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[G.R. No. L-28966. November 7, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **BRIGIDO DE LA CRUZ, RODRIGO MACA and ONOFRE COVITA**, *defendants*. **RODRIGO MACA and ONOFRE COVITA**, *defendants-appellants*.

SYLLABUS

CRIMINAL LAW: ROBBERY WITH HOMICIDE, FRUSTRATED HOMICIDE AND PHYSICAL INJURIES; PENALTY IF COMMITTED BY A BAND.— The crime committed is robbery with homicide, frustrated homicide and physical injuries, punishable by *reclusion perpetua* to death. Since the crime was committed by a band, as five of the men were armed with guns and bolos, Article 295 of the Revised Penal Code should be applied. Under the aforestated penal provision, if the robbery with homicide is committed by a band the offender shall be punished by the *maximum* period of the proper penalty. There being no mitigating circumstance, the trial court correctly imposed the maximum penalty of death.

APPEARANCES OF COUNSEL

Solicitor General Felix V. Makasiar and *Solicitor Dominador L. Quiroz* for plaintiff-appellee.

Felipe Gozon for defendant-appellant Rodrigo Maca.

Beltran, Beltran & Beltran for defendant-appellant Onofre Covita.

D E C I S I O N

***PER CURIAM*:**

Before this Court on automatic review is the judgment of the Court of First Instance of Agusan, Branch I, in its Criminal Case No. 2546, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Onofre Covita and Rodrigo Maca guilty beyond reasonable doubt of the offense charged

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and accordingly imposes on them the DEATH PENALTY. They are also hereby ordered, jointly and severally, to indemnify the heirs of Cong Tiong Hay Ham the sum of ₱6,000.00, to restore to them the sum of ₱20,018.30 (₱20,103.50 minus ₱85.20 recovered) robbed from the deceased victim's house and store, to indemnify Judge Julito Dairo and Pacita Dairo the sum of ₱3,000.00, and to each pay one-half of the costs. The weapons used in the commission of the offense are hereby forfeited to the Government.

"The accused Brigido de la Cruz is acquitted and his immediate release from detention is hereby ordered."

At about 6:30 o'clock in the evening of January 30, 1963, five men, armed with guns and bolos, entered the store and house of Cong Tiong Hay Ham (hereinafter referred to as Hay Ham) located in Veruela, Agusan. At that time the following persons were in the house: Hay Ham, his wife Anselma Chamen and his daughter Pacita Dairo. Inside the store were Hay Ham's son-in-law, Julito Dairo, Municipal Judge of Veruela and husband of Pacita, Florencio Piencenaves, Jr., son of Anselma Chamen by a former marriage, Hay Ham's laborer Tomas Otero, Leonilo Novo, Laurentino Otero and Crispin Romano.

Two of the intruders, including the leader, who entered ahead of their companions, ordered Tomas and Laurentino Otero, Leonilo Novo and Crispin Romano to go into the house, and once the latter four were inside, they were told not to move. Laurentino Otero, Crispin Romano and Leonilo Novo were, however, able to escape. The others were ordered to lie down on the floor by the leader of the group, and as the intruders were tying them up, the leader fired his gun, the bullet ricocheting from the floor and injuring the leg of one of the intruders. Judge Dairo, who was previously sitting in the corner of a room, was already on the floor, with his hands tied by the robbers, Anselma Chamen was slapped with the blade of a bolo, as a result of which she became unconscious. After regaining consciousness and while lying flat on the floor; she pleaded with the intruders not to harm them, telling them to just take what they wanted. She was, however, rebuked for talking too much. Mrs. Dairo was slapped, beaten with a gun and kicked several times. The

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leader of the gang fired his gun once more and went to the display table, pulled out a drawer, and took therefrom money and other valuables. Another man, bringing a sack, followed him. Then the leader approached Hay Ham and, holding him by the back of his collar, ordered him to stand. Hay Ham was not able to stand, for by that time he had become weakened by the beatings inflicted on him by the intruders. Another man dragged him into his bedroom; followed by another intruder who kept kicking him at the back. Hay Ham was thereafter heard to be groaning. One of the intruders approached Judge Dairo, who was lying on his left side, pointed his gun toward the judge and pressed the trigger thrice, but the gun did not fire. Another member of the gang got a bolo and hacked the judge several times, and as the latter tried to evade the blows, he was slashed on the left side of the face, on the back, right wrist and head. About thirty minutes later, the robbers left the house, carrying with them their sackful of booty, but one of them fired two shots before leaving the environs of the house of Hay Ham.

