

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX LAGOS, ALIAS GAMO, ETHEOFIL FLORES, REGINO RECEDE AND RAFAEL DATO-ON, DEFENDANTS, ETHEOFIL FLORES, REGINO RECEDE AND...*G.R. No. L-231. August 21, 1946*

Ponente: TUASON, J.

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Felix Lagos, Etheofil Flores, Regino Recede and Rafael Dato-on were prosecuted in the Court of First Instance of Negros Oriental, charged with robbery. After trial they were found guilty and sentenced to three years prison correccional with the accessories of law; to return to Doroteo Baro three pairs of short pants or jointly and severally to indemnify him in the amount of P42.00; to return to Jesus Torino one raincoat or jointly and severally to indemnify the latter in the amount of P30.00; and finally to pay Ricardo Moto, Jesus Torino, one Agustin and Doroteo Baro P9.00, which was the value of nine gantas of ground corn. Defendants were further sentenced to serve subsidiary imprisonment in lieu of any of the above amounts which might not be satisfied and to pay the costs. Felix Lagos abided by this judgment; the other three defendants have appealed.

It appears that a sail boat from Zamboanga had anchored at the mouth of the Banica River at Dumaguete, Negros Oriental. On the night of August 31, 1945, about 9:00 o'clock, Demetrio Baro was playing a guitar, alone in the boat, the rest of the crew and/or passengers having gone ashore. According to Baro, several men walked up to the boat and one of them requested Baro to let him see Baro's guitar. As Baro was handing over the guitar, two of the strangers seized him and pointed their guns at him while others went inside the cabin and carried away from it articles of personal property. Demetrio Baro said he was told not to move or to shout; if he did they would kill him. He said he could not tell the exact number of persons that robbed him because he was trembling with fear for his life and because the thieves moved fast into and from the boat. But he thought there were six malefactors in all. He declared that Etheofil Flores and Felix Lagos alias Gamo were the thugs who grabbed and threatened him and carried firearms, a carbine and a rifle.

As to the goods which had been stolen, this witness said they consisted of seven pairs of short pants, four shirts, one undershirt, one belt, one knife, one raincoat and milled corn. Three of the seven pairs of short pants belonged to him, for which he had paid P42.00. The rest of the pants belonged to his companions and he could not tell their value. Of the shirts, three belonged to him and had cost him P60.00. The knife was not his property and he did not know how much it cost. The same is true with the belt, but the raincoat, although it belonged to Jesus Torino, he knew was worth P30.00. The ground corn belonged to all the people in the boat. He did not mention its value.

About two days after the robbery Felix Lagos alias Gamo sold six pieces of garments to Demetrio Tacup and Gaudencio Nodado for P6.00. Later on, the buyers offered to sell those clothings to the very people in the boat who owned them. In succession, Demetrio Baro reported the matter to the police, the buyers revealed to the authorities the name of the man from whom they had acquired the garments, and the four defendants were

arrested.

The three accused who are now appellants took the witness stand. Their evidence may be summed up as follows? On the evening of the robbery, Regino Recede went to the public market of Dumaguete. He found Rafael Dato-on drinking "tuba" and joined the latter. Shortly after, Etheofil Flores also came and joined Recede and Dato-on. While these three were drinking, Etheofil Flores thought of going to the beach where gambling was supposed to be going on, and invited his two companions to come along. At the beach, they stopped at a small store to gamble and drink. There, Felix Lagos alias Gamo appeared and joined the group. Lagos was carrying a carbine but appellants were not astonished because Lagos had been a guerrilla. After a short while, Lagos stated that he wanted some aperitives and told his codefendants to follow him to what he said was his boat. Upon this invitation, all the four proceeded to a place where there was a boat at anchor. It was very dark. Lagos stepped into the craft presumably to light a lamp. In the boat Lagos was heard to say, "Don't move", A confusion ensued as the people began to scamper and take cover. Then the appellants learned for the first time that Lagos was up for some mischief, for which reason they also slipped away from the boat to hide. A short distance away they were overtaken by Lagos and warned not to squeal under pain of retribution.

