foregoing reasons, it being understood that the judgment as to the accused-appellant Pablo Mauricio is modified in the sense that he should suffer the penalty of reclusion perpetua with the accessory penalties prescribed by law, instead of the death penalty, the appealed judgment is affirmed in all other respects, with the costs of this instance to both appellants. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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