After they had gone, Judge Dairo, his wife Pacita and Piencenaves immediately went to Hay Ham's bedroom. There they saw Hay Ham lying prostrate with two big wounds on his face. His hands were tied, and he was in critical condition. He could not talk. Mrs. Dairo applied some medicine on Hay Ham's wounds and a torniquet on the wound of Judge Dairo. Hay Ham was placed on a motorized banca to be taken to a hospital, but he had already expired by then.

The robbers succeeded in taking away ₱20,000.00 in cash kept in a drawer of a table in bills of ₱50, ₱20, ₱10, ₱5, ₱2, and ₱1, and small denominations of ₱0.50, ₱0.20, ₱0.10, and ₱0.05, ₱50.00 in cash inside a brown bag belonging to Anselma Chamen, as well as other articles of value as enumerated in the Information. Of the cash amount taken, ₱85.20 was later recovered by the authorities, as will be mentioned hereinafter.

The medical certificates show the following: *Hay Ham* died of shock and hemorrhage due to hack wounds in the face (Exhibit "B"); *Judge Dairo* suffered a deep incised wound

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about seven (7) inches on the left side of the face — temporo maxillary, a superficial incised wound on the left cheek about three (3) inches, and two sliced wounds about one (1) inch of the scalp at the occipital region (Exhibit "A"); *Anselma Chamen* suffered a lesion on the right temporal region, with hematoma, as big as a closed fist of a three-month old baby, which was expected to heal from four (4) to seven (7) days (Exhibit "C"); and *Pacita Dairo* suffered a contusion on the right occipital region, another contusion on the right periorbital region, a laceration of two (2) inches at the scalp, right occipital region, with an expected healing period of three (3) weeks.

On April 22, 1963, an Information was filed with the Court of First Instance of Agusan, docketed as Criminal Case No. 2546, which reads:

"The undersigned Special Counsel of Agusan accuses BRIGIDO DE LA CRUZ, RODRIGO MACA and ONOFRE COVITA of the crime of ROBBERY AND HOMICIDE, FRUSTRATED HOMICIDE AND PHYSICAL INJURIES, committed as follows:

"That on or about the 30th day of January, 1963, at about 6:30 o'clock in the evening, in the Municipality of Veruela, Province of Agusan, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, armed with firearms and bolos, conspiring together with John Doe and Peter Doe, with intent of gain, and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously enter into the house of Cong Tiong Hay Ham at the aforementioned place and take, steal and carry away therefrom a cash amount of ₱20,000.00, a bag worth ₱8.50 containing a wrist watch worth ₱45.00 and a cash amount of ₱50.00, all belonging to Cong Tiong Hay Ham, to the damage and prejudice of the latter in the aggregate sum of ₱20,103.50, and on the occasion and by reason of said robbery, the said accused, confabulating together with John Doe and Peter Doe and mutually helping one another, with intent to kill and with treachery and evident premeditation, then and there wilfully, unlawfully and feloniously attack, assault and stab with bolos Cong Tiong Hay Ham, thereby inflicting upon the latter mortal wounds which directly caused his death, and Julito Dairo, inflicting upon the latter serious wounds which would ordinarily produce death, thus performing all the acts of execution which would produce the crime of homicide as a consequence but which, nevertheless, did not

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produce it because the weapon used met obstructions in the victim's body and by reason of competent medical treatment rendered on him, and struck Pacita Dairo and Anselma Chamen with blunt instruments, thereby inflicting physical injuries upon them.

"That the offense herein charged is attended by the aggravating circumstances of nocturnity and a band.

"Contrary to law."

On May 8, 1964, after a reinvestigation of the case, an Amended Information was filed, containing more or less the same allegations as those in the original Information, but adding as accused the names of Filemon Suarez, Ludovico Suarez and *Alias* Cano, in lieu of John or Peter Doe.

A motion for reinvestigation was filed in behalf of accused Brigido de la Cruz and Rodrigo Maca on August 20, 1964, to which the prosecution filed an opposition. The motion was denied by the court in an Order dated December 3, 1964.

Trial proceeded with respect to accused Brigido de la Cruz, Rodrigo Maca and Onofre Covita, who had previously pleaded not guilty at the arraignment. The other accused, Filemon Suarez, Ludovico Suarez and *Alias* Cano, remained at large.

