

**THE PEOPLE OP THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONCIO SAULOG, ANGEL SARMIENTO, LEONARDO GUINOBAN, AND
LEONARDO BUNAG, DEFENDANTS. LEONCIO SAULOG, ANGEL.
SARMIENTO, AND ...**

G.R. No. 48850. January 31, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

Robbery with homicide, committed in the following manner:

In the evening of March 24, 1941, at about eight o'clock, a group of individuals arrived at the premises of the spouses Marciano Balingit and Leoncia Arsala in the barrio of Tunasan or Tunasancillo, municipality of Muntinlupa, Rizal. They were met in the yard by Marciano, and they told him that they were Pampangos who had lost their way. Marciano Balingit, who is also a Pampango, invited them to come up his house. Three of the individuals went upstairs and were received and entertained by the mistress of the house, Leoncia Arsala, after she had been informed by her husband who they were. The spouses offered to have supper prepared for them but one of them replied that they had already eaten their supper. Then Leoncia offered them buyo to chew. One of them accepted the offer and conversed with her regarding the proper amount of lime that should be put on the betel leaf. After that, Marciano talked to them in Pampango, asking them what town they were from ("Nuco macabalen, caluguran?"), but the one who had chewed buyo replied that he and his companions could no longer speak Pampango. Then they bid their hosts goodbye, at the same time asking Marciano to conduct them to the road. Marciano took his cane and was going to accompany them as requested, when one of the trio grabbed him by the hand that was holding the cane and the other two each pointed a revolver at his side. Marciano raised his hands to signify that he was not going to resist. He and all the members of his family were then ordered to lie on the floor face downwards, and at the same time the one who had chewed buyo struck the petroleum lamp and put out the light. Pandemonium reigned in the room. Terror-stricken, like lambs cornered and suddenly attacked by wolves, the women strove to jump out of the window. While Leoncia was in the act of jumping, one of her erstwhile "guests" caught her and struck her head with the butt of his revolver. She lost consciousness for a while, and when she came to, she found herself, her husband, and their children tied and bound together hands and feet. Her daughter-in-law Simeona Hermosilla was able to jump out of the window, but after landing she was shot by one of the malefactors who had remained downstairs. As a result, she died of buckshot wounds in the Philippine General Hospital on the afternoon of the following day. The robbers, who were six or seven in number, got away with various pieces of wearing apparel belonging to Marciano Balingit and seven cows belonging to Bernardino Espinosa and under the care and responsibility of Balingit. Two of the animals were later found astray. The total value of the property stolen and not recovered was P369.45.

Who perpetrated this astute and daring robbery with homicide?

The Constabulary, which was notified early the following day, began to investigate. One of the suspects was an

allegedly notorious cattle rustler named Terio Bunag. While looking for him on the afternoon of March 28, 1941, in the municipality of Las Piñas, Rizal, Lt. Cirilo Garcia of the Constabulary and Mr. Aquilino Velasquez, special agent of the provincial governor of Rizal, were directed to the house of his brother Leonardo Bunag. They requested the latter to accompany them to the house of his brother Terio, who turned out to be living in San Pedro Tunasan, Laguna. When he learned that Garcia was an officer of the Constabulary, he became pale and nervous, for which reason they suspected him and questioned him about the robbery. He denied having had anything to do with it, but his deportment and his reaction to the imputation were such as to strengthen their suspicion of him. So instead of taking him to San Pedro Tunasan to look for his brother, they took him to the municipal building of Muntinlupa. Once there they sent for the spouses Marciano Balingit and Leoncia Arsala. The husband was the first to arrive at the premises of the municipal building, where Leonardo Bunag had been mixed with a group of eight or ten individuals, among whom Balingit was requested to identify one of those who had come up his house on the night in question. After looking at them, he pointed to Leonard Bunag as being similar to one of his "visitors," the only difference, he said, being that Bunag was then shaved while the robber he was referring to had not shaved for about a week. Balingit added that if Leonardo was not the man, the latter must be his (Leonardo's) brother.[1] Next, Leoncia Arsala was called, and when she saw Leonardo Bunag among the group, she wept and held him with both hands, saying that he was one of the malefactors.

