

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MELCHOR MEDINA ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. 47126. April 08, 1941*

Ponente: MORAN, J.

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Pursuant to their plan of robbery concocted in the morning of the day previous, appellants Melchor Medina, Hilarion Holgado, Regino Garcia, Benigno Tenorio and Jose Agojo, together with one Veronico Oriola, equipped with a carata, rope and flashlight, entered, at about midnight of June 29, 1938, the house of Modesto Bastasas and his sister Aniceta, in the barrio of Olingan, municipality of Dipolog, Zamboanga. The entry was effected through one of the windows, the main and kitchen doors being then locked. After putting out the light on the altar in the living room, three of the malefactors, at the indication of Oriola who was standing on guard at the main door, entered the room of Modesto, and the two others, the room of Aniceta. They bound and gagged Aniceta in her bed, but in her vain effort to extricate herself, she fell to the floor after which one of them kicked her and gave her a blow on the head. She thereupon feigned unconsciousness undoubtedly to save herself from further injuries. One of the malefactors who entered Modesto's room came out, approached one Romana Troyo, the Bastasas' maid who was then having her quarters in the living room, and held her by the hands. She awoke and screamed for help, and her assailant held her by the neck and clamped her mouth with one of his hands. Attracted by her screams, another man came out of Aniceta's room, and as he focused a flashlight which accidentally caught his companion's face, Romana saw the person gagging her as one with curly hair and whom she identified at the trial as Melchor Medina. Thereafter, the malefactors pulled out two trunks from the room of Aniceta and rifled them of their contents. With their loot, they left the house taking exit through the main door.

When the malefactors were gone, the maid, who in the meantime succeeded in freeing herself, went immediately to Aniceta's room and there found her on the floor besmeared with blood. At the instance of the latter, the maid went to the room of Modesto whom she found also bound and gagged and was limp and cold. She notified their neighbor Laylay who repaired to the house and upon entering the living room, he saw the trunks open and their remaining contents scattered around. He also saw Aniceta in her room still on the floor and bleeding, and Modesto in his room, already dead.

Laylay called the chief of police and at about 7 o'clock in the morning of that day, the latter, accompanied by Dr. Jose de las Peñas of the sanitary division and other policemen, immediately repaired to the scene of the crime. The physician found stuffed inside the mouth of the deceased Modesto, a handkerchief which completely covered his glottis, a pillow case and a part of one of the pants. Death, according to him, was due to asphyxia or to strangulation the deceased showing finger marks around his neck. Aniceta sustained injuries by friction with the rope with which she was bound and certain contusions on the head which were cured after twenty days of medical treatment.

The evidence discloses that in the smaller trunk which was forced open by the malefactors, Aniceta kept P300 in bills of different denominations, delivered into three packages of P100 each, folded lengthwise and were wrapped

with papers and old cloths. It also contained jewelries and fancy trinkets valued at P805, old foreign coins and a piece of stone. All these valuables disappeared. In the larger trunk, Aniceta kept P464, also divided into packages and folded lengthwise. Of this sum, P114 was looted away and the package containing P350 which was kept at the bottom of the trunk remained. The sum of P93 which Modesto himself was keeping also disappeared.

Defendants-appellants were held guilty by the trial court of the complex crime of robbery with homicide and less serious physical injuries, and each of them was sentenced to reclusion perpetua, with the accessories of the law, to indemnify, jointly and solidarily, the heirs of the deceased Modesto Bastasas in the sum of P2,000, and Aniceta Bastasas in the amount of P100, to return the articles stolen or pay their value of P805, together with the unrecovered amount in cash of P71.51, and to pay the costs. Part of the money stolen and found in the possession of defendants-appellants was ordered returned to Aniceta Bastasas.

The case rests basically upon the sole question of the identity of the criminals. That the appellants are the authors of the crime is established by the positive testimony of Oriola who was with them in the perpetration of the crime; by a similarly positive testimony of the maid who definitely identified Melchor Medina as the one who gagged her and clamped her mouth with one of his hands; and by a chain of extrinsic circumstantial evidence.

Appellants sought to impugn Oriola's veracity on the ground, among others, that it is improbable for them, being complete strangers to Oriola, to propose to him the commission of the robbery on the day they first met. But Oriola is a poor man, earning P4 a month as rig driver, with meager education, and has hardly been five days in the employ of the Bastasas. Having attained knowledge of these facts from Oriola himself through appropriate questioning, appellants undoubtedly thought then that, under such personal circumstances, Oriola, with an offer of a share in the loot, might be tempted to fall in, as in fact he did.