Nine (9) witnesses, namely, Florencio Piencenavez, Jr., Melquiades Salisi, Tomas Otero, Marcelino Belano, Jose Dadong, PC Cpl. Teodoro Magturtur, Anselma Chamen, PC Cpl. Dacman Pancilmawan and Judge Julito Dairo, testified for the prosecution. After the prosecution had rested its case, accused Brigido de la Cruz and Rodrigo Maca filed, on October 4, 1965, a motion to dismiss the case against them on the grounds of insufficiency of evidence and doubtful identification. The motion was opposed by the prosecution. In a resolution dated January 5, 1966, the trial court, then presided over by Judge Montano A. Ortiz, denied the motion to dismiss. It was the court's opinion that the accused-movants had been unmistakably identified as participants in the crime by some of the prosecution witnesses, especially by Tomas Otero and Florencio Piencenaves, Jr.

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The three accused, Onofre Covita, Rodrigo Maca and Brigido de la Cruz, took the witness stand. Four (4) other persons, namely, Eusebio Montero, Silvestre Maca, Teresita Maca and Atty. Teodorico Labtic, testified for the defense.

After trial, the court *a quo*, presided over by Judge Simeon N. Ferrer, rendered the judgment referred to at the beginning of this opinion, acquitting the accused Brigido de la Cruz and convicting Rodrigo Maca and Onofre Covita.

In finding defendant-appellant Onofre Covita guilty of the crime charged, the trial court stated in its decision:

"The testimonial evidence presented by the prosecution coupled with his own admissions established beyond the shadow of doubt accused Onofre Covita's participation in the crime charged. His close association with his co-accused before, during and after the commission of the offense, his admittedly direct participation in the performance of acts resulting in the accomplishment of their evil purpose, his concealment of his share of its loot (Session of Sept. 15, 1965, t.s.n. 116-122), his failure or refusal to voluntarily surrender to the authorities (*Ibid.*) negate his belated pretension he was deceived and/or forced into committing the robbery-killing. This Court cannot simply bring itself to believe Covita's story he permitted three men (his co-accused Felimon Suarez, Ludovico Suarez, and *alias* Cano) whom according to him, he hardly knew, and who were armed with deadly weapons, to stay in his house one day and one night, and, on the following day, accompanied them, ostensibly to buy land in a totally strange place miles away from home, only to find himself involved in a robbery-killing. On the contrary, this evinces a community of purpose, and that each of the accused knew of the criminal design of the others as can be sufficiently inferred from the attendant circumstances, such as their arrival at Veruela at the same time, their presence from the commencement up to the consummation of the crime, and most important of all, the fact they acted in concert all throughout its commission pursuant to the same evident objective. (*People vs. Agrava, et al.*, G.R. No. L-12406, June 30, 1961; *People vs. Mandagay, et al.*, 46 Phil. 838). In a conspiracy, every act of one of the conspirators in the furtherance of the common purpose or design is in law the act of each of them (*U.S. vs. Ipil*, 27 Phil. 530; *U.S. vs. Remigio*, 37 Phil. 599)."

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With respect to the defendant-appellant Rodrigo Maca, the trial court stated:

"Apart from the positive identification of the accused Maca by the prosecution eyewitnesses Piencenaves, Otero, and Dairo during the trial, several circumstances militate strongly against Maca's inherently weak defense of alibi:

"1) in his affidavit, Exhibit E, he swore having reached his house at Penalisan from Tacurong on January 18, 1963; his repudiation of this and other statements contained in his affidavit during the trial is a defensive afterthought (Session of May 24, 1966; t.s.n., pp. 78-82);

"2) at one point during the robbery, Maca's white handkerchief mask slid down his face enabling the eyewitness Florencio Piencenaves to recognize him under the bright Petromax lamp (Session of March 24, 1965; t.s.n., pp. 12-18);

"3) by his own admission, shortly after the commission of the offense charged, he was with the accused Onofre Covita, Felimon Suarez, Ludovico Suarez, and alias Cano, among others; on February 1, 1963, rural policeman Jose Dadong saw him with the aforesaid accused, among others, on the Masayan trail; on February 2, 1963, Jose Dadong saw him again with the same group at Dadong's farm digging for camotes (Session of July 29, 1965; t.s.n., pp. 90-94); earlier on the same day, the very identical group was surprised by barrio lieutenant Marcelino Belano at Triumph Timber Corporation's logging camp at Kaigangan, Loreto, Agusan; Rodrigo Maca lied to Belano when he told the latter his group had been to Masayan to plant rice (Session of July 29, 1965; t.s.n., pp. 54-56);

"4) despite his knowledge of the commission of the offense charged and the perpetrators thereof, he made no effort to report the incident to the authorities until he was arrested; in fact, the aid and comfort he gave the perpetrators contributed to the escape of three of them who, to this date, are still at large;

"5) the unrebutted testimony, on direct and cross-examination of Corporal Teodoro Magturtur of the 97th PC Co., Punawan, Agusan, is to the effect that Rodrigo Maca confessed to

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> him and his Commanding Officer, Maca was one of the five persons who had robbed the residence of Hay Ham on January 30, 1963, at 6:30 P.M. (Session of September 15, 1963; t.s.n., pp. 119-120; 124-131).