Thereafter they took Leonardo Bunag to the office of the chief of police of Muntinlupa, where he was further questioned in view of his identification by the spouses, and he then and there confessed his participation in the crime. His declaration in Tagalog by question and answer was taken in writing (exhibit H) and was subscribed and sworn to by him before Mr. Pedro E. Diaz, municipal mayor of Muntinlupa. He revealed that his companions were Leoncio Saulog, Angel Marquita, Pedro Arevalo, Maximiano,[2] Leonardo Guinoban, and Lope Bombasi. In view of that revelation Leonardo Guinoban and Lope Bombasi, who were residents of the locality, were immediately arrested and together with Leonardo Bunag were taken to the constabulary barracks at Pasig, Rizal, that same night. On April 2, 1941, Leonardo Bunag signed another and more detailed sworn statement (exhibit G) in which he described how the crime was committed, but tried to mitigate his own participation by saying that he was forced under threat of death by Leoncio Saulog to take part in the dastardly act. He said in substance that at about seven o'clock in the evening of March 24, 1941, while he was resting in his house Leoncio Saulog came accompanied by four individuals unknown to him and invited him to go to the dance hall. They boarded an L. T. B. bus towards San Pedro, Laguna. When they arrived at the barrio of Tunasan, Muntinlupa, at about eight o'clock, they got down and they met Leonardo Guinoban, to whom Leoncio Saulog talked. He (the declarant) then asked Leoncio where they were going, and he was told that they were going to commit robbery. He said he protested but that Leoncio Saulog threatened to shoot him if he desisted. After they had carried away nine (?) cows, and at a distance of about one kilometer from the house, he separated from the gang with the permission of Leoncio Saulog. In this his second declaration, which was also subsequently subscribed and sworn to before the mayor of Muntinlupa, Leonardo Bunag omitted the name of Lope Bombasi.

When Leonardo Guinoban was investigated at the constabulary barracks in Pasig, Rizal, he confessed his participation in the crime. His confession in Tagalog was reduced to writing (exhibit I) and was subsequently subscribed and sworn to by him on April 2, 1941, before the municipal mayor of Muntinlupa. He declared in substance that he was thirty years of age, single, residing in the barrio of Tunasan, Muntinlupa, Rizal; that he was one of those who committed the robbery on March 24, 1941, in the house of Marciano Balingit; that they were seven in all including himself: Leonardo Bunag, Leoncio Saulog, Angel Marquita, and three others unknown to him; that on the night in question, at about eight o'clock, he was walking near the bridge towards the poblacion of Muntinlupa, when he met Leoncio Saulog in company with Angel Marquita, Leonardo Bunag, and the three others unknown to him, and Leoncio Saulog invited him to go with them and rob Marciano Balingit; that he

accepted the proposal altho he knew it was bad because Leoncio threatened to shoot him if he would not go with them; that Angel Marquita, Leonardo Bunag, and their three to him unknown companions went up the house of Marciano while he and Leoncio remained downstairs; that when those who went upstairs were tying Marciano and the members of his family he (the declarant) approached the house by the east window, and at that moment a woman jumped from the window and he immediately fired at her, and he believed she was hit because she fell, and that when he looked at her, he saw that she was Simeona, Marciano's daughter-in-law ; that all of them except Leonardo Bunag were armed with paltiks; that they took nine cows which were tied under the mango tree near the house of Marciano, and then proceeded to the mountain of San Pedro, Laguna; that when they arrived there, he separated from his companions, but that before Leoncio Saulog released him, he took the paltik from him; that he did not know whereto they carried the cows.

The next accused to be arrested was Leoncio Saulog, who was apprehended in the barrio of Burol, municipality of Dasmarinas, Cavite. When taken to the constabulary barracks where his coaccused Leonardo Bunag and Leonardo Guinoban were detained, the latter were asked to identify Leoncio Saulog. They replied that he was their chief or ring-leader, but at the same time they tremblingly requested that they be not confined in the same room with Saulog, alleging that the latter would kill them, which request was granted. However, Saulog refused to make any declaration, remaining silent and indignant, and Lieutenant Garcia said he could do nothing. On April 12, 1941, Saulog was taken to Muntinlupa and there was mixed with five other men, and then the spouses Balingit were called to see whether among that group they could recognize any one whom they saw in their house on the night in question. Leoncia Arsala identified Saulog without any hesitation.

