

[ G. R. No. L-11004. August 25, 1958 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFL AND APPELLEE VS. PACIFICO GARDON, ET AL., DEFENDANTS. PACIFICO GARDON, CATALINO ASTILLERO AND AMADOR ALTIS, DEFENDANTS AND APPELLANTS.**

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

**BAUTISTA ANGELO, J.:**

Pacifico Gardon, Catalino Astillero, Amador Altis and Antonio Rodrigo were accused of robbery in band with homicide and serious physical injuries before the Court of First Instance of Sorsogon. Upon arraignment they pleaded not guilty to the charge. On motion of the fiscal, the information was dismissed with regard to Antonio Rodrigo, who was utilized as a state witness. After trial, Gardon, Astillero and Altis were found guilty as charged and sentenced each to the supreme penalty of death, to indemnify Coso Gotia in the sum of P50.50 and the heirs of the deceased Emilio Fuentes in the sum of P6,000, and to pay one-fourth of the costs. The three took the present appeal.

In the morning of October 15, 1955, at about 7:00 o'clock, Antonio Rodrigo went to carry water to barrio Patag, Irosin, Sorsogon, and on the way he met Catalino Astillero who invited him to hunt wild pigs. Having agreed, Antonio followed Astillero to a place known as Talistison in the same barrio and on the way they met Pacifico Gardon and Amador Altis. Forthwith, the four proceeded to the house of Gardon where they plotted the robbery involved in this case. Thereafter, they left for barrio Cawayan, Irosin, Sorsogon armed as follows: Astillero with a Japanese rifle, Gardon with a pistol, a dagger and a hand grenade, and Altis with a jungle knife.

From Cawayan, they proceeded to barrio Talaonga of the municipality of Sta. Magdalena, Sorsogon, where they arrived at about 4:00 o'clock in the afternoon. In the meantime, they hid among the plants known as "bariw" and when night came they proceeded to the store of Chinaman Coso Gotia situated in said barrio. After entering the store, Altis immediately closed the door behind them, having caught inside the Chinaman Gotia, his wife Conchita

Fungo, his son-in-law Manuel Chu, and one Loreto Ganas who had gone there to buy cigarettes. At this juncture, Astillero aimed his dagger at Conchita from whom he asked P500 and out of fear she handed over to him her bag containing the sum of P13.00. Gardon in turn ordered Gotia, Gañas, Conchita and Manuel Chu to sit down on a pile of copra inside the store while Astillero opened another bag containing P15.00 which he gave to his companion Altis, at the same time taking possession of a flashlight valued at P2.00, ten (10) fountain pens valued at P8.00 each, which he put in his pocket. He then got hold of four (4) packages of Cycle cigarettes valued at P12.50 which he gave to Antonio Rodrigo, together with several flashlights.

While the robbery was going on, the bell of the local chapel began to ring as if giving a general alarm for which reason the barrio folks came out of their houses and flocked around the store of Chinaman Gotia asking in a loud voice that the door be opened. Alarmed and fearful of their safety, the robbers attempted to escape by the back door but they found it closed. Then the door of the store was opened and finding a chance to escape, Altis and Rodrigo hurriedly came out through that door towards the beach, followed later by their companions Gardon and Astillero. While Gardon was trying to escape, he met on the way Engracio Manga and Emilio Fuentes who went to the store because of the general alarm, and upon seeing Fuentes, he immediately stabbed him on the abdomen causing his instantaneous death. Astillero on his part met one Rosalio Galicio, another barrio folk who responded to the alarm, and upon meeting him Astillero also stabbed him several times inflicting upon him serious physical injuries. He was taken to the provincial hospital of Sorsogon where he was treated by Dr. Nonito Jimenez. On the next day, or on October 16, 1955, two members of the constabulary detachment stationed at Irosin went to the store to investigate and there the inmates delivered to them a pistol left behind by the robbers.

Several days thereafter, or on October 29, 1955, Sgt. Mario Furiscal of the constabulary again went to the store to continue the investigation upon instruction of his chief, Lt. Fenis, and upon arriving Conchita Fungo informed him that an anonymous letter was received in the house of Rosalio Galicio wherein the names of those who committed the robbery were mentioned, whereupon Sgt. Furiscal went to that house to get the letter after which he proceeded to the municipal building of Irosin to ask the police authorities to arrest said persons, namely, Pacifico Gardon, Catalino Astillero, and Amador Altis, all residents of that municipality. On November 4, 1955, the three were arrested and taken to the constabulary barracks for investigation. In the investigation, the three persons, jointly with Antonio Rodrigo, who was also taken into custody, made written confessions stating that they are the authors of the robbery committed in the store of Coso Gotia in the night of October 15,

1955 which they subscribed and sworn to before the clerk of court of the Court of First Instance of Sorsogon. On November 12, 1955, Conchita Fungo, Loreto Gañas and Engracio Manga were taken to the provincial jail in order that they may identify the four persons that had been arrested, but before they were allowed to enter the jail, the four were mingled with other prisoners and later placed on a single file, and when Conchita, Ganas and Manga were asked to identify who among those took part in the robbery, they, without hesitation, identified the four now accused in the present case.

