

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS OMBAO, ACCUSED-APPELLANT.

G.R. No. L-30492. February 26, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic review of the decision dated January 27, 1969 of the Court of First Instance of Davao entitled, "The People of the Philippines versus Jesus Ombao alias Jesus and Agustin Dignos alias Osting" finding the accused Jesus Ombao guilty of the crime of robbery with homicide and sentencing him to death, to indemnify the victims of the robbery the sum of P27,000 and to further indemnify the heirs of Felicitas Zozobrado the sum of P10,000 with no subsidiary imprisonment in case of insolvency by reason of the penalty imposed.[1] The other accused Agustin Dignos pleaded guilty to the crime charged on November 13, 1968 was sentenced to suffer the penalty of reclusion perpetua, to indemnify the victims of the robbery in the sum of P27,000 and to further indemnify the heirs of Felicitas Zozobrado.[2] The accused Dignos chose not to appeal his case. Hence, this review refers only to Jesus Ombao.

Jesus Ombao and Agustin Dignos were charged in February 1968 with the crime of robbery with homicide in the following:

"Information

"The undersigned accuses Jesus Ombao alias Jesus and Agustin Dignos alias Osting of the crime of Robbery in Band 294, in relation to Art. 293 and Art. 249 of the Revised Penal Code, committed as follows:

"That on or about June 10, 1967, in the Municipality of Padada, Province of Davao del Sur, Philippines, and within the jurisdiction of this Court, the above-named accused, conspiring and confederating together with Willy Doe, Alberto Doe, Kidong Doe, Dodong Doe, Romy Doe, Luis Doe, Reynaldo Doe, Andres Doe, Agosto Doe, Seno Doe, Tony Doe, Linda Doe, Edgar Doe, Inting Doe, Linda Doe, Nene Doe, George Doe, Mike Doe, John Doe, Peter Doe and Jack Doe, who are still at large, and helping one another, armed with different kinds of guns, through force, violence and intimidation, and in band, with intent to gain, did then and there wilfully, unlawfully and feloniously take, steal and carry away the following articles, belonging to the following persons, to wit:

NAME

ARTICLES

AMOUNT

Eng Chu Ka

Cash

P2,000.00

Eduardo Locsin

Cash

5,000.00

Ludy Cham

Cash

5,000.00

Check

1,000.00

Venancia Labrador

Cash

4,700.00

Jewelries

300.00

Luy Guiam

Cash

700.00

Sending Atencio

Cash

500.00

Jewelries

800.00

Tama Yang

Cash

P

Felicitas D. Zozobrado and Ramona Zozobrado

Jewelries

P4,000.00

TOTAL.

P24,000.00

in the total sum of P27,000.00 all belonging to the above-named persons, and on the same occasion of the robbery, taking advantage of the time, with intent to kill, treacherously shot, wounded and injured Felicitas D. Zozobrado, which caused her instantaneous death, and on the same occasion, the above-named accused, with intent to kill, did then and there wilfully, unlawfully and feloniously shoot Erlinda Marimon and Ramona Zozobrado, thereby inflicting upon them physical injuries which would have caused their death, thus the accused performed all the acts of execution which would produced the death of Erlinda Marimon and Ramona Zozobrado, as a consequence, but nevertheless, did not produce it by reason of some causes independent of the will of the said accused, that is by the timely and able medical assistance rendered to the latter.

"Contrary to law.

"Davao City, Philippines, February 15, 1968, (Digos, Davao del Sur).

(SGD) CAYETANO F. TUASON
PROVINCIAL FISCAL"[3]

The facts, as stated in the appellee's brief are.

"One day in June, 1967, a group of persons, one of whom was the defendant Agustin Dignos, met at Magsaysay Park in Davao City and planned a series of robbery to be committed in Padada, Davao del Sur (pp. 39, 45, T.S.N., Jan. 8, 1969)

"In the evening of June 10, 1967, the band of armed robbers, numbering seventeen, one of whom was the defendant Agustin, who was armed with a .45 caliber pistol arrived at Padada (p. 38, t.s.n., Jan. 8, 1969). After dividing themselves into three groups of five members, the band of robbers started plundering the town (p. 39, t.s.n., Jan. 8, 1969). Agustin and his companions, two of whom were armed with Carbine rifles, began by opening the door in the ground floor of the first house (p. 39, t.s.n., Jan. 8, 1969).