The last of the four accused to be arrested was Angel Sarmiento, who was referred to in the confessions of Leonardo Bunag and Leonardo Guinoban as Angel Marquita. He was apprehended in the municipality of Imus, Cavite. When investigated by Lieutenant Garcia after his apprehension, Sarmiento denied complicity in the robbery and refused to talk, for which reason Lieutenant Garcia refrained from questioning him. But when he was taken to Muntinlupa and mixed with four or five other men, he was identified by both Marciano Balingit and Leoncia Arsala as one of those who came up their house on the night in question. Leoncia added that Sarmiento was the one who hit her on the head that night.

During the trial of this case Marciano Balingit again identified Leonardo Bunag and Angel Sarmiento as two of the three persons who came up his house on the night in question but that he could not recognize the third because his face was turned away from him. He swore that Sarmiento was the one who chewed buyo and conversed with his wife as to the proper amount of lime to be put on the betel leaf and was also the one who answered him that they could no longer speak-Pampango; that the man whose face he could not recognize was the one who grabbed him, and Bunag and Sarmiento were the ones who pointed their revolvers at him; that Angel Sarmiento was the one who put out the light and ordered him to lie face downwards.

Leoncia Arsala also testified during the trial and identified the accused Leonardo Bunag, Angel Sarmiento, and Leoncio Saulog as the three men who accepted her husband's invitation to go up their house on the night in question. She swore that Angel Sarmiento was the one who chewed buyo, who answered her husband that he could no longer speak Pampango, and who struck the lamp and put out the light; that Leoncio Saulog was the one who grabbed her husband's hand holding the cane; and that Leonardo Bunag pointed his revolver at her husband.

On March 29, 1941, the accused Leonardo Guinoban and Leonardo Bunag, together with Lope Bombasi, were, at the request of Lt. Cirilo Garcia, subjected to paraffin-diphenylamine test to determine the presence of nitrates or gunpowder residues by the expert chemist of the Constabulary, Lt. Trinidad Jose Ungson. The finding submitted by the chemist was that the right and left hands of all the three above-mentioned suspects gave positive results as to the presence of plenty of nitrates. Leoncio Saulog was subjected to the same test on April 7, 1941, with the

same result. Lieutenant Ungson testified during the trial regarding the procedure and the result of the tests made by him and stated that "the said presence of plenty of nitrates together with their sizes and distribution is sure indication that they came from a firearm discharge." When asked how he arrived at that conclusion, he replied: "Because we do also experimental tests of actual firing and perform diphenylamine test afterwards and the specks or the nitrates, the sizes and distribution were noted, and in this case the result of the test, comparing the sizes and distribution of nitrates in these two cases point to strong indication that they also came from firearm discharge."

Jose Balingit, twenty-one-year-old husband of the deceased Simeona Hermosilla, testified that on March 25, 1941, he was a trainee at Camp Murphy, where he was informed by his brother-in-law that his wife was in the Philippine General Hospital; that he went there to see her but at first he was not admitted into her room; that when he was finally admitted, he asked her how she was, and she replied that her life could no longer be saved; that he asked her who had shot her and she replied that it was Leonardo Guinoban; that he knew Leonardo Guinoban personally; that he asked her why she recognized Leonardo Guinoban, and she replied that the latter as well as Bombasi approached her, that Bombasi was the one who raised her head, and Leonardo Guinoban kicked her; that his wife's parting words before she expired were: "My husband, you have to avenge my death."

Leonardo Guinoban had previously been convicted of robbery.

Lope Bombasi was discharged from the complaint after the preliminary investigation for lack of sufficient evidence.

The four accused above named were found guilty by Judge Servillano Platon of the crime with which they were charged and sentenced to suffer life imprisonment, with the accessories of the law, to indemnify the heirs of the deceased Simeona Hermosilla in the sum of P2,000, and the offended parties Marciano Balingit and Leoncia Arsala in the sum of P369.45, the value of the animals and articles stolen and not recovered, and each to pay the proportional part of the costs.