In the investigation, accused Gardon revealed that he was keeping several firearms in his house in Talistison, barrio Patag, Irosin, Sorsogon and when the constabulary soldiers went to that place they in effect found several firearms, among them, two shotgun paltiks, one Springfield rifle, one Japanese rifle, thirty-five cartridges and one hand grenade, some of which were identified as those used by Gardon and Astillero in the commission of the robbery.

Appellants Gardon and Altis set up the defense of alibi. They tried to prove that in the night in question they were in the house of Gardon in sitio Talistison, barrio Patag, Irosin, Sorsogon, where they spent the night singing and playing the guitar. Gardon testified that he signed his written statement because he was afraid to be maltreated by his investigators, while Altis said that he signed his confession because the constabulary soldiers threatened to hang him if he would not do it.

Appellant Astillero, on his part, tried to prove that he had formerly a fight with Emilio Fuentes in Manila and that on October 15, 1955, he went to barrio Talaonga, Sta. Magdalena, Sorsogon, merely to get even with him. He said that in the night in question when he heard the ringing of the bell of the local chapel, he went to the plaee where the barrio folks got together near the store of a Chinaman and when he saw Fuentes, he immediately gave him a fist blow. Fuentes then faced him in an attempt to hit him, aided by Engracio Manga and his companions, for which reason he attacked Fuentes and Rosalio Galicia with a knife hitting both of them. Astillero declared that he signed his written confession because Lt. Fenis of the constabulary threatened to keep him in jail indefinitely if he would refuse to do so. And that if he mentioned Pacifico Gardon and Amador Altis as his companions, it was because he had a grudge against them and Lt. Fenis ordered him to implicate them.

There is no question that the three appellants, together with Antonio Rodrigo, were the ones who in the night of October 15, 1955, went to the store of Chinaman Coso Gotia in barrio

Talaonga, Sta. Magdalena, Sorsogon to commit the robbery they had plotted, and that when they were discovered and a general alarm was given by ringing the bell of the local chapel, they hurriedly escaped not after causing the death of Emilio Fuentes and inflicting serious physical injuries on Rosalio Galicio. This fact is borne out by the testimony of several witnesses who not only saw them actually committing the robbery but identified them when they were arrested and placed in one single file in the provincial jail of Irosin, thereby establishing their complicity and participation. This fact is further borne out by their written confessions where they voluntarily narrated the commission of the robbery and the manner it was committed. There can therefore be no doubt as to their guilt.

The claim of alibi of appellants Gardon and Altis is too weak to merit consideration. The same is belied not only by their own written confessions wherein they pointed out their participation, but by the testimony of Conchita Fungo, a co-owner of the store where the robbery was committed, and of Antonio Rodrigo, a co-accused utilized as a states witness, which clearly establishes that the two took an active part in the commission of the crime. The finding of several firearms in the house of appellant Gardon, some of which were used in the robbery, is another proof of his guilt.

The claim of appellant Astillero to the effect that he had had no participation in the robbery and that he went to the barrio where it was committed because of his desire to take revenge against Emilio Fuentes because of the incident he had with him in Manila, is also belied by the evidence, for the same shows that he is one of those seen in the place of the robbery with his co-appellants Gardon and Altis. This claim is also belied by his written confession wherein he admitted his participation. It is apparent that this claim is an eleventh hour concoction in order to do away with the connection between the robbery and the infliction of the wounds on Emilio Fuentes and Rosalio Galicio which took place while appellants were fleeing from the scene of the crime. As a matter of fact, the defense does not dispute the commission of the robbery, for it now merely contends that the same was committed independently of the crimes of homicide and serious physical injuries for the reason that the plan preconceived by appellants was merely confined to the commission of robbery and did not include that of homicide and physical injuries. But this contention evidently is unsustainable for it cannot be denied that the killing of Fuentes and the wounding of Galicio took place practically in the course, if not as a necessary consequence, of the commission of the robbery. Said acts should therefore be considered as constituting the special crime of robbery with homicide and physical injuries defined in the law. In this respect, we disagree with the opinion of the Solicitor General.

The contention that the aggravating circumstance of nocturnity cannot be considered for the reason that it does not appear clear from the testimony of Antonio Rodrigo that appellants expressly sought the darkness of night to insure the commission of the crime is not also well taken, it appearing that they waited until after nightfall before entering the store of the Chinaman. Considering however the circumstances under which the crime was committed wherein it does not appear that appellants have deliberately intended to harm their victims though incidentally two of them laid hands on some who apparently wanted to prevent their flight, some members of the Court expressed the opinion that the application of life imprisonment would be commensurate to the crime committed, and so the majority voted for the imposition of said penalty instead of the supreme penalty of death.

Wherefore, the decision appealed from is hereby modified by imposing upon appellants the penalty of *reclusion perpetua*, affirming the decision in all other respects, with proportionate costs against appellants.

*Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A. Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.*

*Felix, J., concurs in the result.*