

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FRANCISCO CINCO ET AL., DEFENDANTS. FRANCISCO CINCO,
FRANCISCO CAMERO, CALIXTRO CINCO, TRANQUILINO RELADOR,
LORENZO RA...**

G.R. No. 46144. April 05, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

Francisco Cinco, Francisco Camero, Calixtro Cinco, Tranquilino Relador, Lorenzo Raynera, Tirso Espejo, Iluminado Berio, and Constancio Raagas were charged with the crime of robbery in band with homicide. The Court of First Instance of Leyte found them all guilty as charged, sentenced each and every one of them to reclusion perpetua, to return the fifty pesos which they took from the deceased Valentin Santo, and to indemnify, jointly and severally, his widow, Luciana Cañete, in the sum of P1,000 and to pay the costs. From this judgment, the defendants, with the exception of Iluminado Berio, have appealed to this court,

Valentin Santo was an old man of 90 years and his wife, Luciana Cañete, an old woman of 70 years. Fausto Toreno, their home-companion who lived separate from his wife, was an old man of 63 years. These were the only three people who lived in the house of Valentin Santo at the time the eight defendants above mentioned forced their way into the house. It was about 10 o'clock in the evening of February 2, 1938. Valentin Santo and his wife were then seated on the floor talking about their family life, while Fausto Toreno was lying down near a pile of palay in one corner of the house. One group, composed of Francisco Cinco, Francisco Camero and Lorenzo Raynera, passed through a hole in the wall of the kitchen whereat the bamboo waterholder was placed. Francisco Cinco and Francisco Camero proceeded directly to Valentin Santo and by assaulting and strangulating him were able to obtain fifty pesos from the belt that was tied around his waist. Lorenzo Raynera, the last-named in the group, went to the old woman, Luciana Cañete, in search for money, removed her clothing, stepped and sat on her, covered her mouth and eyes with his hands and asked for money, but he obtained nothing from her. The second group, formed by Calixtro Cinco, Tranquilino Relador, Tirso Espejo, Iluminado Berio and Constancio Raagas, gained entrance through the door of the house by cutting the string that tied it up. Two in the group approached Fausto Toreno, pointed their bolos at him, focused their flashlights on his eyes and inquired for money. Because Toreno told them he had no money, they forced open a trunk containing the clothing of the spouses, scattered the contents on the floor, took away a blanket, a suit, a Chinese camisa and a pair of shoes, all valued, approximately at ten pesos. After this looting the malefactors left.

Luciana Cañete, the aged widow, testified that immediately after the robbers left, she approached her husband who had been left in one corner of the house, tried to awaken him and because he laid still she thought he was already dead. She then reported the matter to the town authorities and the following day her husband was taken to the poblacion.

Francisco Santo, the chief of police of Burauen, who went to the place of the occurrence, testified that he found

Valentin Santo lying unconscious on the floor of the house. It was he who took Valentin to the poblacion. Dr. Wenceslao Enage, who examined the deceased, testified that on the day following the commission of the crime, Valentin Santo was brought to the poblacion and he found him to be in a comatose condition. He found three lesions on his body, the most serious of which was that on the nape of the head. Death resulted three days later due to the concussion of the brain caused by the blows received on the nape of the head. Fausto Toreno, the home-companion, was the direct eyewitness to the commission of the crime. He was lying awake on the floor when the eight malefactors entered the house. According to him, every one of the malefactors was wearing a hat and he recognized all of them by the light of the lamp in the house and by their flashlights. In open court, this witness was called upon to identify the defendants, which he did although the defendants were intermingled with other people in the court-room. At first he mistook one Cayetano Canque who was awaiting for trial in the sala on a charge of theft or other as one of the defendants herein but he immediately rectified and admitted his error. When asked to identify anew the defendants, Fausto Toreno was then able to identify Constancio Raagas who, during the first identification, was covering his face with a handkerchief. Iluminado Berio, who has not appealed, was the only one not identified by the witness.

Exhibit F, a buri hat, was presented during the trial. It was found near the stairs of the house of the deceased. Toreno testified that it belonged to Lorenzo Raynera because when the malefactors entered the house every one of them was wearing a hat and when they left Lorenzo Raynera was the only one without a hat.

Diego Briso testified that near midnight of February 2, 1938, according to his calculations, while he was in his house, he heard the barking of a dog coming from the direction of the house of Valentin Santo. Out of curiosity he went out and from a distance of about four brazas from the house of the deceased he heard people talking from within. When the eight malefactors descended from the house he hid behind a big anonag tree and from there he recognized them all to be the defendants herein. According to him, every one of them was wearing a hat with the exception of Lorenzo Raynera.

Alejandro Pedere, another neighbor of the deceased, testified that on the night of the incident, he went down his house to see whether there were pigs in his plantation of tobacco and gabe, and he saw eight men walking down the street. Three of them he immediately recognized to be Francisco Camero, Francisco Cinco and Calixtro Cinco because they were known to him.

Antonio Candela testified that while he was taking his carabao along he saw the eight defendants passing through his lot and that he recognized Calixtro Cinco and Francisco Cinco, the former walking in front.

The defense put up an alibi. Each of the defendants pretended ignorance of the crime charged and endeavored to corroborate his allegation of innocence by the statement of a few friends and relatives. The defense of alibi is always received with caution. (*People vs. Badilla*, 48 Phil., 718.) It should be proved by probable evidence which reasonably satisfies the court of the truth of such defense (*U. S. vs. Olais*, 36 Phil., 828; *U. S. vs. Oxiles*, 29 Phil., 587; *People vs. Limbo and Limbo*, 49 Phil., 94.) It is held to be a weak alibi where it is supported by witnesses found to be related by intimate ties of relationship to the accused and living with them under the same roof. (*U. S. vs. Ambrosio and Falsario*, 17 Phil., 295.) Alibis cannot stand and prevail over clear and convincing testimonies of credible witnesses (*People vs. De Asis*, 34 Off. Gaz., 655, citing *People vs. Cabantug*, 49 Phil., 484-486; *People vs. Palamos*, 49 Phil., 601, 604, 605; *People vs. Medina*, 59 Phil., 330; *U. S. vs. Garcia*, 26 Phil., 289), and this is true in the present case. The evidence presented for the prosecution in the case at bar is too convincing for mere alibis to overcome. The evidence clearly points to the guilt of the defendants.

The crime committed is robbery in band, in an inhabited house, with homicide, defined in article 294, paragraph 2, of the Revised Penal Code, the penalty prescribed therein being reclusion perpetua to death. The

Solicitor-General directs our attention to various aggravating circumstances present in the commission of the offense, to wit: (1) that the crime was committed in the dwelling of the offended party; (2) that the crime was committed in the night time; (3) that the crime was committed in disregard of the age of the offended party; and (4) that the crime was committed by a band. With regards to the appellant Francisco Cinco, our attention is called that the further aggravating circumstance of recidivism is present. In view, however, of the inability of the members of this court to reach a unanimous verdict on the imposition of the death penalty, the judgment of the lower court is affirmed in all respects, with cost against the appellants. So ordered.

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

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