From that sentence they all appealed. Subsequently, however, the defendant Leonardo Bunag withdrew his appeal, and it was dismissed by resolution of this Court of November 28, 1942.

The attorney de oficio for the appellant Leoncio Saulog informs this Court that after examining the evidence, he is of the opinion that the said accused is guilty as found by the lower court and that the penalty imposed is in accordance with article 294, paragraph 1, of the Revised Penal Code, for which reason he asks that the sentence appealed from be affirmed. The attorney de oficio for the other two appellants Angel Sarmiento and "Leonardo Guinoban sustains their innocence and asks that they be acquitted. We shall consider the respective defenses of the three appellants separately.

1. Leoncio Saulog.

The only evidence adduced on behalf of this appellant was his own testimony denying any acquaintance on his part with Leonardo Guinoban and Angel Sarmiento and stating that the testimony of Leoncia Arsala to the effect that he was one of those who went up her house on the night in question was not true. He did not deny the testimony of Aquilino Velasquez that immediately after he had been brought to the constabulary barracks and confronted with his coaccused Leonardo Bunag and Leonard Guinoban, these two pointed to him as their chief or ringleader and at the same time requested that they be not detained in the same room with him for fear of being killed by him. He did not even attempt to put up an alibi. We think the trial court and counsel de oficio were right in believing this appellant guilty. We are so convinced ourselves after carefully considering the evidence adduced against him.

2. Angel Sarmiento.

On behalf of this appellant three witnesses including himself testified during the trial. The first witness was Marcelo A. Miranda, municipal mayor of Bacoor, Cavite, who testified to the effect that on the day following the robbery in question Mayor Diaz of Muntinlupa, accompanied by a constabulary soldier and a policeman of said municipality, came to his house in search of the cattle rustlers, first in the morning and then in the afternoon; that on both occasions the mayor of Muntinlupa was accompanied by the same persons; that on the afternoon of that day he accompanied the mayor and his party to the "tiendas" in Mataas na Sampaloc, because there were many people gathered there; and that he pointed to Angel Sarmiento among the persons there gathered but that the offended party failed to identify him as one of the culprits. The second witness was Marcelino Mendoza of the barrio of San Jose, Dasmariñas, Cavite, who testified that he knew Angel Sarmiento; that the latter was living in the barrio of Mataas na Sampaloc, Molino, Bacoor, Cavite, in March 1941; that at two o'clock in the afternoon of March 24, 1941, he went to the house of Angel Sarmiento, arriving there on foot at about five o'clock, in order to ask some melons of him; that as Sarmiento had no more melons and had to pick up some more the following day, he spent the night in his (Sarmiento's) house; that Sarmiento did not leave the house the whole night; that he got the melons the following day at about seven o'clock in the morning and he went home to Dasmariñas at about eight o'clock after taking his breakfast. On cross-examination he testified that the barrio of San Jose, Dasmariñas, is about seven kilometers from Mataas na Sampaloc, Molino, Bacoor, Cavite; that it was the first time that he slept in the house of Sarmiento; and that it was the first time that he went to that house to ask for melons. Angel Sarmiento testified in his own behalf and denied the imputations of the witnesses for the prosecution against him and said that he was at home on the night of March 24, 1941, where he slept with his wife and his small child. He also corroborated the testimony of Marcelino Mendoza to the effect that the latter also slept in his house that night; that on the afternoon of the following day, March 25, 1941, he sold melons in the barrio of Mataas na Sampaloc, Bacoor, where he saw Marcelino (?) Miranda, mayor of Bacoor, together with a companion whom he remembered to be Marciano Balingit. On cross-examination he said that his melon plantation was just behind his house at a distance of about ten brazas.

