

G.R. No. L-8762

[G.R. No. L-8762. December 08, 1956]

**THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, V.S. LOPEZ RAYOS
AND REYNALDO PASCUAL, DEFENDANT-APPELLANTS.**

D E C I S I O N

MONTEMAYOR, J.:

Lopez Rayos alias Commander Poldo and Reynaldo Pascual alias Roming alias Montes are appealing the decision of the Court of First Instance of Nueva Ecija, finding them guilty of the crime of robbery with homicide, and sentencing each of them to the penalty of reclusion perpetua; with the accessories of the law, to return the properties taken by them or to pay jointly and severally, the value thereof in the sum of P369.00; to indemnify the heirs of the deceased; Manuel Jacinto, in the amount of P6,000.00 and to pay one-half of the costs.

The following facts are not disputed. On October 26, 1951, Manuel Jacinto was living with his family, some members of which were his wife, Expectacion Aquino, and his son Celso Jacinto, in the barrio of Siimacab, Cabanatuan City, Nueva Ecija At about ten o'clock in the evening, a group of persons approached the house, one in the group calling out In Tagalog, "Tao po", meaning somebody is here. Expectation peeped through the window and saw several men composing the group, one of them asking for her husband, saying that their sergeant wanted to talk to him. She answered that her husband was already asleep, but they told her to wake him up, which she did, Manuel Jacinto went to the window and invited the group to come up the house, but they answered that they wished to speak to him downstairs, and so he went down., It is not clear whether three of the group of malefactors carrying firearms went up the house before Manuel came down, or invaded his home once he was downstairs, but the fact is that three of those men went up the house, ordered the inmates to lie down faced downward, and then ransacked the same, and finally took away with them or handed down to their companions various articles, such as rice, clothing; air rifle, harmonica, and an Elgin watch belonging to Celso, all valued at about P369.00. After the robbery, the leader of the group ordered Manuel Jacinto to be liquidated and in

obedience to said order, three of the men took Manuel away along the road leading to the cemetery, while the rest of the group⁵ including the leader, headed for the river. The three who took Manuel toward the cemetery later joined their companions at the river, and the group then commandeered a small boat or banca belonging to Antonio Francisco, the latter taking them to the other side of the river.

Very early the next morning, the dead body of Manuel Jacinto was found on the road not far from his house, bearing many stab wounds, His killers evidently did not wish to waste any ammunition on him. The medical certificate later issued. Exhibit B, showed the cause of death to be the multiple wounds on the chest and left hypochondriac region. The case was immediately reported to the authorities who for with went to the place to investigate. However, it seems that neither Expectation nor her son, Celso, was able to identify the persons who came up their house that night and their companions who remained below as well as those who took away Manuel to be killed, and so the crime remained unsolved until one Alberto Ramos, a member of a Huk squadron surrendered to the authorities sometime in November, 1952, and revealed the names and identities of the men who had committed the outrage already described. On the basis of the revelation he made, an information was filed against the herein defendants- appellants, charging them with the crime of robbery with homicide. At the trial, Expectation and Celso Jacinto testified as to the facts already mentioned regarding the arrival of the malefactors on the night in question, and the robbery, as well as the taking away of Manuel Jacinto and the discovery of his dead body the next morning. Antonio Francisco testified as to the commandeering of his banca by the group, among whom he identified defendants- appellant's Lopez Rayos and Reynaldo Pascual, and the individuals named Joe (Adriano) and Amor (Hilarion de Guzman). According to him, three other persons whom he did not know were in the group.

The star witness for the prosecution naturally was Alberto Ramos' who told the court that he was a member of the group of Huks, numbering seven persons, headed by defendant Lopez Rayos alias Commander Poldo, which went to the house of Manuel Jacinto on the night of October 26, 1951; that in the group, besides Rayos, were Reynaldo Pascual alias Roming alias Montes who was a Huk corporal Commander Amor, Commander Joe, Rico - a brother of Rayos, and one Vicente; that the group started from Mataaan, Sta. Rosa, Nueva Ecija, for the barrio of Sumacab where Commander Poldo said he wanted to talk to someone there; that once near the house, Rayos (Poldo) called for Manuel Jacinto on the pretext that he wanted to speak to him, and as the old man Manuel came down, Rayos and Joe, each armed with a pistol, and Amor armed with a carbine, went up the house to ransack the same while Manuel Jacinto was being guarded below; that after committing the robbery, Rayos

ordered Amor to liquidate Manuel Jacinto, whereupon Amor with Rico and Vicente took the old man along the road toward the cemetery; while Rayos, Reynaldo Pascual and the others walked toward the river, carrying with them the articles taken from the house; that after a while, as per agreement with Amor, the latter and his two companions joined the others at the river bank, Amor informing Rayos that Manuel Jacinto was already dead.