"The above-specified circumstances coupled with his positive identification erase any doubt in the mind of this Court with respect to the guilt of Rodrigo Maca.

"The vicarious testimony of his brother-in-law, Onofre Covita (a confessed participant) seeking to bolster Rodrigo's defense of alibi deserves little credence; much less the understandably biased testimony of his father, Silvestre, and his sister, Teresita. Neither can the self-serving letters (Exhibits 4, 4-A-Maca) nor the hearsay reply letter (Exhibit 6-Maca) be of any decisive assistance."

The trial court found that the commission of the crime was attended by the aggravating circumstances of band and treachery, without any mitigating circumstance to offset them. Hence, the imposition of the supreme penalty on defendants-appellants.

Appellant Covita testified that on January 29, 1963, three persons, namely, Filemon Suarez, Ludovico Suarez and someone called Cano, all armed with bolos, arrived at his house at Penalisan, Johnson, Loreto, Agusan; that they brought with them a handbag and a sack purportedly containing clothes and other personal effects; that the three men requested him to accompany them to Lugom, Agusan, where they allegedly wanted to see a parcel of land which they were contemplating to buy; that in the morning of January 30, 1963, he, armed with a hunting knife, together with the men, left his house; that when they reached Veruela at about 6:30 o'clock in the evening, he made inquiries from his companions about the land which they were intending to buy; that the three men pulled out their firearms from the handbag — Filemon Suarez, a rifle; Ludovico Suarez, a shotgun; and Cano, a .38 Caliber revolver — and Cano then told him that their intention was not to buy land but to rob a Chinaman; that he (appellant) told them that had they informed him earlier of their plan, he would not have gone with them; that Cano pointed his revolver at him, asking him whether he preferred to go with them or to be killed by Cano; that because of this, he

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became afraid and had no alternative but to go with the men; that Filemon Suarez ordered him and the other two men to go up Hay Ham's house and rob the place; that when they were already in the second floor of the house, Filemon Suarez ordered the persons inside "'*Wag kayong kikilos*" and made them lie on the floor; that he (appellant) was ordered by Filemon and Ludovico to tie the hands of the persons whom they found in the house but he refused thrice, and the third time he refused, a shot was fired at him by Ludovico Suarez, as a result of which he was hit on the right foot; that he went to the balcony of the house and there tried to stop his wound from bleeding; that while he was in the balcony, he saw Ludovico Suarez standing guard outside the house, Filemon Suarez entering Hay Ham's room, and Cano tying the inmates' hands; that Filemon demanded money from Hay Ham and when the latter refused, Ludovico entered and hacked Hay Ham with a bolo; that Ludovico then came out of the room, aimed his gun at Judge Dairo, and pressed the trigger, but it did not fire, so he (Ludovico) unsheathed his bolo and hacked the judge; that he (appellant) went down from the house in order to escape, but because of the pain in his right foot, he had to rest for a while, and it was while he was resting that his three companions, who were then fleeing from the Chinaman's house, overtook him; that he pleaded with them to bring him to his house at Penalisan; that his companions carried him, and when they had gone a little farther away from Veruela, they found a man who assisted them in carrying him on a hammock; that he sent Ludovico Suarez and Cano to his (appellant's) house at Penalisan to notify his family of his condition; that as a result, his wife, Teresita Maca, his father-in-law, Silvestre Maca, and his brother-in-law, Rodrigo Maca (the other appellant in this case), came to him in the mountain where he was lying wounded; that the said relatives, together with Filemon Suarez, Ludovico Suarez and Cano, helped one another in carrying him on the hammock to Penalisan, which they reached on February 5, 1963; that he was taken to a ricefield, where they hid him; that on February 6, 1963, he became aware of the fact that a PC patrol was at Penalisan looking for the robbers; and that he stayed in the ricefield until February 9, 1963, when PC soldiers arrived.

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Appellant Onofre Covita thus admits his presence at the scene of the crime at the time of its commission, but denies having acted in conspiracy with the other accused because he was misled by Filemon Suarez, Ludovico Suarez and Cano into accompanying them to Lugom to see a parcel of land which the three wanted to buy, but when they reached Veruela, he was forced by them through threats to participate in the robbery. He contends that the fact that he was shot by one of the men proves that he was present as an unwilling member of the group, and that, if at all, his participation merely consisted in pointing a gun at some of the inmates of the house which is not punishable by death.

