

[G.R. No. 19343. January 12, 1923]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN MANUEL ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

STREET, J.:

This cause has been elevated to the Supreme Court for the purpose of subjecting to review in this tribunal a decision of the Court of First Instance of Pangasinan, finding the five appellants, to wit, Juan Manuel (1.º), Ildefonso Giron, Pedro Martos, Graciano Saori, and Juan Manuel (2.º), guilty of the offense of robbery with double homicide, and sentencing each of them to undergo the penalty of death, to indemnify jointly and severally the heirs of Valentin Pasamonte and Maria de la Cruz, in the sum of P1,000, and to pay the costs of the prosecution.

On the night of April 14, 1919, an aged couple, consisting of Valentin Pasamonte and Maria de la Cruz, residents of the barrio of San Antonio, in the municipality of San Manuel, Pangasinan, were foully murdered and robbed in their home by a band of eight miscreants, consisting of the five appellants and three others, namely, Victoriano Gamboa, Saturnino Aguilar, and Teodoro Estioco, the last three having been used as witnesses for the prosecution. As soon as the perpetration of this crime was brought to the attention of the authorities, an investigation was set afoot with a view to the discovery of the identity of the perpetrators, and in the course of this investigation suspicion was directed to a number of individuals other than those prosecuted in this case; but no credible proof was obtained tending to confirm the suspicions against the first suspects, and the prosecution against them was dropped.

The first truthful clue leading to the apprehension of the actual malefactors

came from one Victoriano Gamboa while in Bilibid Prison under sentence of death for participation in a similar crime of robbery and murder. In this connection it appears that on the night of March 30, 1920, Victoriano Gamboa, Ildefonso Giron, and Juan Manuel (2.º), in collaboration with five other individuals not necessary to be here named, attacked the house of Juan Batalla (2.º), in the municipality of Muñoz, Nueva Ecija, for purposes of robbery, in the accomplishment of which crime they killed four of the inmates. In the prosecution that followed (U. S. vs. Gamboa, R. G. No. 17317, decided March 8, 1922⁽¹⁾), Ildefonso Giron and Juan Manuel (2.º) were used as state's witnesses, and the result was the conviction of Victoriano Gamboa and his codefendants. On July 16, 1921, thereafter, the said Victoriano Gamboa, being under sentence of death for the crime aforesaid, wrote a letter to the provincial commandant of the Philippine Constabulary, in Lingayen, Pangasinan, in which he revealed the names of the eight persons, including himself, who, according to his statement, had murdered and robbed Valentin Pasamonte and Maria de la Cruz, in the municipality of San Manuel, Pangasinan, in April, 1919. Acting upon this information, the five appellants were prosecuted in the present cause and, as already stated, sentenced to death, in the Court of First Instance of said province. In this prosecution three of the gang of eight participants, namely, Victoriano Gamboa, Saturnino Aguilar, and Teodoro Estioco, were used as witnesses for the prosecution; and the testimony of these, supported by admissions and confessions obtained from more than one of the appellants, constitutes the proof upon which the conviction was obtained. Juan Manuel (1.º) and Pedro Martos have at no time admitted their guilt; and as against them the conviction rests exclusively upon the concurrent testimony of the three confederates already referred to.

According to these witnesses the crime was committed substantially as follows: About two days before the crime was committed, Victoriano Gamboa and Pedro Martos were in communication with a view to the perpetration of robbery upon a house in the municipality of San Manuel, Pangasinan, where, it was believed, a considerable sum of money could be obtained. Pursuant to the plan then formed, Pedro Martos proceeded to other parts of the Province of Pangasinan to bring together the associates necessary to undertake the enterprise, while Victoriano Gamboa awaited his return. Pedro Martos seems first to have connected himself with Juan Manuel (1.º), Juan Manuel (2.º), and Ildefonso Giron, after

which the four then presented themselves at the home of Saturnino Aguilar, in Umingan, Pangasinan, and invited him to accompany them to the house of Teodoro Estioco. Saturnino Aguilar responded to the invitation and the party, now consisting of five, repaired to the house of Teodoro Estioco. Arriving at that place, Teodoro was called out and he likewise joined the party.

