

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JORGE BARREDO, CRISOLOGO BANDELION, AND SALAVADOR FALCIS, DEFENDANTS AND APPELLANTS.

G.R. No. L-2728. December 29, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Jorge Barredo, Crisologo Bandelion, and Salvador Falcis are appealing from a decision of the Court of First Instance of Capiz convicting them of robbery with homicide under paragraph 1 of Art. 294 of the Revised Penal Code, and sentencing them each to reclusion perpetua, to indemnify the heirs of Jaime Boday in the sum of P2,000.00 plus the amount of P125.00, value of the articles subject of the robbery, and to pay the costs.

From a careful review of the record we find the following facts.

On September 17, 1945 at about 11:00 o'clock in the evening, Jaime Boday and his wife Trinidad Punsaran, sleeping in their house in the barrio of Parian, municipality of Sigma, Capiz, were awakened by the barking of their dog. Jaime, fearing that his carabap may have broken loose from its corral, opened the door of the house, taking with him the bamboo pole or bar locally known as tranca, used to bolt or secure the door from the inside, and went down to the corral, presumably behind the house, to investigate. Finding things to be in order, he was on his way back to the house when he must have noticed the presence of some people in the front yard. Still carrying the bamboo bar in his hand, he approached the group headed by Rafael Deita who trained his flashlight on Jaime. Rafael then fired at him, hitting him in the upper part of the right thigh. The wounded man cried out in pain, fled from his assailant, and hid himself inside his growing palay. Rafael Deita and two of his companions followed him but failing to find him, the three returned in front of the house.

Upon hearing the shot and fearing that something had happened to her husband, Trinidad opened one of her windows, looked out, and addressed the group below asking why they had shot her husband who had done them no wrong. One of the men in the group told her to keep quiet and to make no cry for help, otherwise they would kill everybody inside the house. Almost immediately, several of the group entered the house, some forcibly opening the door which she tried to keep closed, others clambering up the window. She was ordered to produce all her valuables and money and when she denied having anything of value, they ransacked the house and found and confiscated money amounting to P28.00, a ring valued at P8.00s a necklace worth P15.00, and clothing valued at P100.00. Among the things they confiscated was a flashlight which, together with the flashlight carried by Rafael Deita, they used to light up the inside of the house in order to find the valuables they were after. From the light of the two flashlights Trinidad was able to recognize inside the house Rafael Delta, Aproniano Rico and two of the defendants—Jorge Barredo and Salvador Falcis.

After the marauders had left, Trinidad heard the shouts for help and groans of her husband out in the rice plantation. She went to his aid and after notifying his brothers and other relatives, they took him to town and eventually to the hospital where he died from his wound on October 9) 1947.

After the band had wounded Jaime Boday and committed robbery in his house, the members proceeded to the home of an old woman Bibiana Lachica, and after entering the house and maltreating her, they also carried away some of her valuables.

The mastermind in the commission of these two robberies, Rafael Delta, was killed by the Constabulary on October 30, 1947, when he not only resisted arrest but also attacked the peace officers.

For the robbery in the house of Bibiana Lachica, Aproniano Rico was accused in criminal case No. 587. He was found guilty and duly sentenced and we understand that he appealed to the Court of Appeals. For the same robbery, the herein appellants Crisologo Bandelion, Salvador Falcis and Jorge Barredo together with some of their companions were also accused in a separate criminal case No. 607. Crisologo was excluded from the complaint and utilized by the prosecution as a witness but according to the trial court, once on the witness stand, he changed the story he had previously told the prosecuting attorney and practically testified for the defense. In that criminal case No. 607 Jorge Barredo pleaded guilty and he was duly sentenced.

The evidence for the prosecution in the present case consists in part of the affidavits of the three appellants, wherein they admitted the commission of the robbery particularly in the house of Trinidad Punsaran together with the shooting of Jaime Boday and their presence in or around the house including the amount of money given to them by Rafael Deita as their share of the loot, namely, P5.00 to Bandelion, P4.00 to Barredo and P2.00 to Falcis. At the trial, however, all three appellants repudiated their affidavits, claiming that they were not given voluntarily but were the result of torture to which they had been subjected by the Military Police. After considering the circumstances surrounding the preparation and ratification of paid affidavits by the respective affiants, we agree with the trial court that the statements contained therein were made and given voluntarily and freely.

