

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERNANDO DIO, ACCUSED-APPELLANT.

G.R. No. L-36461. June 29, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Automatic review of a decision of the defunct Circuit Criminal Court, 7th Judicial District, which imposed the death penalty.

An information for robbery with homicide was filed on October 1, 1971, against Danilo Tobias and a John Doe. The order to arrest Tobias was returned unserved and he is still on the "Wanted Persons Files."

On December 7, 1971, the information was amended to name Hernando Dio as the John Doe, the appellant herein. As amended, the information reads:

"That on or about the 24th day of July 1971, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Danilo Tobias @ Danny Kulot and Hernando Dio @ Way Kaon, conspiring and confederating together and mutually helping one another, with intent to gain and without the knowledge and consent of the owner, and with the use of a 'balisong', one of the accused was provided with, and by means of force, threats and intimidation employed upon the latter, did then and there wilfully, unlawfully and feloniously take, steal and rob away from one Crispulo P. Alega, one Seiko brand men's wrist watch (recovered); and the said accused in accordance with and pursuant to their conspiracy, and in order to carry out their avowed purpose, with intent to kill did then and there wilfully, unlawfully and feloniously attack, assault and stab for several times Crispulo P. Alega, and which 'balisong' was directly aimed at the vital portions of the body of said Crispulo P. Alega, thus performing all the acts of execution causing his instantaneous death." (Expediente, p. 68.)

Accused Hernando Dio pleaded not guilty when he was arraigned and after trial the court rendered the following judgment:

"WHEREFORE, finding the accused, Hernando Dio, Guilty, beyond reasonable doubt, of the crime of Robbery with Homicide as defined under Article 294 of the Revised Penal Code, as charged in the Amended Information, the Court hereby sentences him to suffer the penalty of DEATH; to indemnify the heirs of the victim, Crispulo Alega the amount of P12,000.00; to pay moral damages in the amount of P10,000.00 and another P10,000.00, as exemplary damages; and to pay the costs." (Id., pp. 105-106.)

The People's version of the facts is as follows:

"At about noontime on July 24, 1971, Crispulo Alega, a civil engineer by profession working at the Sugay Construction Company, with a salary of more than P500.00 a month, went to the Southeastern College, Pasay City to fetch his girlfriend, Remedios Maniti, a third year high school student thereat (pp. 55, 59, 63-64, tsn., January 11, 1973). They proceeded to the Pasay City Public Market. As they were going up the stairs leading to the Teresa and Sons Restaurant, Remedios, who was walking about an arms-length ahead of Crispulo suddenly heard the dropping of her folders and other things, being carried by Crispulo. When she looked back,

she saw a man - later identified as Danilo Tobias but still at large - twisting the neck of Crispulo, while the appellant was holding his (Crispulo's) two hands (pp. 56-57, 61, tsn., id.). The appellant and his companion tried to divest Crispulo of his 'Seiko' wrist watch, but Crispulo resisted their attempt and fought the robbers. At this juncture, the man who was twisting the neck of Crispulo stabbed the latter on the left side of his chest. Crispulo ran down the stairs followed by Remedios who shouted for help. When he reached the front of the Pasay Commercial Bank he fell down and expired. At the time of his death, the 'Seiko' watch was still strapped to his wrist. (pp. 57-61, tsn., id., pp. 7-9, tsn., Jan. 22, 1973).

An autopsy conducted on the victim's body by Dr. Ricardo Ibarola, medico-legal officer of the NBI revealed that the cause of death was a stab wound at the region below his left breast which penetrated the heart. Said doctor opined that judging from the natural appearance of the stab wound, it must have been caused by a single-bladed pointed instrument (pp. 6, 13-14, tsn., Jan. 11, 1973; Exh. C and C-1, p. 87, rec.). The necropsy report (Exh. A, p. 85, rec.) stated that the deceased sustained the following injuries:

'Abrasions: right zygomatic region, 0.6 x 0.4 cm. infra-labial region, right side 1.7 x 1.4 cm.; forearm right, upper third, postero-lateral aspect, 0.6 x 0.4 cm. and left, lower third, posterior aspect, 0.4 x 0.2 cm.; right knee, 0.6 x 0.4 cm; right leg, upper third, anterior aspect, 1.4 x 0.8 cm.