The flaw in appellant Covita's theory is that it leaves many vital questions unanswered. Why, for instance, would he accompany the three persons to Lugom when according to him he himself did not know where that place was? His wife, Teresita, testified that her husband told her that the first to enter Hay Ham's house were Filemon and Ludovico Suarez, the next, Cano, and the last, appellant Covita. Being the last to enter the house, Covita could have escaped had he wanted to, as some of the persons who were then in the house — Laurentino Otero, Crispin Romano and Leonilo Novo — were able to do, considering, especially, that he was, by his own admission, armed with a hunting knife. Appellant Covita would make capital of the fact that he was wounded by one of his companions because he refused to participate in the commission of the robbery. This was, however, belied by Tomas Otero who testified that Covita was wounded when the bullet from the riot gun fired by one of the culprits towards the floor ricocheted. Again, if appellant Covita was an unwilling member, why did he hide from the authorities in a ricefield at Penalisan until February 9, 1963? Upon the other hand, the evidence for appellant Covita shows that after the robbery, his companions attended to him with solicitude, carrying him to the mountain, notifying his family of his wounded condition, helping his relatives carry him to Penalisan and hiding him in a ricefield. Besides, appellant Covita was likewise armed which would not have been the case if he joined the group under duress. And there

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is the money in the amount of ₱85.20 in a tin can hidden under the ground beneath a tree at Penalisan some fifteen (15) meters away from the house of appellant Covita's father-in-law. It was dug up by the PC soldiers upon the information given to them by appellant Covita's wife that the money was hidden there by her husband. No explanation at all was given on the witness stand by Covita why he had hidden this money although it appears clear from the evidence that the prosecution had always considered the money as part of Covita's share in the loot. For the foregoing reasons and in view of the substantial evidence for the prosecution, We find that Onofre Covita was in deed one of the participants in the offense charged.

The case of defendant-appellant Rodrigo Maca is in a different situation.

To begin with, in his affidavit, appellant Maca stated that he arrived in his house at Penalisan, Johnson, Loreto, Agusan, from Tacurong, Cotabato, on January 18, 1963; but on the witness stand he testified that the date of his arrival was January 30, 1963. In his brief, appellant Maca admits that there is a discrepancy between his affidavit and his testimony in court regarding the date of his arrival at Penalisan, but he claims that there must have been an error in the drafting of the affidavit, the contents of which were not read to him before he affixed his signature. He claims that the true date of his departure from Tacurong, Cotabato, was January 25, 1963; that the true date of his arrival at Penalisan was January 30, 1963; and that in his affidavit, he declared that he left Tacurong, Cotabato on January 18, 1963 and arrived at Penalisan on January 18, 1963, which could not be the case unless he travelled by airplane, which is not shown by the record.

We have examined appellant Maca's affidavit and We cannot but conclude that the dates appearing therein are the true dates of his departure from Cotabato and arrival at Penalisan. It is not true, as now claimed by this appellant, that he stated that he left on *Janury 18, 1963.*

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"Q. 10 — When did you leave Tina, Tacurong, Cotabato for Agusan Province?

A. — January 15, 1963, sir."

To the question of when he arrived at Penalisan, appellant Maca answered in his affidavit that the date of his arrival was January 18, 1963. He also stated in said affidavit that his companion on the trip was one Nicolas Espulgar; and when asked where Espulgar was at the time the affidavit was being executed (on February 23, 1963), appellant Maca replied that Espulgar went back to Cotabato on January 25, 1963. If, as now claimed by appellant Maca, he arrived at Penalisan only on January 30, 1963, he would not be in a position to state that his travel companion, Nicolas Espulgar, went back to Cotabato on January 25, 1963.

We are convinced that when the robbery took place on January 30, 1963 in Veruela, Agusan, appellant Maca had long returned to Penalisan from Cotabato.

The next, indeed the crucial question to be resolved is whether appellant Maca was sufficiently identified as one of the perpetrators of the crime. The court *a quo*, it will be noted, anchored its affirmative conclusion mainly on the circumstance that appellant Maca's white handkerchief mask slid down his face, enabling Piencenaves to recognize him.

Three of the eyewitnesses, namely, Florencio Piencenaves, Jr., Tomas Otero and Judge Julito Dairo, identified appellant Maca as one of the criminal participants. Each of them narrated in court the role allegedly performed by appellant Maca. Our duty is to ascertain whether there was a correct and convincing identification of this appellant.