Rayos denying all knowledge, much less participation in the robbery and homicide claimed that at that time, he was with the Caballero unit of the Huk organization under Commander Rodil (Melecio Marcos) in Tatlong Bule, San Antonio, Nueva Ecija, and was under custody as a prisoner because, although he was a Huk, he refused to go to the mountains, and that he was sick for several months and recovered only some time in November, 1951. Huk Commander Rodil, in his testimony; supported the claim of Rayos. As to Reynaldo Pascual; he claims that between 1950 and 1952, he was attended to the Huk command of Eliseo Sawit as security guard, operating in or around the Caraballo Mountains between Pangasinan and Nueva Ecija. In this he was corroborated by Commander Eliseo Sawit, who said that during the month of November, 1951 Reynaldo did not separate from him. But it will be remembered that the crime was committed not in November but in October, 1951. These defenses of alibi were rejected by the trial court. Considering the circumstances surrounding the case, we are not disposed to act otherwise. The witnesses presented to support said defenses were fellow Huks, naturally disposed to help fellow travellers. Not only this, but they were, or had been together in jail with the defendants. Commander Sawit was then accused of murder for the killing of one Mariano Garcia. He said that while in jail, he was requested by defendant Pascual to be his witness and he agreed. On cross examination, he was asked the following question;

“Q, Was it not a fact that having been together for a long time in that kind of life you were willing to help one another?”

A Yes, sir.”

The defense also presented Eliseo Fernando, a confessed Huk. Who declared that he witnessed the killing of Manuel Jacinto; that it was Commander Joe who ordered the killing upon indication or order of one Antonio Francisco who accused Manuel Jacinto of being a “puppet”; that those in the group were Commander Joe, Commander Amor one named Edring, another named Martin, Vicente Oliver and Rico, brother of Lopez Rayos, his witness Eliseo Fernando, when he first testified in 1953. upon cross examination refused to answer

and explain how he happened to be at the scene of the killing, on the ground that it might incriminate him. To determine the legal point, the trial was suspended and the question was brought to this Tribunal. After about a year, trial was resumed. Continuing his interrupted testimony, presumably, forgetting what he declared in court a year before, Eliseo Fernando slightly changed his story and said that it was Commander Amor, who was in charge of the group that ordered the killing of Manuel Jacinto, and not Joe who was only a vice commander* It will be noticed that the persons mentioned by Eliseo as included in the group are either dead, like Amor, or still at large, with the exception of Antonio Francisco, the person who was commandeered to transport the group of malefactors that night across the river in his banca; and there is reason for Eliseo including Antonio in the group because it was he (Antonio) who persuaded Alberto Ramos to reveal to the authorities the names of those who really committed the crime, and who later testified for the prosecution, identifying the two defendants-appellants as members of the group which commandeered the banca. Antonio assured the court that he did not see Eliseo in that group, Furthermore, Eliseo was in jail with the two defendants-appellants for about eight months, he being charged at the time with rape, and at the time of the trial, he admitted that he was already convicted of said crime. We are not disposed to attach any importance or weight to Eliseo's testimony. He only wanted and tried to help and save fellow dissidents with whom he had a prolonged, though enforced association in prison.

We agree with the trial court that the guilt of the appellants has been established beyond reasonable doubt. On the question of aggravating circumstances says the lower courts:

“The commission of this crime was attended by the aggravating circumstances of nocturnity and taking advantage of superior strength, which, however, are absorbed by the circumstance of alevosia or treachery, which qualifies the homicide to murder”

The Solicitor General is not entirely agreeable to the above ruling, saying:

“x x x- The lower court correctly found, as alleged in the information (p. 30, rec.), that the commission of the crime was attended by the aggravating circumstance of nocturnity and abuse of superior strength. We submit that the aggravating circumstance of dwelling should also be considered against the appellants. Contrary to the holding of the trial court, however, neither nighttime nor abuse

of superior strength can be considered absorbed on merged with treachery or alevosia which is neither alleged nor shown, apart from the fact that abuse of superior , strength is not necessarily treachery.”

We should say that in the crime of robbery with homicide, the circumstances attending its commission should not be used to qualify the killing as murder but considered rathert be used to qualify the killing as murder but considered rather as generic aggravating circumstances (1) However, this question in the present case, as well as the difference of opinion between the trial court and Government counsel become rather academic in view of the absence of the necessary number of votes in this Court to impose the death penalty which, strictly speaking, appellants deserve. But we feel that they are no deserving of any Executive clemency. specially Lopez Rayos, the leader of the two.

In view of the foregoing, the appealed decision is hereby affirmed, with costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Ferlix, JJ., concur.