We find the evidence for this appellant not of sufficient weight to overcome the testimony of the witnesses for the prosecution against him. The testimony of Marcelo A. Miranda, mayor of Bacoor, Cavite, is not convincing because before ever mentioning the offended party Marciano Balingit he had repeatedly asserted that the companions of Mayor Diaz of Muntinlupa were a constabulary soldier and a policeman of Muntinlupa. He intimated that Marciano Balingit was with the mayor only when he testified that he pointed to Angel Sarmiento among the persons gathered in one of the tiendas in the barrio of Mataas na Sampaloc. On the other hand, the evidence for the prosecution clearly establishes that on the afternoon of March 25, 1941, Marciano Balingit was in Manila on account of the death of his daughter-in-law Simeona Hermosilla. Since according to Miranda himself he did not know Balingit personally, it is probable that he mistook for the latter some other person. The testimony of the melon-seeker Marcelino Mendoza is too absurd to deserve credence. We cannot believe that a man would walk seven kilometers just to ask for some melons of an acquaintance and pass the night in the latter's house on the only pretext that the melons had to be picked up on the following day altho the plantation was just ten brazas away; and that such unusual mission took place precisely on the night in question. This appellant did not even care to present his wife to corroborate his testimony as to the alibi.

As against such an alibi of dubious authenticity, we have the testimony of the spouses Marciano Balingit and Leoncia Arsala, who positively identified this appellant as the man who chewed buyo, confessed ignorance of the Pampango dialect, and struck the lamp to put out the light. Both spouses had ample opportunity to observe and recognize this appellant on the night in question. We are particularly impressed with the sincerity of Marciano Balingit as a witness, who frankly said he was not able to recognize Leoncio Saulog on the night in question because it was the latter's back that was turned towards him. And this same offended party was so scrupulous

about his identification of Leonardo Bunag that he would not be so positive because the latter had shaved while the man who looked like him had not shaved for a week. If Marciano Balingit were not honest and scrupulous, he would have corroborated his wife's identification of Leoncio Saulog instead of frankly stating that he did not recognize his face. Consequently, when Balingit, as well as his wife, positively identified Sarmiento, we have no reason to doubt his sincerity and veracity.

3. Leonardo Guinoban.

This appellant also, presented three witnesses including himself. The first witness was Felipe Buenacelis, fifty-year-old laborer of Tunasancillo, Muntinlupa, who testified that on the night in question he picked up Simeona Hermosilla agonizing in the sugar-cane plantation and carried her, at the same time asking her "if she recognized anybody from among those men and she said, 'Nobody.' " The second witness was Teodulo Redilla, forty-five-year-old farmer of Tunasan, Muntinlupa, who testified that at seven o'clock in the evening of March 24, 1941, Leonardo Guinoban passed by his house on his way to a near-by store, whom he followed thereto at about eight o'clock in the same evening; that while he was in that store together with Leonardo Guinoban, someone came to inform them that something had happened in the field far from the place where they were; that, being a barrio lieutenant, he repaired thereto and found that policemen had already arrived there. Leonardo Guinoban, testifying in his own behalf, said that he was thirty years old, single, farmer, residing in Muntinlupa, Rizal; that he was arrested on the afternoon of March 26, 1941, and brought to the municipal building of Muntinlupa; that on that night, while he was in the municipal jail, he was made to drink liquor by Corporal Taberdo and Sergeants Amante and Batocoy till he became drunk, after which he was taken upstairs in the municipal building and investigated, and when he answered that he did not know anything they struck him and kicked him; that the investigation continued on the following day, March 27; that at about six-thirty in the evening of March 28, he was taken to the constabulary barracks at Pasig, Rizal, and on that night he was also kicked and given fist blows in the plaza of the barracks by four persons of whom he recognized only "Cabo Pula"; that the maltreatment continued on March 29 until three o'clock in the morning' of the following day, when they showed him a written statement which he identified as exhibit I for the prosecution and which he said he signed against his will and under threat to kill him; that he was not present when said document was, prepared; that at about eight o'clock on March 24, 1941, he was in the store of Potenciano Fresnedy with many persons, among whom was Teodulo Redilla; that while he was conversing in that store, a person came and told them to go to the field because according to him his brother-in-law Ciano had been robbed; that thereupon he went home to dress with the intention of going to the place of the robbery, but that his seventy-year-old mother was trembling because of fear and so he did not go.