Appellants sought to cast suspicion on the general credibility of Oriola on the circumstance of his having been kept for six months in the constabulary barracks. The evidence, however, discloses not even the slightest clue of official pressure upon Oriola in a way as to make him testify falsely against the appellants. It might have been possible that Oriola, out of fear, would have refused to testify at all but for the fact of his having been thus kept in the custody of the constabulary. But this is legally no ground for discrediting him. In the absence of any evidence of illegitimate official pressure, no inference to that effect can be drawn. The presumption in favor of the official integrity cannot be overthrown by mere conjecture.

The trial court, commenting on the credibility of this witness (Veronico Oriola), said the following:

"El Juzgado, consciente de la gravedad del crimen de que estan acusados los aqui acusados, declara que considera veraz a este testigo. Consideramos inverosímil y hasta imposible que este testigo haya podido dar la profusión de detalles que ha dado sobre la comisión del crimen que nos ocupa si no fuera verdad todob lo que el ha declarado y que realmente el era uno de los que subieron a la casa del occiso Modesto Bastasas en la noche de autos. Durante su largo interrogatorio, solo ha flaqueado en un detalle, o sea, cuando al principio de su testimonio confundió las fechas del dia en que comenzó a servir al occiso como cochero y del dia en que se encontro en la carretera provincial con los acusados Melchor Medina y Regino Garcia. En vez de decir que este ultimo dia era el día 28 del mencionado mes de junio de 1938, dijo que era el 24. Pero es evidente que esto no es mas que una mera confusión de fechas en la que suelen incurrir muchos que declaran por primera vez en los Juzgados. Este testigo, más acostumbrado a recordar fechas mediante la mencion de los dias de la semana, ha asegurado que el día de la comisión del crimen era un miercoles (que corresponde al 29 de junio) y también ha asegurado que este día de la comision del crimen era el dia siguiente al dia aquel en que se encontró con los acusados Melchor Medina y Regino Garcia en la carretera provincial.

"La veracidad de este testigo se pone de manifiesto ademas si se tiene en cuenta que algunos dias después de la

comisión del crimen, o sea, el 4 de julio de 1938 (lunes), no sabiendo aun que los aquí cinco acusados habian sido arrestados por el teniente Diosdado Rodriguez de la Constabularia el dia 1.[o] de dicho mes, suscribio y juro voluntariamente ante el Juez de Paz de Dipolog Sr. Venancio Mendoza un affidavit o declaracion jurada (Exhibito 1) en la que hizo constar sustancialmente todo lo declarado por el ante el Juzgado. Cuando prestó esa declaración jurada ni siquiera conocia aún los nombres de los aquí acusados, pues solo les conocia de cara, asi es que al referirse a ellos sólo hizo constar que eran comerciantes ambulantes. Por otro lado, tampoco tenemos el menor motivo para dudar de la honestidad y buena fe del teniente Rodriguez ante quien este testigo Oriola admitio por primera vez su participation en la comision del crimen ni del Juez de Paz Sr. Mendoza ante el cual se juró por el testigo dicha declaracion jurada. Al ser investigado este testigo por el teniente Rodriguez en la casa del Juez de Paz Sr. Mendoza el dia 3 de junio, este testigo aun no reveló lo que sabia y el teniente Rodriguez le dejó que se retirara a su casa. Al dia siguiente el teniente Rodriguez lo investigó otra vez y fue cuando confeso y este testigo dice que el volvió al dia siguiente y confeso porque no podia dormir pensando en lo que aquellos hombres a quienes él había acompañado habían hecho, dando de entender indudablemente—y creemos que esto es lo mas probable—que el no tenia ninguna idea que aquellos hombres iban a matar a Modesto Bastasa y a hacer dano a su hermana y que sólo creia que se limitarian a robar."

Nothing can be found in the record which may be a good ground for disturbing these findings of fact of the trial court.

As elsewhere adverted to, the maid identified her assailant, on the night of the robbery, as Melchor Medina. The statement of the defense to the effect that the beam of the flashlight would have temporarily blinded her and thus rendered her unable to identify her malefactor, is not supported by the evidence. The flashlight, as focused by one of the appellants who came out of the room of Aniceta, caught not her face, but that of the person who was gagging her from behind. Besides, that was not the first time she met Melchor Medina. She had the opportunity to see him for the first time two days before the robbery when the latter approached her in the premises of the Bastasas pretending to be inquiring about a certain widow.