Piencenaves declared that appellant Maca was one of the five persons who participated in the robbery; that he had known Brigido de la Cruz, who acted as leader of the group, for about five (5) years before the incident, for De la Cruz used to buy from Hay Ham's store and once even had an altercation with Hay Ham; that he did not know the other persons who were

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with De la Cruz, but he could recognize them if he saw them again; that it was Onofre Covita and Rodrigo Maca who ordered Leonilo Novo, Tomas Otero, Laurentino Otero and Crispin Romano, who were then in Hay Ham's store, to go inside the house; that Maca had a revolver and a bolo; that Covita and Maca ordered him and his companions in the house to lie flat on the floor; that Covita and Maca tied Hay Ham's hands; that Maca fired three (3) times at Judge Dairo while the latter was lying on the left side of his body, but the gun did not fire; and that he was able to see and remember the faces of the intruders because there was a bright Petromax light inside the house.

On cross-examination, witness Piecenaves declared, in relation to the identification of appellant Maca:

"Q. You seem to know very well Onofre Covita and Rodrigo Maca before this incident. Were you already fully acquainted with these two persons?

A. No, sir; but it was during the fiesta when I saw Onofre Covita. I recognized him to be of that person but I did not know his name first. I recognized him also because he was bald headed person, with beards on his face. With respect to Rodrigo Maca, I did not know him but I recognized him to be the same person because his physical feature resembles to the person I saw that afternoon. Besides, he is a tall-looking person." (t.s.n., p. 15, Session of March 24, 1965).

"Q. And because you were not afraid to face them and you followed their order, you must have observed very well. Is it not?

A Yes, sir; I saw them.

Q. For how long did you see them?

A. When he ordered me to lie flat on the floor, I looked at them until I found myself lying flat on the floor." (t.s.n., p. 16, *Ibid.*)

"Q. You said that there were also two persons aside from Brigido de la Cruz who came in first. Because you were not afraid and you were looking at them as you were lying down, you also noticed the clothing of the two persons. What was the clothing worn by the companions of Brigido de la Cruz?

A. Rodrigo Maca was wearing a black jacket and was also wearing a mask (white handkerchief). At that time, his mask

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was removed down, so that his face was recognizable." (t.s.n., p. 18, *Ibid.*)

"Q. You said a while ago that before the incident on January 30, 1963, you did not know the accused Rodrigo Maca. Is that correct?
A. Yes, sir.

Q. You did not know Rodrigo Maca because you did not see him before January 30, 1963?
A. Never.

Q. You did not hear the name of Rodrigo Maca? Is that correct?
A. Yes, sir.

Q. Now, who told you that the person you identified in this Court is Rodrigo Maca?
A. The PC told me." (t.s.n., pp. 25-26, *Ibid.*)

Tomas Otero testified that in the early evening of January 30, 1963, while he was in Hay Ham's store together with Crispin Romano, Leonilo Novo and Laurentino Otero, three persons arrived, shortly followed by two others; and that the first three who arrived were Brigido de la Cruz, Onofre Covita and Rodrigo Maca, all three of whom he identified in court; that the other two persons were not in court; that he had been acquainted with Brigido de la Cruz for five years since 1958 up to the time of the incident, because he used to see him in the poblacion purchasing supplies from Hay Ham's store, and there was a time when he (witness) and his mother went to harvest in De la Cruz' farm, and they had to stay in the latter's house for almost one week; that De la Cruz immediately told his abovenamed companions and Judge Dairo, Hay Ham and Anselma Chamen, not to move; that De la Cruz pulled Hay Ham, put his hand around the latter's neck, slapped him with a gun and pushed him toward a box where Hay Ham slumped; that Covita and Maca were each armed with a bolo and a revolver; that the other two unidentified persons were each armed with a revolver; that De la Cruz then fired an alarm shot with a riot gun, hitting Covita in the left leg; that Covita and Maca ordered the persons to seek cover; that Maca tied his hands, while Covita tied Piencenaves' hands; that De la

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Cruz took money from a drawer and put it inside a sack, after which he dragged Hay Ham toward a room asking him where he had placed his other money; that De la Cruz was assisted by another man who was also wounded in the left leg and armed with a revolver and a bolo, in pushing Hay Ham; that he heard a commotion inside the room, after which De la Cruz came out taking with him a sack; that De la Cruz and the other wounded man went downstairs; that Maca aimed his revolver at Judge Dairo, who was hogtied and lying on the side of his body, and pressed the trigger three times, but the gun did not fire; that the man with the wounded leg approached Judge Dairo, pushed Maca inside and began hacking the Judge with a bolo; and that the robbers then went away, and before leaving, fired two shots.