We are not persuaded to believe the alleged maltreatment of this appellant by the Constabulary for the purpose of forcing him to sign exhibit I: (1) because the testimony of this accused on that point is uncorroborated and cannot prevail over the testimony to the contrary of Lieutenant Garcia and Mayor Diaz; (2) because there was no reason for the Constabulary to single out and torture this appellant for the purpose of extracting a confession from him among the five persons who were arrested and investigated in connection with, the robbery in question; three of those arrested, Leoncio Saulog, Angel Sarmiento, and Lope Bombasi refused to make any confession, or any declaration whatsoever, and the Constabulary did not force them to do so; (3) because it is hard to believe that the detailed statement exhibit I was a pure fabrication of the Constabulary and that this appellant had nothing to do whatever with its preparation, as he would have the court believe; (4) because this accused was not arrested until after Bunag had made his confession of March 28, implicating him; so that his testimony that he was arrested and maltreated on March 26 cannot be true; and (5) because this appellant's credibility as a witness was impeached by his previous conviction for robbery. Even without taking into consideration the extrajudicial confession of the accused Leonardo Bunag as a proof against this appellant, we are fully convinced of his guilt: first, by his own

confession (exhibit I) ; second, by the ante-mortem declaration of the deceased victim Simeona Hermosilla, to whom this appellant must have been familiar because they lived in the same locality; and, third, by the positive result of the paraffin test, as to which he offered no explanation whatever.

We find all of the appellants guilty beyond reasonable doubt of the crime of robbery with homicide, which is penalized by paragraph 1 of article 294 of the Revised Penal Code with reclusion perpetua to death. Conspiracy among the accused was sufficiently established by their concerted action in perpetrating the crime. The trial court found two aggravating circumstances—nocturnity and the employment of craft—without any mitigating circumstance, for which reason the Solicitor General recommends the maximum penalty. The writer of this opinion considers that recommendation well founded, especially with regard to the actual killer, Leonardo Guinoban, whose crime is further aggravated by recidivism, but a majority of the Court voted to affirm the sentence of the lower court.

Wherefore, the sentence appealed from is affirmed, with the only modification that the liability of the appellants for civil indemnity to the offended parties shall be joint and several. The appellants shall pay the costs proportionally.

Yulo, C. J., Moran, and Paras, JJ., concur.

CONCURRENTES Y DISIDENTE

HORRILLEN, M.,

Concurro con la mayoria en que los acusados Leoncio Saulog y Leonardo Guinoban son culpables; pero no asi en que el procesado Angel Sarmiento, lo es, tambien.

Respecto de este, es mi sentir que las pruebas de la acusacion son insuficientes para establecer su culpabilidad. Las unicas, obrantes en autos, consisten en el testimonio del ofendido Marciano Balingit y su esposa Leoncia Arsala al efecto de que, en la noche del 24 de marzo de 1941, Sarmiento fue uno de los asaltantes de la casa, en el barrio de Tunasan, raunicipio de Muntinlupa, Rizal. El testimonio de ambos, sin embargo, no halla corroboracion en las otras pruebas presentadas por la acusacion. Sarmiento niega haber tornado parte en el crimen que motiva este proceso. En su defensa presento al alcalde de Bacoar, Cavite, Sr. Marcelo A. Miranda, cuyo testimonio directo es tan breve que, para su mejor comprension, lo copiamos integramente:

"Q.—Do you know Mayor Pedro Diaz of Muntinlupa, Rizal?—A.—Yes, sir.

"Q.—Do you know also Angel Sarmiento, the accused herein?—A.—Yes, sir, there he is.

"Q.—In the early morning of March 25, 1941, do you remember if Mayor Pedro Diaz ever came to your house?

"Fiscal: Objection for leading.

"Court: Reform the question.

"Atty. Guia:

"Q.—Have you seen Mayor Diaz on March 25, 1941?

"Fiscal: Same objection.

"Court: May answer.

"A.—I cannot remember the exact date, but one morning in the month of March, 1941, at about 4:00 o'clock, the municipal mayor of Muntinlupa, Mr. Pedro Diaz, came to my house and asked my help because according to

him thieving of large cattle occurred in Muntinlupa and because he did not [know] any place in Bacoor, he asked my help.

"Q.—Do you remember if mayor Pedro Diaz had any companion with him when he went to your house?—A.—Yes, sir.