The appellants denied that Etheofil Flores had a carbine or held Demetrio Baro. They swore there was absolutely no agreement between them and Lagos to rob.

The main defense of the appellants in this instance is that they were not properly identified.

This contention is correct if the evidence for the prosecution alone is to be relied upon. The prosecution's lone witness, Demetrio Baro, admitted that "he could not see directly the persons who came and held him", saying he "just saw their silhouettes." He also admitted on cross-examination that he had never seen the accused before and that he did not know who held him by the arm, or who carried firearms, or who removed their belongings from the boat. He admitted lastly he based his identification of Etheofil Flores and Felix Lagos exclusively on their height and sizes.

But the appellants furnished conclusive evidence of their own identity. Their testimony cinched the case for the prosecution. They admitted at the trial that they were with Felix Lagos when the robbery was perpetrated, although they would not admit having taken part in the crime.

This admission reduces the issue to the question whether appellants were coauthors of the robbery or were at the scene of the crime as innocent onlookers, drawn willy-nilly into such compromising situation.

On this point the testimony of Demetrio Baro is definite and conclusive. As we have seen, Baro stated that at the moment two men were holding him and telling him not to scream, others ransacked the sailboat and removed goods from it. Clearly there were four men in the gang and all four took active part in the robbery. These four men could not have been other than Lagos and appellants. Appellants do not allege or even insinuate the presence of persons, aside from their victim, who were not members of their group. Baro said it seemed there were six men but made it clear he was uncertain; he was frightened. Now it can be said positively, in the light of appellants' evidence, that only four men raided the boat.

Quite aside from the testimony of Rafael Dato-on, Regino Recede and Etheofil Flores given at the trial, the first two and Felix Lagos made statements to the chief of police and ratified them before the justice of the peace under oath. Flores did not make any extrajudicial confession but he testified at the preliminary investigation. These statements and this testimony vary as to details but they agree that the four accused were active confederates in the crime.

The feeble and perfunctory effort of some of the defendants to repudiate their statements by saying that they were

afraid of Lagos, deserve, scant attention. These statements carry their own refutation of the alleged fear, for they did not spare Lagos or Flores from incrimination. Moreover, Lagos being in jail was not in a position to make any retaliation.

That the appellants were cunningly led into the place of the robbery by Lagos and were not informed of the purpose of going there also merits no serious consideration. We are not to presume that Lagos was so lacking in common sense as to take along in a dangerous enterprise men who were not in his confidence and who had not agreed to y. aid in the prosecution and accomplishment of his venture.

It is idle to say there was no conspiracy. Conspiracy was established by defendants' own spontaneous, voluntary declarations and by their actual performances. They came together, they plundered the boat together, and they went away with the loots together. It was only in the disposal of the loots that they were not together.

For the foregoing considerations, we find the appellants guilty of the crime of simple robbery penalized in Art. 294, case No. 5, of the Revised Penal Code. The presence of the aggravating circumstance of nocturnity and that of the crime having been committed with the aid of armed men is to be appreciated. The trial court imposed the minimum penalty. The trial court also failed to apply the provisions of the Indeterminate Sentence Law. Another error we have found is that Demetrio Baro was adjudged P42.00 indemnity, whereas the value of the goods he lost was P102.00, P42.00 for the shorts and P60.00 for the shirts. If the penalty to be imposed is the maximum penalty provided by law for this offense, the subsidiary imprisonment provided in the decision of the lower court should be eliminated.

WHEREFORE, we modify the judgment appealed from and sentence the appellants to a penalty of from 6 months of arresto mayor to 6 years, 10 months and 1 day of prision mayor; to pay Doroteo Baro P102.00, Jesus Torino P30.00, and Ricardo Moto, Jesus Torino, the man named Agustin, and Doroteo Baro P9.00. The appellants will pay the costs of both instances.

Moran, C.J., Feria, Bengzon, and Briones, JJ., concur.

Mr. Justice Hontiveros did not participate.

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