On the question of identification of appellants, Maca and Covita, Tomas Otero declared on direct examination:

"Q. What did you observe in the persons of Rodrigo Maca and Onofre Covita from the time they entered the store of Hay Ham Lim on January 30, 1963?
A. All these persons were not clearly seen by me because they were having masks (handkerchiefs) on their faces." (t.s.n., p. 77, Session of March 25, 1965.)

During the cross-examination, witness Tomas Otero declared, however:

"Q. What kind of handkerchiefs did they use, all plain white?
A. Colored and dotted with red.

Q. All their faces were covered of these two that you saw?
A. Up to their nostrils covering their mouth.

Q. And their faces were covered that you could not recognize who they were?
A. I was able to recognize them because their masks were brought down when they were moving.

Q. What do you mean?
A. When they reached inside and went upstairs their masks were removed down while they were hog-tying us." (t.s.n., p. 11, Session of July 28, 1965.)

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"Q. You stated that you were not able to recognize the two persons wearing masks, and you were already inside the store, is that correct?

A. Yes, sir." (t.s.n., p. 21, *Ibid.*)

Judge Julito Dairo corroborated on material points Piencenaves' and Tomas Otero's testimonies, and he further testified that he was seated beside a table in the store and opening a letter when five persons, namely, Brigido de la Cruz, Rodrigo Maca, Onofre Covita and two others who were not in court arrived; that the store was brilliantly lighted with a 500-candle Petromax lamp; and that immediately after the January 30, 1963 incident, he went to Davao City for medical treatment, returning to Veruela, Agusan, on or about March 22, 1963.

On the question of appellants' identities, Judge Dairo declared on cross-examination:

"Q. Atty. Dairo, you seem to know very well these accused, namely, Brigido de la Cruz, Rodrigo Maca and Onofre Covita, could you tell the Court if you have any association with them prior to the incident?

A. Before the incident, I saw Brigido de la Cruz several times in the *poblacion* of Veruela and at times in the store purchasing supplies while this Rodrigo Maca and Onofre Covita, I saw them only for the first time in the evening of January 30, 1963.

Q. How did you happen to immediately identify the persons who entered in the evening of January 30, 1963 that they were Rodrigo Maca and Onofre Covita if you only knew them at that time?

A. While I was there lying down hogtied, I was staring at the face of Rodrigo Maca and I observed his face, the nature of his ears and I was staring at his expression. While this Onofre Covita, I noticed that he has a beard on his chin and he was bald-headed.

Q. Is it not a fact that you only came to know these two merely at the time they were already accused?

A. When I came back from Davao I went immediately to the headquarters and while I was sitting in the Office of the

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Commanding Officer inside, a person came to the amphitheater acting as a janitor and I recognized him immediately to be one of those who robbed us.

Q. When was that?
A. That was sometime in March, and I easily recognized and identified him to be one of those who came up in the store in the evening of January 30, 1963." (t.s.n., pp. 180-181, Session of September 16, 1965.)

Appellant Maca places much stress on the variances or inconsistencies in the witnesses' description of the handkerchiefs used as masks by the culprits.

Thus, according to Piencenaves, the handkerchief was white,[1] while in the view of Tomas Otero, it was colored and dotted red. These differences on impressions on the color of the handkerchiefs do not detract from the credibility of the aforestated witnesses. They refer to minor differences in detail which are not of such magnitude as to impair the credibility of their testimony. This Court has observed that inconsistencies in the testimonies of witnesses in minor details reinforce rather than weaken their credibility. It is usual for witnesses to a startling event to see some details of the startling occurrence differently.[2]

It is clear from the evidence that the store of Hay Ham Lim where the incident occurred was brightly lighted by a 500-candle Petromax lamp. Since these eyewitnesses were near appellant Maca, it is not improbable that they recognized his face, when the handkerchief mask which he was wearing momentarily slipped down his face, at the time appellant was stooping low when he was tying up Otero. It must be noted that Piencenaves recognized Maca, not only on the basis of Maca's physiognomy, but also because of his height and other physical features, while Judge Dairo recognized him because of the shape of his ears and the other contours of appellant's countenance. Judge Dairo had

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[1] T.s.n., p. 18, Session of March 24, 1965.

[2] *People v. De Gracia*, L-21419, Sept. 29, 1966, 18 SCRA 197, 204.