"Q.—Can you tell this Court who were the companions of Mayor Diaz of Muntinlupa?—A.—A constabulary soldier and a policeman of Muntinlupa.

"Q.—Did you ask Mayor Diaz when that crime of theft of large cattle was committed?—A.—According to Pedro Diaz, the Mayor, the stealing of large cattle occurred the night before he came to my house. His purpose was to ask help from me in order to show him the way across Dasmarinas and Bacoor in order to meet the authors of the theft of large cattle.

"Q.—Did you accompany Pedro Diaz to the place where he wanted to go in the municipality of Bacoor?—A.—Yes, sir.

"Q.—Did you see any carabao or any person who was responsible for the theft of large cattle the night before Pedro Diaz went to your house?—A.—Not carabao, cows, according to Mayor Diaz; we did not find the author of the robbery but we found footprints of cows which were believed to -be of those cows stolen from Muntinlupa going to the direction towards the west.

"Q.—On that same date in the morning that Pedro Diaz went to your house, where did you go together with Mayor Diaz and the constabulary soldiers?—A.—That afternoon, I met Pedro Diaz in Mataas na Sampaloc within the jurisdiction of barrio Molino.

"Q.—When you met Mayor Pedro Diaz in the afternoon at barrio Molino, Bacoor, Cavite, did you know who were his companions that afternoon ?—A.—The same companions he had when he came to my house at 4:00 in the morning.

"Q.—Did you know the offended party in the case of theft of large cattle committed the night previous?

"Fiscal: Objection for lack of predicate.

"Atty. Guia:

"Q.—Do you know the offended party in this case, Marciano Balingit? A.—I do not know his name but I can recognize his face if I see him because according to him he was the one taking charge of the cows; he was with Pedro Diaz at that time.

"Q.—Did you see Angel Sarmiento that afternoon in sitio Molino, Bacoor, Cavite?—A.—Yes, sir, in sitio Mataas na Sampaloc, barrio Molino.

"Q.—Can you tell this Court what you, together with Mayor Pedro Diaz and the offended party do when you went to sitio Mataas na Sampaloc, barrio Molino, Cavite, in that afternoon?—A.—Yes, sir.

"Q.—Please relate it to the court. A.—In the morning of that date when we were taking breakfast in the land of Dr. Garcia in Salawag, the owner to those cows told us that he could recognize the thieves if he could see them. We asked him of the description of those persons—robbers— and he told me that one of them was white with sharp nose and looks like a mestizo and I told him that if that is the case, we better go to those "tiendas" in Mataas na Sampaloc because there are many people gathered there selling, that is in that afternoon we met in Sampaloc; I asked him if he could identify anybody as the author of the alleged theft of large cattle; I pointed to him who was then sitting on a bench with a pointed nose who looks like a mestizo and according to him he was not the one; then I brought him around because I myself was personally interested in knowing the real author of that theft of large cattle.

"Q.—Who was that man whom you pointed to the offended party whose description looks like a mestizo?—A.—That person is called Agre.

"Q.—Now, continue. A.—And because the offended party told me that one of those robbers was called Angel Marquita, I told him that there is Angel in that place but the family name is not Marquita and I told him he might be mistaken so I pointed to him, I indicated to him Angel Sarmiento and aside Angel Sarmiento I pointed him another.

"Q.—After the offended party failed to identify any of the culprits that took his cows in the night of March 24, where then did you go?—A.—We separated in sitio Mataas na Sampaloc; they rode in their car and I was left there.

"Q.—Did you know what Angel Sarmiento was doing in that place when you pointed him to the offended party?— A.—He was sitting near a pile of melons."