As the party proceeded on its way to the point where Victoriano Gamboa awaited them, the information was given out to the effect that the band was bent upon robbing a house which would be pointed out by Pedro Martos, where they expected to obtain the sum of P1,000. The party passed through the municipalities of San Quintin and Tayug, arriving at the latter place at 4.30 o'clock in the afternoon of April 14. Crossing the River Agno at that point, the six found Victoriano Gamboa, in company with Graciano, (Marcelino) Saori, sitting by the side of the road. Victoriano Gamboa, upon seeing Pedro Martos and his companions, asked them why they have been so slow in coming, to which Pedro Martos replied that they had come from considerable distance.

The party then proceeded to the municipality of San Manuel; but before arriving there Pedro Martos showed a disposition to withdraw from the party, saying that he was known in San Manuel; and he evidently feared that he might be recognized in those parts. To this Juan Manuel (2.º) and Ildefonso Giron replied that they did not know the place and that, being in the company of the others, he (Pedro Martos) should have no fear, and they added, significantly, that, if anybody should recognize Pedro, "we will kill him." In response to this pressure, Pedro Martos decided to go on, saying: "Let us be on the way, lest the rising moon catch us before we get to the house." Following upon this, Pedro Martos conducted the party to the home of Valentin Pasamonte and Maria de la Cruz, in the barrio of San Antonio, of San Manuel, in accordance with their original plan.

Upon arriving at the house, which was low, the aged inmates were found asleep. Juan Manuel (2.º) was the first to enter, followed by others of the party. The old man (Valentin Pasamonte) was found on the floor in front of the steps leading up into the house; and him Juan Manuel (2.º) struck at once on the head with a bolo, producing immediate death. Maria de la Cruz, the aged wife, was sleeping in a little room separated somewhat from the sala where Valentin was slain, and she was soon awakened by the noise that had been made at the

door. Becoming frightened, she began to scream, and just at the moment when she was attempting to get up, Ildefonso Giron seized her in the breast with one hand and cut her throat with a stroke of the bolo, almost severing the head from the body.

After the two inmates of the house had been thus dispatched, the party proceeded to search the interior of the house; and Pedro Martos and Graciano (Marcelino) Saori carried out a trunk in which valuables were kept. Placing the trunk upon the ground, Ildefonso Giron forced the lock, and in the trunk was found a small box from which was taken the sum of P240 in paper money. The money thus obtained was distributed among the men of the party, but apparently in very unequal proportions, as Victoriano Gamboa received only P6; Saturnino Aguilar, P25; and Teodoro Estioco, P10.

On the next morning, the chief of police of the municipality of San Manuel, having been informed of the occurrence, went to the scene of the crime, accompanied by three soldiers and the assistant sanitary inspector of the municipality. Upon arriving at the place, they found the body of Valentin Pasamonte where it had been left by the robbers, near the steps leading into the house. The body exhibited a fatal wound in the head, made by a bolo. In the sleeping room was found the body of Maria de la Cruz, with the throat cut. Everything about the house was in disorder, and the trunk which had been rifled was found open on a bench in the yard.

After Juan Manuel (2.º) had been arrested by the sergeant of the Constabulary, Telesforo Peralta, he admitted to the latter, and later in the presence of Lieutenant Liwanag, that he had formed part of the band which robbed and killed Valentin Pasamonte and Maria de la Cruz. Later he signed a sworn confession (Exhibit D) before the justice of the peace of Tayug, in which he tells how the crime was consummated. It is not improbable that this accused was prompted to these admissions by the hope that he might obtain immunity by being used as a witness for the prosecution, as had happened to him in the prosecution for the quadruple murder and robbery, in which he participated in the Province of Nueva Ecija. However, it is sufficiently shown that no improper inducements were held out to obtain the confession.