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every reason to remember appellant Maca because he stared intently at the appellant after he tried to shoot him thrice.

In resume, therefore, there are facts and circumstances which establish Maca's participation in the commission of the crime and militate strongly against his defense of alibi. Thus:

1. Tomas Otero testified that Rodrigo Maca tied him up while Onofre Covita tied Florencio Piencenaves; that Maca pointed his revolver at Judge Dairo, fired at the latter, but the gun failed to fire; that only two of the culprits were masked but he was able to "recognize them because their masks were brought down when they were * * * hogtying us."[3]

2. According to Florencio Piencenaves, Rodrigo Maca was wearing a black jacket and a mask (white handkerchief) and at one point during the robbery, Maca's handkerchief mask slid down his face enabling him to recognize Maca under the bright Petromax lamp.[4]

3. By Maca's own admission, shortly after the commission of the offense charged, he was with Onofre Covita, Felimon Suarez, Ludovico Suarez and *alias* Cano, among others; on February 1, 1963, rural policeman Jose Dadong saw him with the aforesaid accused, among others, on the Masayan trail; on February 2, 1963, Jose Dadong saw him again with the same group at Dadong's farm digging for *camotes*;[5] earlier on the same day, the same group was surprised by Barrio Lieutenant Marcelino Belano at Triumph Timber Corporation's logging camp at Kaigangan, Loreto, Agusan; Rodrigo Maca lied to Belano when he told the latter that his group had been to Masayan to plant rice.[6]

4. Municipal Judge Julito Dairo positively identified Rodrigo Maca and Onofre Covita as the two armed men who

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[3] T.s.n., p. 11, Session of July 28, 1965.

[4] T.s.n., pp. 12-18, Session of March 24, 1965.

[5] *Ibid.*, pp. 90-94, Session of July 29, 1965.

[6] *Ibid.*, pp. 54-56.

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followed Brigido de la Cruz into the store which was brilliantly lighted by a "500 candle Petromax"; Rodrigo Maca and Onofre Covita "herded Tomas Otero, Crispin Roman, Laurentino Roman and Leonilo Novo from the porch and forced these four people * * * inside the store."[7] Maca and Covita commanded Otero and Piencenaves to lie down; [8] Maca who was guarding Judge Dairo fired his revolver but he heard only three clicks as the gun didn't fire; he recognized Maca because he "was staring at the face of Rodrigo Maca and I observed his face, the nature of his ears and I was staring at his expression."[9]

5. There is on record the unrebutted testimony on direct and cross-examination of Cpl. Teodoro Magturtur of the 97th PC Company, Bunawan, Agusan, to the effect that Rodrigo Maca confessed to him and his Commanding Officer that Maca was one of those who robbed the residence of Hay Ham on January 30, 1963 at 6:30 p.m.[10]

In the face of the foregoing considerations, the lower court correctly refused to give credence to the testimonies of Onofre Covita, appellant Maca's brother-in-law, Silvestre Maca, his father, and Teresita Maca, his sister, to the effect that he was not among those who perpetrated the offense, for being understandably biased.

The crime committed is robbery with homicide, frustrated homicide and physical injuries, punishable by *reclusion perpetua* to death. Since the crime was committed by a band, as five of the men were armed with guns and bolos, Article 295 of the Revised Penal Code should be applied. Under the aforestated penal provision, if the robbery with homicide is committed by a *band*, the offender shall be punished by the *maximum* period of the proper penalty.

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[7] *Ibid.*, pp. 169-171, Session of Sept. 16, 1965.

[8] *Ibid.*, p. 173.

[9] *Ibid.*, p. 180.

[10] *Ibid.*, pp. 119-120; 124, 131.

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There being no mitigating circumstance, the trial court correctly imposed the maximum penalty of death.

WHEREFORE, the judgment appealed from is AFFIRMED, with the modification that the amount of indemnity for the death of the victim is hereby increased from ₱6,000.00 to ₱12,000.00.[11]

SO ORDERED.

Teehankee, Makasiar, Antonio, Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

Fernando, C.J., voted for the imposition of the penalty of *reclusion perpetua* in accordance with the view expressed by Mr. Justices Barredo and Abad Santos.

Barredo, J., concurs in the finding of guilt, but consistently with any opinion in *Peo. vs. Borja*, G.R. No. L-22947, I vote for life imprisonment.

Abad Santos, J., concurs in the finding of guilt but because of their long detention, I vote for life imprisonment.

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[11] *People v. Pantoja*, L-18793, Oct. 11, 1968, 25 SCRA 468.