

G.R No. L-9491

[ G.R No. L-9491. September 18, 1957 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. APOLONIO ROBENTA AND ALEJANDRO RAÑIN.**

**D E C I S I O N**

**REYES, A., J.:**

Apolonio Robenta, Alejandro Rañin, Clowing Demos and an unknown person designated in the information as John Doe were charged with "robbery in band with murder" before the Court of First Instance of Leyte. Demos having died before trial and the accused designated as John Doe not having been captured, only Robenta and Rañin were tried. These two were found guilty of murder and sentenced to *reclusion perpetua*, accessory penalties, indemnity and costs. They both appealed; but only the appeal of Ranin is now before us because that of Robenta has, with the permission of this Court, been withdrawn.

It appears from the evidence that about 7:30 o'clock in the evening of November 26, 1953, the four accused in this case went to Policarpo Pelea's place in barrio Anibongon, municipality of Jaro, Leytet and asked him for a gun. Told that he had none, they next asked him 10 centavos for cigarettes. Pelea obliged but they decided not to take his money, saying, "Never mind, we will just go away." As they were leaving and while still at Pelea's front yard, they met the spouses Gabriel Añover and Lorenza Grapani, Pelea's neighbors, who were then returning home from another town where they sold copra. Upon meeting Añover, they took hold of him and, after making certain who he was, made him lie down face to the ground, and once in that position the defendant Robenta hit him on the back with the side of a bolo. Añover turned over, but as he did so the defendant Demos hacked him with his bolo in the face. Though wounded, Añover was able to get up and run, passing under Pelea's house, but he was pursued by the defendants, and one of them, Rafiin, fired two shots at him with a sawed-off gun. The place was then lighted by a lamp hung above the front door of Pelea's house, and the aggression was witnessed by Lorenza Grapani from the stairs of Pelea's house and by Pelea himself, who was just behind her. The two were,

however, too terrified to lend succor to the victim.

The following morning the dead body of Añover was found. lying on the ground about a hundred meters from the scene of the attack. He had six wounds in all, including a bullet wound on the right forearm. Four of the wounds were serious and any one of them could, according to the sanitary inspector who examine the body, have caused deaths.

The appellant Rañin admitted being with the group that attacked Añover but claimed that he took no active part in the killing and that it was Francisco Oledan and not he who fired the shots. Naming his companions then as Clowing Demos and Honorio Encenas, aside from Francisco Oledan, he said that he did not see Robenta among them. He explained that earlier that evening he had been prevailed upon to go with them to a dance in barrio Anibongon and that when he tried to back out upon learning later that it was not really to a dance they were going, they threatened to kill him and Oledan hit him on the forehead with the butt off a gun. He also said that at Pelea's place they asked for *tuba* and all but himself took sips from the bamboo container. According to him has just stood there and looked while his companions were hacking Añover and, for fear of being himself killed, he ran away upon hearing the shot fired by Oledan, passed the night in the house of an uncle and then went into hiding in the town of Garigara.

Accepting the version given by Pelea and Añover's widow as eyewitnesses to the crime and not giving credence to Rañin's exculpatory statements, the trial court, as already stated, found him guilty along with Robenta, though not of the crime specifically charged but only of murder. After going over the record we find no reason for disturbing this finding. This appellant's explanation that he was only forced to join the group that attacked Añover and that he had no part in the killing is, as the trial court' says, hard to believes, His conduct after separating from his companions betrays his guilt, for not only did he make no report or complaint to the authorities? but he even went into hiding in another town. Furthermore, he was clearly identified by Pelea and the widow as the one who fired at the deceased, and there can be no doubt about this identification because he was well known to them and the place was then lighted.

The point is made that conspiracy has not been proved. But it is clearly deducible from the evidence that Rañin and his companions had banded together that night for some illegal purpose and that they were acting in concert in putting an end to Añover's life. Rañin, in particular cannot disclaim responsibility for the killing for not only did he join his companions in pursuing Añover but he even fired two shots at him. His claim that he was

acting under duress is, as already stated; not worthy of belief.

It is indisputable that the killing was qualified by *alevosia*, and on the evidence presented we have to agree with the trial court that Rañin, like Robenta, can be convicted only of murder and not of robbery with homicide as the Solicitor-General suggests. There is no direct proof of the supposed robbery, and though according to the widow no part of the proceeds of their copra was found in Añover's pocket the following morning, she also testified that her husband gambled on their way home after selling their copra. There is moreover a statement in the affidavit of Pelea, one of the Government witnesses, that the defendant Demos had a standing grudge against Mover; and, indeed, the manner in which this defendant and his companions proceeded to dispose of their victim suggests animosity rather than intent of gain as the motivation for the crime.

The Solicitor-General has taken notice of the aggravating circumstance of night time but recommends that the penalty to be meted to this appellant be not higher than that imposed upon Robenta, who withdrew his appeal. It is not clear that night time was purposely sought or taken advantage of in the commission of the murder, and in any event there is not enough vote to impose the death penalty.

WHEREFORE, with the sentence imposed on Robenta already made final by the withdrawal of his appeal, the sentence against appellant Rañin is affirmed with costs.

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