Ildefonso Giron and Graciano (Marcelino) Saori, after being arrested, also

admitted in the presence of more than one person that they had formed part of the band which robbed the house in question and killed its inmates. It may be noted, however, that both Juan Manuel (2.º) and Ildefonso Giron, who, by the unanimous testimony of the three accusing witnesses, were the respective murderers of Valentin Pasamonte and Maria de la Cruz, pass the honor of this atrocity to other persons than themselves; and they respectively claim merely to have been participants in the robbery, without having taken any part in the killing.

Upon examination of the testimony of the three principal witnesses for the prosecution, we are impressed with the directness, clarity, and consistency of their narrative; and although they all admit their own participation in the crime, and their credibility is subject to criticism on this account, the corroboration which each gives to the other is so complete and satisfactory that no doubt can enter the mind as to the substantial truthfulness of their statements. In respect to Victoriano Gamboa, in particular, it should be noted that at the time he testified in court, he was under sentence of death for another crime of like character; and his testimony is sanctioned by the powerful incentive to truth which is born of the belief, or fear, of being soon called to accountability by the Almighty. Naturally, the attorneys for the appellants have attacked his testimony as having been possibly prompted by a desire of vengeance against Ildefonso Giron and Juan Manuel (2.º), on account of the fact that their testimony had convicted him in the case in which he had been sentenced to death. Upon being asked in rebuttal in this case whether he in fact entertained any resentment against those two persons, he replied very simply that he felt no resentment against them because what they had told in the trial against him was the truth. Upon the whole we can entertain no doubt whatever as to the guilt of all five of the appellants.

The offense of which the five accused were convicted in the lower court was the complex crime of robbery with homicide, under article 502, in relation with subsection 1 of article 503 of the Penal Code; and this qualification of the offense is in our opinion in conformity both with the charge contained in the information and the proof submitted in support of the same. In the estimation of the offense the trial judge rightly took account of the two aggravating circumstances that the offense was perpetrated in the dwelling house of the injured parties and that the malefactors availed themselves of darkness in order

more securely and conveniently to accomplish their design and as against Juan Manuel (2.º) and Ildefonso Giron, the additional circumstance of *alevosia*.

It has been suggested that inasmuch as the two homicides were designedly perpetrated prior to the robbery, and as a preliminary thereto, the case cannot properly be placed under subsection 1 of article 503 of the Penal Code and it is therefore supposed that the acts which are the subject of prosecution should be treated as constitutive of separate offenses, namely, double homicide and robbery (or murder and robbery, according to the relation of the different actors thereto).

As regards Juan Manuel (2.º) and Ildefonso Giron, the point is merely of academic interest, as these two accused are amenable to the death penalty whether the offense be treated as the complex offense of robbery with homicide, or as separate offenses, since the maximum penalty assignable to murder is the same as the penalty for the complex offense of robbery with homicide.

As to the other three accused—Pedro Martos, Graciano (Marcelino) Saori, and Juan Manuel (1.º)—the situation is different, since the circumstance of *alevosia* cannot fairly be imputed to them (par. 2 of art. 79, Pen. Code); and the practical result of holding them responsible for the separate offenses instead of the complex offense would be that they would undergo imprisonment for forty years, under the second paragraph of subsection 2 of article 88 of the Penal Code to be made up from the penalties severally incident to each of the two homicides and to the robbery; and at any rate they would not be amenable to capital punishment.

The importance of the point in both its theoretical and practical aspects makes it proper for us to state the reasons which cause this court to sustain the view that the proper qualification of the offense is that which treats it as the complex offense of robbery with homicide, accompanied by aggravating circumstances, and punishably under subsection 1 of article 503 of the Penal Code, and not as homicide (or murder) and robbery, as above suggested.