'Incise wounds, neck, left supero-lateral aspect, two in number, 2.5 and 1.2 cm. in lengths, both superficial.

'Stab wound: left inframammary region, level of the 5th intercostal space along the parasternal line, 6.0 cm. from the anterior midline, 0.5 cm. below the left nipple, elliptical in shape, 3.0 cm. long extended laterally by 3.0 cm, long rising slightly downwards, medially edges, clean cut, sutured, medial extremity of which is blunt and lateral extremity, sharp; directed upwards, medially and backwards involving, among others, the soft tissues, thru the 5th intercostal muscles, grazing the 6th rib superiorly, perforating the left pleural cavity only, into the middle mediastinum by penetrating the pericardium antero-inferiorly, perforating the left pleural cavity only, into the middle mediastinum by penetrating the pericardium antero-inferiorly, perforating the interventricular system and penetrating the left ventricle of the heart at its apical portions, approximate depth 11.0 cm."

"After the appellant's arrest on October 24, 1972, he was investigated at the Detective Bureau of the Pasay City Police Department and gave a statement (Exh. D, p. 90, rec.) in the presence of Pat. Arturo Rimorin admitting that on the date and time of the incident, he and his co-accused, Danilo Tobias alias Kardong Kaliwa alias Danny Kulot, held up a man and a woman; that they did not get the watch of the man; that he held the victim's hands but the latter was able to free himself; that Danny Kulot stabbed the man; that when the victim ran, they also ran away; and that he did not know what happened to the victim (Exhs. D, D-1, D-2, D-3, D-4 and D-5, p. 90, rec.; pp. 27-31, tsn., Jan. 11, 1973)." (Brief, pp. 2-5.)

Atty. Luis R. Feria, counsel de oficio of the appellant, states:

"After a careful, considered and conscientious examination of the evidence adduced in the instant case, undersigned counsel is constrained to conclude that the findings of fact of the trial court, upholding the version of the prosecution as against that of the defense, must have to be sustained. As against the sole and uncorroborated testimony of appellant merely denying any participation in the commission of the crime imputed to him (while admitting that he was present at the scene of the crime), there is a formidable array of evidence against him consisting of the clear and convincing testimony of Remedios Maniti, who was in the company of the deceased at the time he was killed and an eyewitness to the entire incident; the extrajudicial written confession of defendant-appellant (Exhibit D) admitting participation in the commission of the crime; the testimony of Patrolman Arturo Rimorin who conducted the investigation of, and before whom Exhibit D was executed and signed by, defendant-appellant, as well as the testimony of Sgt. Geronimo de los Santos of the Pasay Police to whom defendant-appellant orally admitted that he held the victim's hands although he had no part in the actual stabbing of the deceased.

"With respect to the testimony of the eye-witness Remedios Maniti, there is absolutely nothing in the record (except perhaps that she was the sweetheart of the deceased) to show, or even hint, that she had any reasons to perjure herself by falsely incriminating defendant-appellant in such a grievous crime, no bias, interest or prejudice against the latter as would move or induce her to faithlessly accuse him of a crime which he had not committed. More than ever, the time-honored, ruling of this Honorable Court, too elemental to require citations, that the findings of the trial court on the question of credibility of the witnesses, having had the advantage of observing their demeanor and manner of testifying, should not be disturbed in the absence of strong and cogent reasons therefor, applies fully to the case at bar. No such reasons can be found herein.

"The same observations may be made with respect to the testimonies of Patrolman Rimorin and Sgt. de los Santos. Moreover, as has been held by this Honorable Court, where the prosecution witnesses, being government employees who testified as to what transpired in the performance of their duties, were neutral and disinterested and had no reason to falsely testify against the accused, and did not subject him to any violence, torture or bodily harm, their testimonies should be given more weight than that of the accused (P. v. Pereto, 21 SCRA 1469; P. v. Del Castillo, 25 SCRA 716.)