"At that time Felicidad Celebrado, her unidentified sister, Virginia Rama, Teresita Rama, and Aurelia Lavandera, who were employed in the business establishment of Edu Locsin (Locsend or Lok Siang), a copra dealer, were in their room at the second floor of their employer's house at Limonso, along the national highway (pp. 2, 3, t.s.n., Aug. 3, 1968; 15 t.s.n., Aug. 17, 1968). As Felicidad was about to put out the light in her room, she and her roommate Virginia heard gun reports while somebody was axing the kitchen door of their

employer's house (pp. 3, 4, 5, t.s.n., Aug. 3, 1968; 16, t.s.n., Aug. 17, 1968). In fear, the inmates hid under their beds (pp. 9, t.s.n., Aug. 3, 1968; 17, t.s.n., Aug. 17, 1968). Five men armed with Thompson submachine guns and revolvers entered the girl's room, pulled them out of their hiding place and asked where their employer was (pp. 4, 9, t.s.n., Aug. 3, 1968; 17, t.s.n., Aug. 17, 1968). After knowing where he was the malefactors awakened Edu (pp. 17, 18, t.s.n., Aug. 17, 1968). Upon confronting him they slapped and demanded money from him (pp. 17, 18, t.s.n., Aug. 17, 1968). After divesting him of his money, the robbers tore up a blanket bound the inmates of the house in two and marched them downstairs, where they were ordered to ride in an open cargo truck belonging to Edu (pp. 4, 5, t.s.n., Aug. 3, 1968; 18, 19, t.s.n., Aug. 17, 1968; 40, t.s.n., Jan. 8, 1969). Afterwards the robbers together with their captives proceeded to the Visayan Bakery owned by Venancia Labrador (pp. 19, Aug. 17, 1968; t.s.n., Jan. 8, 1969). While aboard the cargo truck Virginia was able to recognize the defendant Jesus Ombao as he kissed her (pp. 4, 13, t.s.n., Aug. 17, 1968).

"Venancia Labrador was awakened by gun reports coming from different directions in the town of Padada (p. 4, t.s.n., Nov. 13, 1968). When she stood up and looked out of the window, she saw an armed man in uniform (p. 4, t.s.n., Nov. 13, 1968). Then she heard somebody pounding and axing the door at the ground floor of her house (p. 5, t.s.n., Nov. 13, 1968). After forcibly opening the door, five armed robbers entered her room and one of them took hold of her little daughter, another held her and the rest ransacked her house and took her cash money of P5,000.00 and jewelry valued at P300.00 inside the drawers of her aparador (pp. 5, 6, 7, t.s.n., Nov. 13, 1968). Then the malefactors ordered Venancia and her salesgirls (Anacoreta Tugap, Evarista Cabutero and one Sariana), who were quartered in another room and who were wakened by the commotion, to proceed to the ground floor where the three salegirls were ordered to ride on a cargo truck (pp. 3, 4, 8, 10, 11, 12, 13, t.s.n., Nov. 13, 1968; 22, 23, 24, t.s.n.; Dec. 12, 1968). Because Virginia pleaded with the robbers not to take her along with them so as to be able to attend to her children, she was left behind (p. 9, t.s.n., Nov. 13, 1968). Before leaving her, the robbers ate oranges and bread in her house, where they tarried for about twenty minutes (p. 8, t.s.n., Nov. 13, 1968).

"Anacoreta was able to recognize the defendant Agustin Dignos while at the ground floor of her employer's house and Jesus Ombao, while at the cargo truck (pp. 23, 24, 29, t.s.n., Dec. 12, 1968).

"The robbers moved over to the house of Mrs. Zozobrado where they exchanged shots with Constabulary soldiers (pp. 19, t.s.n., Aug. 17, 1968; 40, 41, t.s.n., Jan. 8, 1969).