Upon this proposition our first observation is that although the authors of the Code have used only the word “homicide” in subsection 1 of article 503 and

not "homicide or murder," it is evident that the word "homicide" is there used in a generic sense; and the complex crime therein contemplated comprehends not only robbery with homicide, in its restricted sense, but also robbery with murder. In other words, an offense is not taken out of the purview of that article merely because the homicide rises to the atrocity of murder. This proposition seems to be elemental, and it is not only supported by the decisions of the supreme court of Spain (1 Viada, 4th ed., p. 356), but is in conformity with the practice of this court.

Again, attention may properly be here directed to the rule—also elemental in this branch of the law—that an offense of the character of that now under consideration is none the less a complex offense by reason of the fact that double homicide (or murder) is committed instead of a single homicide (or murder), the number of the victims being immaterial (Viada, 4 Supp., 413).

This brings us to the main point, which is, whether homicide (or murder) immediately followed by robbery is excluded from the purview of subsection 1 of article 503 of the Penal Code, with the result that criminal acts must be prosecuted and punished as separate offenses and not as a single complex offense. Upon this question the supreme court of Spain has pointed out what appears to us to be a sound distinction, which is, that where the original criminal design comprehends robbery in a dwelling, and the homicide is perpetrated with a view to the consummation of said offense, the crime committed is the complex offense even though the homicide precedes the robbery by an appreciable interval of time. On the other hand, if the original criminal design does not clearly appear to have comprehended robbery, but robbery follows the homicide as an afterthought or as minor incident of the homicide, the criminal acts should be viewed as constitutive of two offenses and not as a single complex offense (Viada, 5 Supp., 383, citing decision of June 27, 1905).

The doctrine stated in the decision above cited is in our opinion sound; and some of the older cases from the same court, suggesting a contrary rule, must be considered discredited (3 Viada, 4th ed., 348, 349). The use of the words "with a view to *** robbery" (*con motivo *** del robo*), in subsection 1 of article 503 of the Penal Code, seems to our mind to permit of no other interpretation. It is the intention of the actor which supplies the connection between the homicide and the robbery necessary to constitute the

complex offense; and if that intention comprehends the robbery, it is immaterial that the homicide may immediately precede instead of follow the robbery in point of time.

What has been said disposes completely, we think, of the proposition that the acts which are the subject of prosecution in this case might be considered distinct crimes in respect to which the appropriate penalties should be accumulated, in accordance with the practice instituted in this jurisdiction by the decision of *United States vs. Balaba* (37 Phil., 260). With still less force could it be argued that the criminal acts of homicide and robbery committed in this case are punishable under that part of article 89 of the Penal Code which contemplates the situation where one offense is a *necessary* means for committing the other; for it cannot be maintained that the murder of the two aged and helpless persons who were the victims of this outrage was in any wise necessary to the robbery. The robbery could easily have been effected without the commission of the homicides (sen, Sept. 11, 1878); and indeed the proof indicates that the purpose in the commission of the homicides was not so much to make the robbery possible as to remove the possibility of the future identification of one of the robbers.

We have thus demonstrated that the proper qualification of the offense which is the subject of prosecution in this case is that of the complex crime of robbery with homicide, with aggravating circumstances. It results that no error was committed by the trial judge either in the qualification of the offense or in fixing the penalty attendant thereupon. However, as one of the Justices of this court is not in accord with the majority in regard to the propriety of the imposition of the death penalty upon Pedro Martos, Graciano (Marcelino) Saori, and Juan Manuel (1.º), the sentence of the lower court, as to these three must, in conformity with the requirements of Act No. 2726, be reduced from death to *cadena perpetua*, with the accessories incident thereto; and it being understood that the appealed judgment is modified to this extent, the same is in other respects affirmed, with proportional costs against the several appellants. The penalty of death imposed upon Juan Manuel (2.º) and Ildefonso Giron will be executed at a time to be fixed by the trial court and in all respects in accordance with law. So ordered.

Araullo, C.J., Malcolm, Avanceña,

Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

^[1] Not reported.

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