"Then there is the extrajudicial confession of defendant-appellant, Exhibit D. True it is that, belatedly during the trial, appellant claimed that his answers appearing in Exhibit D were given because he was afraid as he was intimidated and struck on the buttock with a long piece of wood (pp. 32-34, t.s.n. Ses. of January 22, 1973). It is submitted that this last-minute, desperate and uncorroborated claim falls flat in the face not only of the presumption of voluntariness in the execution of confession, but also of the testimony of Patrolman Rimorin to the effect that Exhibit D was executed voluntarily and that defendant-appellant was never maltreated (pp. 26, 31-32, t.s.n. Ses. of January 11, 1973), and the latter's own admission that before he signed Exhibit D, its contents were first read to him in Tagalog and that he fully understood the same (pp. 24, t.s.n. Ses. of January 22, 1973), and his further admission that he has not filed any case against those who had allegedly maltreated him (p. 33, t.s.n. id.). Moreover, where the alleged confession reveals spontaneity of the declarations belying the claim that they were concocted or dictated by the police, the court will reject the claim that the confession was involuntary (P. v. Castro, 11 SCRA 699)." (Brief, pp. 3-5.)

Notwithstanding the foregoing factual admission, Atty. Feria makes the following assignment of errors:

1. THE TRIAL COURT ERRED IN CONVICTING DEFENDANT-APPELLANT OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE AS DEFINED AND PENALIZED UNDER ART. 294, PAR. 1, OF THE REVISED PENAL CODE.
2. EVEN ASSUMING THAT THE CRIME COM-MITTED BY DEFENDANT-APPELLANT IS ROBBERY WITH HOMICIDE, THE TRIAL COURT ERRED IN SENTENCING HIM TO SUFFER THE DEATH PENALTY.

We have scrutinized the record, particularly the testimonial evidence, and indeed there is no doubt that the appellant had a hand in the death of Crispulo Alega. There remains to be considered, however, the claims of the appellant which are made in the assignment of errors.

The appellant claims in his first assignment of error that he should not have been convicted of the special complex crime of robbery with homicide because the robbery was not consummated. He states that there was only an attempted robbery.

The Solicitor General states:

"x x x We are constrained to agree with defense' contention. The evidence adduced show that the appellant and his companion were unsuccessful in their criminal venture of divesting the victim of his wrist watch so as to constitute the consummated crime of robbery. Indeed, as adverted to earlier, when the victim expired, the 'Seiko' watch was still securely strapped to his wrist (p. 59, t.s.n., Jan. 11, 1973). The killing of Crispulo Alega

may be considered as merely incidental to and an offshoot of the plan to carry out the robbery, which however was not consummated because of the resistance offered by the deceased. Consequently, this case would properly come under the provision of Art. 297 of the Revised Penal Code which states that -

"When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code." (Brief, pp. 5-6.)

In his second assignment of error the appellant claims that the information does not allege any aggravating circumstance nor was any proved during the trial.

Again the Solicitor General states:

"We likewise agree with the contention of counsel in his second assigned error that the evidence presented by the prosecution did not show the attendance of any aggravating circumstance in the commission of the crime and neither did the court a quo make any finding in this respect (pp. 7-8, appellant's brief)." (Id., p. 6.)

The crime committed by the appellant is attempted robbery with homicide and the penalty prescribed by law is reclusion temporal in its maximum period to reclusion perpetua. Since there was no attendant mitigating nor aggravating circumstance, the penalty should be applied in its medium period, i.e. 18 years, 8 months and 1 day to 20 years. The Indeterminate Sentence Law has also to be applied.

WHEREFORE, the judgment of the trial court is hereby modified; the appellant is found guilty beyond reasonable doubt of the special complex crime of attempted robbery with homicide and he is sentenced to suffer an indeterminate penalty of 10 years and 1 day of prision mayor as minimum to 20 years of reclusion temporal as maximum, to indemnify the heirs of Crispulo Alega in the amount of P30,000.00, and to pay one-half of the costs. SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

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