The extrinsic circumstances pointing to the appellants as the authors of the crime are their possession of the properties looted; the fact that the rope with which they tied their trunks is identical with the rope with which the deceased Modesto was bound; and their frustrated attempts at escape.

The bank notes which were recovered from the appellants exhibited two distinguishing characteristics which identified them as the money of the Bastasas. They were folded lengthwise, exactly the unusual way the Bastasas folded their paper bills. Their odor is one peculiar only to bills which had been kept for a long time among wearing apparels. Similarly, the old foreign coins recovered from the appellants substantially met Aniceta's description thereof.

Among those also found in appellants' possession was a rope with which they tied their trunks. It is one of maguey fibers, a kind of rope which, according to a reliable witness for the prosecution, is not to be found in Dipolog or nearby municipalities. This rope is exactly identical with the rope with which the deceased Modesto Bastasas was bound.

The last link in the chain of circumstances identifying the appellants with the crime is their attempts at escape. In the morning of June 30, 1938, appellants were about to embark in a boat that was to sail from Dipolog to Cebu and if they were unable to leave, it was because a constabulary sergeant detained them for investigation before the boat sailed. This attempt at escape is corroborated by the testimony of Estrella Ocampo, daughter of Elena de Ocampo in whose house appellants were boarding. She testified that at about 4 o'clock in the morning of June 30, 1938, she was instructed by Hilarion Holgado to prepare their breakfast earlier as they were decided to leave that

date.

Appellants attempted to escape for the second time on July 1, by embarking on the motorboat "Pilar" which was then about to sail for Dumaguete. It appears that when they were called by the chief of police on that day for investigation, they were allowed to go home with instruction to return at 2 o'clock in the afternoon. Having failed to return, appellants were fetched by a policeman who found them already on the motorboat "Pilar." They sought to explain that after the investigation in the morning of that day, they were allowed by the chief of police to leave Dipolog. This is, however, flatly denied by the chief of police. Besides, the hurry with which they attempted to embark on the motorboat "Pilar" is hardly consistent with their pretended innocence. Flight from justice has always been deemed indicative of a consciousness of guilt. "The wicked flee, even when no man pursueth; but the righteous are bold as a lion." (U. S. vs. Alegado, 25 Phil., 510; U. S. vs. Sarikala, 37 Phil., 486; U. S. vs. Virrey, 37 Phil., 618; People vs. Manalo & Atienza, 46 Phil., 572; People vs. Wilson et al, 52 Phil., 907).

Appellants sought to offer an alibi, pretending that even since 8 o'clock of the night in question they were in the house of Elena de Ocampo where they were boarding, and that they never left the house until morning of the next day. It has been held, however, that an alibi must be proved by positive, clear, and satisfactory evidence. (U. S. vs. Olais, 36 Phil., 828; People vs. Limbo, 49 Phil., 94; People vs. Pili, 51 Phil., 965.) The reason is that "oral evidence of alibi is so easily manufactured and usually so unreliable that it can rarely be given credence." (People vs. Badilla, 48 Phil., 718). It has been held, further, that, when the defendants are identified by the witnesses for the prosecution by clear, explicit and positive testimony, the alibi will not be credited. (U. S. vs. Nudieres, 27 Phil., 45; People vs. Cabantug, 49 Phil., 482; People vs. Palamos, 49 Phil., 601; People vs. Medina, 58 Phil., 330; People vs. De Asis, 61 Phil., 384; People vs. Cinco et al., 37 Off. Gaz., 2740.)

The crime committed by appellants is one of robbery with homicide and physical injuries, attended by the aggravating circumstance of treachery, appellants having bound and gagged their victims when the latter were asleep, thereby insuring the accomplishment of their purpose without risk to themselves, and by the aggravating circumstances of abuse of superior strength and of disregard to the age and sex of the offended parties, the Bastasas being 65 and 62 years of age and two of the victims being women. None of these aggravating circumstances is offset by any mitigating circumstance.

With respect to the doubt entertained by the trial court as to the possibility of absence of intention to kill Modesto Bastasas, the evidence to the effect that appellants introduced into Modesto's vocal cavity a handkerchief and thereafter a pillow case and a portion of the pants resulting into the suffocation of the deceased, is hardly consistent with the absence of homicidal intent. The case, therefore, calls for the application of the maximum penalty provided for by law—death. In view, however, of the absence of unanimity among all the members of this Court in the imposition of the death penalty, judgment is affirmed, with costs against appellants.

Imperial, Diaz, Laurel, and Horrilleno, JJ., concur.

Judgment affirmed.

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