"The malefactors drove on to Davao City (pp. 20, t.s.n., Aug. 17, 1968; 13, 14, t.s.n., Nov. 13, 1968; 24, t.s.n., Dec. 12, 1968; 42, t.s.n., Jan. 8, 1969). On the way somewhere in Santa Cruz, the cargo truck ran out of gasoline (pp. 20, t.s.n., August 17, 1968; 14, t.s.n., Nov. 13, 1969). The defendant Dignos parked the truck in the middle of the road and stopped an oncoming passenger bus of the 'Villa Bus' which the malefactors seized to bring them and their captives to their destination (pp. 5, t.s.n., Aug. 3, 1968; 20, 21, t.s.n., Aug. 17, 1968; 25, t.s.n., Dec. 12, 1968; 42, 43, t.s.n., Jan. 8, 1969). The Chinaman Edu was left behind with his truck (p. 20 t.s.n., Aug. 17, 1968). At Inayanan, the malefactors ordered their captives to alight and took them to a coconut grove (pp. 5, t.s.n., August 3, 1968; 21, t.s.n., Aug. 17, 1968; 14, t.s.n., Nov. 13, 1968). They took refuge in a nearby house where they were picked up by a bus which brought them to Davao City, and there they reported the incident to the police authorities (pp. 5, 6, t.s.n., Aug. 3, 1968; 21, 22, t.s.n., Aug. 17, 1968; 14, t.s.n., November 13, 1968; 25, t.s.n., Dec. 12, 1968).

"Dr. Crispin de los Cientos conducted a post-mortem examination of the dead victim and found that she had sustained a compound fracture in the right arm and a gunshot wound (pp. 24, 25, t.s.n., Dec. 18, 1968; Exhibit A). Death was due to hemorrhage secondary to the gunshot wound (p. 25, t.s.n., Dec. 18, 1980; Exhibit A).

"Eng Chu Ka, doing business as Hao Chu Gin, and Luy Sam, both victims of the robbery perpetrated in the evening of June 10, 1967 in the town of Padada, lost P2,000 and P6,000, respectively (pp. 32, 33, t.s.n., Dec. 12, 1968."[4]

The defendant Jesus Ombao assigned the following errors allegedly committed by the trial court:[5]

"I

"THE TRIAL COURT ERRED IN NOT FINDING THAT THE DEFENDANT-APPELLANT WAS NOT SUFFICIENTLY IDENTIFIED BEYOND REASONABLE DOUBT AS A MEMBER OF THE GROUP.

"II

"THE TRIAL COURT ERRED IN NOT FINDING THAT THE MALEFACTORS IN THE CRIME OF HOMICIDE WERE NOT MEMBERS OF THE GROUP OF ROBBERS.

"III

"THE TRIAL COURT ERRED IN NOT FINDING THAT THE COMMISSION OF THE CRIME CHARGED WAS NOT ATTENDED BY ANY AGGRAVATING CIRCUMSTANCES.

"IV

"THE TRIAL COURT ERRED IN NOT FINDING THAT THE VALUE OF LOSSES TO COMPLAINING WITNESSES WAS ONLY P17,200, OR LESS BY P9,800 THAN THAT ALLEGED IN THE INFORMATION.

"V

THE TRIAL COURT ERRED IN NOT ACQUITTING DEFENDANT-APPELLANT OF THE CRIME CHARGED."

The accused Ombao claims that the prosecution failed to prove his identity beyond reasonable doubt because of

an inconsistency in the testimonies of prosecution witnesses Virginia Rama and Anacorita Tugap. Rama testified that it was dark inside the cargo truck, but she was able to recognize Ombao because he kissed her. On the other hand, Anacorita Tugap testified that the bright moonlight enabled her to recognize Ombao inside the cargo truck. This inconsistency in the statements of Rama and Tugap does not render their testimonies incredible. Rama was brought to the cargo truck from the house of his employer, Lok Sieng Edu, while Tugap was brought to the cargo truck from the "Visayan Bakery". Thus, it is probable that the cargo truck was dark while it was parked in front of the house of Lok Sieng and that it was bright while parked in front of the "Visayan Bakery". Moreover, a person's capacity to recognize is affected not only by his sense of vision but also of the surrounding house, buildings, trees, and other structures.

The defendant Ombao also contends that only two witnesses positively identified him in spite of a listing of twenty-one (21) witnesses in the information, ten (10) of whom actually testified in court. He also questions the failure of the prosecution to present the statements of the identifying witnesses taken on the day following the robbery. According to him, it is possible that these statements were not presented because 'these statements showed that they could not identify the perpetrators'.^[6] These contentions are without merit. If the other witnesses could have helped him, he should have availed of the compulsory processes of the court to enable him to present them as his own witnesses. In the same manner, if the statements were important to his cause, he should have availed also of the compulsory processes of the court to produce them. This he failed to take advantage of.