It is true that these three appellants were confined and kept under the custody of the Military Police but their affidavits were not prepared by said peace officers. Appellant Crisologo Bandelion was taken before the Justice of the Peace at Patíño and it was this judicial officer who questioned him, had his statements reduced to writing, and later read and explained the contents of the affidavit, Exhibit A (its translation is marked Exhibit A-1) to him before he signed it. And as to Jorge Barredo and Salvador Falcis, they were taken to the office of the Provincial Fiscal and it was Assistant Fiscal Conrado O. Honrado who questioned them, reduced their statements into writing and later read and explained their contents to them before they signed the same. Under such circumstances, there is reason to believe that the contents of the three affidavits of the three appellants herein were given freely and voluntarily. Furthermore, as pointed out by the Solicitor General, as may be gathered from their affidavits the affiants took care not to implicate themselves too deeply in the commission of the robbery in the house of Trinidad Punsaran. For instance, Crisologo Bandelion says that he did not go up the house but remained below, perhaps thinking that by limiting his participation in that respect, his guilt was less. Jorge Barredo and Salvador Falcis also stated in their affidavits that they did not go up the house of Trinidad Punsaran but remained below.

What really happened as regards the movements of the appellants that evening before reaching the house of Trinidad Punsaran, as may be gathered not only from their affidavits but also from their own testimonies, may be stated as follows.

Early in the evening of September 17, 1947, Jorge Barredo and Salvador Falcis who seem to be good friends agreed to attend the prayer to be said for the dead in the house of Benjamin Baldonado. On their way to that house they met Crisologo Bandelion whom they invited to join them. The three later met Rafael Deita with several companions—Alfonso Capapas, Leopoldo Vallademosa and Roque Celino. They indulged in some drinking. Then

they all proceeded toward the house of Benjamin Baldonado. Upon reaching it, Rafael Delta instructed his companions to wait for him for he was going up to see whether the affair or celebration there was lively enough and worth attending. When he rejoined his companions below he told them that the affair upstairs was rather tame and unexciting and invited them to a supposed dance at Parian, at the same time calling two more men—Benjamin Baldonado and Aproniano Rico from the house. The nine men started on their way to Parian where they were supposed to attend the dance.

Appellant Bandelion noting that some of their companions were armed asked Rafael Delta the reason for it, and he told him to keep quiet. Once in the yard of Jaime Boday, Rafael opened a bag and from it he drew a rifle which he gave to Jorge Barredo. As to what happened there inside the house has already been stated based mainly on Trinidad the testimony of Punsaran.

Counsel for appellant Crisologo Bandelion contends that it was illegal to include his client in the complaint for the reason that he had previously been excluded at the instance of the Provincial Fiscal to be utilized as government witness. It is sufficient answer to this contention that the exclusion of Crisologo from the complaint was done in a separate case, Criminal Case No. 607. It has nothing to do with Criminal Case No. 664 (present case) involving a different robbery although committed on the same day.

We find that the guilt of the appellants has been established beyond reasonable doubt. It is possible that at the beginning the appellants herein may not have entered into conspiracy to commit the robbery in the house of Trinidad Punsaran engineered by Rafael Deita, but on their way to that house, they must have learned of the evil design and conspiracy to rob, and entered into it. After Jaime, the owner of the house, had been shot, Barredo and Falcis were among those who broke into the house and ransacked it. They were identified by Trinidad. As to Bandelion, although he remained below while the robbery was being committed, he evidently was stationed there to act as a guard. From there he willingly accompanied the other members of the gang to rob the house of Bibiana, and afterwards received his share of the loot.

The Solicitor General submits that the appellants herein had voluntarily surrendered themselves to the authorities, and that this mitigating circumstance compensates the aggravating circumstance of dwelling, leaving the other aggravating circumstance of nighttime which requires the imposition of the maximum penalty, namely, death. But under the circumstances already stated regarding the manner the three appellants joined the conspiracy and giving them the benefit of the doubt, we are willing to find that they did not purposely seek the nighttime to commit the robbery. Neither did they take advantage of it. Taking the view most beneficial to appellants, we may say that when they finally agreed to commit the crime of robbery, which appears to have been previously planned by Rafael and some of his companions, they were already on their way to or near the house to be robbed. Presumably, the convenience or advantage of committing the crime with the aid of darkness did not enter into their calculation. They probably thought that irrespective of the time of day or night they could with impunity carry out their plan, especially since they were not known to the inmates of the house.

Finding no reversible error in the decision appealed from, except that the amount of indemnity for the death of Jaime Boday is increased from P2,000 to P6,000 the same is hereby affirmed with costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Jugo, JJ., concur.

MORAN, C. J.:

Mr. Justice Parás and Mr. Justice Feria voted to affirm with modification as to civil indemnity.

Judgment modified.

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