Sobre la declaracion del otro testigo de Sarmiento, Marcelino Mendoza, presentada para sustanciar la defensa de coartada, no la conceptuamos de importancia en este caso, existiendo como existe otra prueba clara y positiva, sin vicio alguno que la haga increible, o sea, la declaracion del testigo Miranda, fiste, al decir que Balingit no pudo reconocer a Sarmiento cuando este le fue presentado por el, no le movia interes alguno, ya por razon de amistad o parentesco con el acusado, ya por razon de enemistad con los ofendidos, o ya por raz6n de algun interes pecuniario. Si motivo de interes tenia no pudo haber sido otro que el de que, siendo alcalde de Bacoor, le importaba y le importa la supresion de los robos y hurtos de ganado mayor rampantes en la provincia de Cavite. Mas aun: su testimonio no esta contradicho ni por Balingit ni por la esposa de este, ni por ninguna otra prueba. La identificacion de Sarmiento hecha por dichos esposos durante el juicio, no es, en modo alguno, contradiccion de lo aseverado por Miranda ya que, como obviamente se comprende, el conocimiento que tienen de las facciones de aquel bien pudieran haberlo obtenido de otras fuentes mucho despues del suceso. Tenemos, pues, que cuando Miranda declar6 haber señalado varias personas al ofendido Balingit, lo hizo movido tan solo por el deseo de cooperar con el alcalde de Muntinlupa para la aprehension de los culpables. No existe, por tanto, a mi entender, raz6n valida por que no deba apreciarse su testimonio.

He leído con mucha atencion y cuidado sumo la decision del Tribunal a quo, asi como los datos constantes en autos, con el objeto de hallar siquiera indicios de algun motivo o causa por la cual dicho Tribunal a quo y este Tribunal hayan rechazado el testimonio del alcalde de Bacioor. Y, francamente, he de decir que no he encontrado ninguno. Lo unico que la mayoría apunta en su decision esta en lo siguiente: "Since according to Miranda himself he did not know Balingit personlly, it is probable that he mistook for the latter some other person" * * * (pag. 14, Dec). Debetenerse en cuenta que, segun se desprende del testimonio directo de Miranda, considerado en toda su integridad, Balingit iba con el alcalde de Muntinlupa, Sr. Pedro Diaz, un soldado de la Constabularia y un policia; que, cuando Miranda indico otras personas y el acusado Sarmiento a Balingit, era de dia; que Balingit y sus compañeros habian estado ya con el (Miranda) en la manana del dia siguiente al del robo; y que en la tarde del wiismo dia, fue cuando Miranda habia señalado a Sarmiento al ofendido Balingit. Estos hechos, como dejamos dicho, no estan desvirtuados por ninguna prueba de la acusacion. La probabilidad, por consiguiente, de que Miranda hubiera tornado a otra persona por Balingit, es, a nuestro juicio, muy remota; moralmente imposible.

Otro dato que robustece fuertemente la defensa de Sarmiento, es el heeho no impugnado de que este fue indicado por Miranda al ofendido Balingit "en la tarde del dia siguiente al de autos; sin embargo, Balingit no hizo que aquel fuera arrestado aquella misma ocasion por los agentes del orden que iban con el. Habiendo ocurrido el crimen en la noche del 24 de marzo de 1941, no se le detuvo, no obstante, por la Constabularia, sino despues de 17 dias, o sea, el 11 de abril de dicho año.

Para terminar, permitasenos hacer esta interrogation: No seria mas justo y conforme eon el curso regular de las

cosas decir que existe mayor probabilidad de que Balingit y su esposa hubieran tornado por Angel Sarmiento a uno de los asaltantes, cuya nsonomia no pudieron reconocer aquella noche, dado el estado de animo, que es de suponer, en que se hallarian en vista de las circunstancias, asi como la poca o escasa luz que habia, luz que fue apagada por los ladrones momentos despues de haber subido estos a la casa?

Por todas estas consideraciones, creo que el acusado Angel Sarmiento tiene derecho, por lo menos, a los beneficios de la duda racional, y, por consecuencia, a ser absuelto.

BOCOBO, J., concurring in part and dissenting in part:

I concur as to Leoncio Saulog. I concur in the result so far as Leonardo Guinoban is concerned.

The guilt of Angel Sarmiento has not been proved beyond reasonable doubt. Mr. Justice Horrilleno's dissent is well-founded, in my opinion.

[1] Terio Bunag was subsequently taken in and investigated but was found to have had nothing to do with the robbery.

[2] The whereabouts of Pedro Arevalo and Zosimo (Maximiano ?) Advincula is alleged in the information to be still unknown.

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