The testimony of Agustin Dignos, the other accused who pleaded guilty to the charge, that Ombao was not with them when they robbed several stores in Padada on June 10, 1967 is not credible. This is not the first time that Ombao and Dignos committed robbery together. At the Court of First Instance of Davao, Branch I, both Dignos and Ombao were found guilty of the crime of robbery with homicide committed in Barrio Bincungan, Tagum, Davao del Norte and sentenced to reclusion perpetua.^[7] Having committed robbery together, Dignos and Ombao must have become close friends. It was natural for Dignos to try to protect Ombao. Besides it is sometimes the practice of one or two arrested members to own up the commission of a crime to exonerate other members of the gang.

Anent the second error assigned, the accused Jesus Ombao argues:

"From the above-quoted testimony, it is apparent that the shooting which led to the death and wounding of the victims took place upon the encounter of the robbers with the PC. There is absolutely nothing in the record which shows that it was the robbers who fired the shots which killed and wounded the victims. On the contrary, in the natural course of events, in the cross-fire between the PC and the robbers, it is fair to assume that the bullets coming from the guns of the PC found their mark and hit two of the robbers. In the same light, since the victims were supposed to have been taken as hostages, therefore, in the same flank with the robbers, opposite and facing the PC, only shots coming from the opposite (PC's) direction could have hit them.

"It would then appear that since the lower court did not make a finding as to who fired the shots which hit the victims (as indeed it could not, since the record does not so show), the lower court merely presumed that it was the robbers, to justify conviction with the ultimate death penalty. But then again, here, if there should be any presumption at all, it should be in favor of defendant-appellant.

"In view of the above discussion, if at all defendant-appellant is liable, it would merely be for the crime defined in Art. 294, No. 5 of the Revised Penal Code.

'There being no sufficient evidence as to who stabbed and killed Felipe Salazar nor any evidence showing the connections between said stabbing and the robbery, the lower court was right in finding appellant guilty only of robbery under Art. 294, Sec. 4 of the Revised Penal Code. (People v. Legaspi, CA-G.R. No. 22401-R, June 27, 1959)'

which imposes the penalty of from prision correccional maximum to prision mayor medium."[8]

This submission is without merit. It is a fact that during the encounter of the robbers and the PC authorities Felicitas D. Zozobrado was shot and killed while Erlinda Marimon and Ramona Zozobrado sustained physical injuries. It is of no moment if the death and physical injuries were not caused by the accused Jesus Ombao. In People vs. Mangulabnan, et al.[9] this Court held:

"It may be argued that the killing of Vicente Pacson undertaken by one of the 2 unidentified persons who climbed up a table and fired at the ceiling, was an unpremeditated act that surged on the spur of the moment and possible without any idea that Vicente Pacson was hiding therein, and that the English version of Article 294, No. 1, of the Revised Penal Code, which defines the special, single and indivisible crime of robbery with homicide only punishes any person, with the penalty of reclusion perpetua when by reason or on occasion of the robbery, the crime of homicide shall have been committed, but this English version of the Code is a poor translation of the prevailing Spanish text of said paragraph, which reads as follows:

'1. Con la pena de reclusion perpepetua a muerte cuando con motivo o con ocasion del robo resultare homicidio.'

"We see, therefore, that in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (Decision of the Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's Penal Code, p. 267 and 259-260, respectively). This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident (Decision of September 9, 1886; October 22, 1907; April 30, 1910 and July 14, 1917), provided that the homicide be produced by reason on or occasion of the robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration (Decision of January 12, 1889-See Cuello Calon'sCodigo Penal, p. 501-502)."

The contention of the accused that the trial court erred in finding that the crime charged was attended by aggravating circumstances is well taken.

The use of firearm is inherent in the circumstance of band.

In robbery with homicide as penalized under Article 294 paragraph 1 of the Revised Penal Code the circumstance of band is not taken into account. Thus in People vs. Moros Amajul, et al.[10] the Supreme Court said:

"Article 294, paragraph 1 of the Revised Penal Code, imposes the penalty of reclusion perpetua to death upon any person guilty of robbery when by reason or on occasion thereof, the crime of homicide shall have been committed. As correctly pointed out by the Solicitor General, the commission of the crimes in band is taken into account only in connection with subdivisions 3, 4 and 5 of Article 294, but not, as in this case, where the robbery falls under paragraph 1 of the same article (see Art. 295 R.P.C.; People vs. Casunuran, G.R. No. L-7654, August 16, 1956)."

The alleged acts of detention and kidnapping of hostages and molestation of girl victim are not among those enumerated in Article 14 of the Revised Penal Code as aggravating circumstances.

Death and physical injuries are part of the robbery with homicide penalized by Article 294, paragraph 1 of the Revised Penal Code.[11]

Hence, the crime charged was committed without any aggravating circumstance.

Anent in the indemnification, the Solicitor General submits that:

"As regards the part of the judgement under review relative to indemnification of the victims of robbery, it is believed that the evidence on record supports only the following award: (1) to Venancia Labrador in the amount of P5,300 (P5,000 in cash and P300, the value of her jewels lost; pp. 5, 6, 7, t.s.n., Nov. 13, 1968); (2) to Carloman Zozobrado in the amount of P5,100 (P4,000, the value of his jewels lost, P1,000, for the funeral expenses of his wife and P100 for medical expenses of his injured daughter; p. 19, t.s.n., Nov. 13, 1968; (3) to Eng Chu Ka in the amount of P2,000; and (4) to Luy Sam in the amount of P6,000 (pp. 32, 33, t.s.n., Dec. 12, 1968). None may be awarded to Chinaman Edu Locsin (Locsen or Lok Siang) because the extent of his loss has not been fully established, no mention thereof having been made by the prosecution witnesses in the course of their testimonies. However, in line with the decision of this Honorable Court in People vs. Pantoja, G.R. No. L-18793, October 11, 1968, the amount of indemnification to the heirs of the deceased wife of Carloman Zozobrado should be increased from P10,000 to P12,000."[12]

The foregoing submission is correct.

WHEREFORE, the decision under automatic review is hereby modified in the sense that the accused, Jesus Ombao, is declared guilty as principal by direct participation of the crime of robbery with homicide penalized by Article 294, paragraph 1 of the Revised Penal Code without any aggravating circumstance and is imposed the penalty of reclusion perpetua and to pay the following indemnities:

- To Venancia Labrador - - - - - P5,300.00
- To Carloman Zozobrado - - - - - P5,100.00
- To Eng Chu Ka - - - - - P2,000.00
- To Luy Sam - - - - - P6,000.00
- To the heirs of Felicitas Zozobrado - - - - - P12,000.00

without subsidiary imprisonment in case of insolvency and to pay the proportionate share of the costs.

SO ORDERED.

Fernando, C.J., Aquino, Concepcion, Jr., Guerrero, Abad Santos and De Castro, JJ., concur.

Teehankee, J., voted for the imposition and affirmance of the death penalty since the crime was committed with

the aggravating circumstance of band under Article 14, par. 6 of the Revised Penal Code.

Barredo, J., joins JJ., Makasiar, and Melencio-Herrera.

Makasiar, J., concurs with the opinion of Justice A. Melencio-Herrera re appreciation of band as a generic aggravating circumstance to justify the death sentence.

Melencio-Herrera, J., concurs that since the robbery with homicide herein was committed by a band, the element of band would be appreciated as an ordinary aggravating circumstance [People vs. Aduhan, Jr., 24 SCRA 798 (1968); People vs. Marquez, 30 SCRA 442 (1969)].

[1] Rollo, pp. 20-21.

[2] Records, pp. 106-107.

[3] Rollo, pp. 3-4.

[4] Brief for the Appellee, pp. 3-8, Rollo, p. 106.

[5] Rollo, p. 56.

[6] Rollo, p. 65.

[7] TSN, January 8, 1969, pp. 45-46; Dignos and Ombao did not appeal this case which was docketed in the Court of First Instance of Davao as CC. No. 10741. Another co-accused Rodolfo Daffon appealed, and on March 28, 1980, the Supreme Court rendered a decision on the case of People v. Rodolfo Daffon, et al., G.R. No. L-30707, on the basis of the extra judicial confession of Agustin Dignos and Jesus Ombao that they, together with others perpetrated robberies in different places in Davao. Among those robberies was that committed at Barrio Bincungan.

[8] Brief for Defendant-Appellant, pp. 19-20, Rollo, pp. 76-77.

[9] 99 Phil. 992, 998-999.

[10] 111 Phil. 354, 262.

[11] People vs. Saquing, 30 SCRA 834.

[12] Brief for the Plaintiff, pp. 16-17, Rollo, p. 106.

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