

THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE VS. ROMEO PAZ ALIAS COMMANDER ROMY, ET AL. DEFENDANTS, MAXIMO STA. ANA, MARIO PATENIA, PABLO CASTALONE, JUANITO SAN MARCOS, CRIS...

G.R. No. L-15052-53. August 31, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

At about 11:00 o'clock in the evening of June 10, 1956 , raiders disguised in army-fatigue uniform, surprised commando-like the drivers, conductors and other employees in the RIZ-MAN TRANSIT, Inc. (Rizal-Manila) garage in Pililla, a town in the remote hills of Rizal Province and after killing one Antonio Lee, an employee of the Transit and looting the place, they set the vehicles and garage on fire. The properties burned or set fire to were:

Fourteen (14) trucks and garage with personal effects therein, belonging to the Biz-Man Transit, all valued at Two Hundred-Eight Thousand, Four Hundred Three Pesos and 15/100

P208,403.15

Two (2) trucks belonging to the Laguna-Tayabas Bus Co., all valued at Twenty Thousand Pesos 20,000.00

One (1) store, together with its contents, belonging to Amelio Sioson valued at Eight Hundred Pesos 800.00

One (1) house belonging to Valeriano Sioson, valued at Seven Hundred Pesos

700.00

Total

P229,903.16

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On July 6, 1956, an amended information for arson alleging conspiracy and aggravating circumstances of night time deliberately sought; with the aid of armed men or persons to insure or afford impunity and that the accused took advantage of their superior strength and the circumstances that the appellants know that the buildings were occupied or inhabited at the time, was filed against the appellants. On the same date, also an amended information for robbery with homicide, was filed against the same accused, alleging therein conspiracy, intent to kill, shot

with firearms Antonio Lee, causing his death; and that the accused on the occasion thereof, with intent of gain and in the furtherance of their conspiracy, unlawfully carried away the sum of Two Thousand Seven Hundred Fifty Pesos (P2,750.00), which Lee had in his custody, belonging to the company, to the damage of the latter in said amount. The information likewise alleged the same aggravating circumstances. A protracted trial was held, and a voluminous record 13 now before us. The trial court found the accused Maximo Sta. Ana, Pablo Castalone, Mario Patenia, Juanito San Marcos, Crisostomo Unida, Agripino Reyes and Ariston Mallari, guilty of the crimes charged; and in view of these aggravating circumstances, with no mitigating circumstance to appreciate, the trial court sentenced all the accused to life imprisonment in the arson case and to suffer the death penalty in the robbery with homicide case and order them to indemnify the heirs of Antonio Lee in the sum of P3,000.00 and each to pay 1/7 of the costs in both cases. They appealed and filed separate briefs and the cases are now G.R. Nos. L-15052 and L-15053, arson and robbery with homicide, respectively.

The chain of antecedent facts leading to the event on the night of June 10, 1956, are as follows:

The Riz-Man Transit operated several lines in Rizal Province, one of which was the Pililla-Manila line. Among the operators on the same routes of the Riz-Man was the Raytranco. The Raytranco was beset with financial losses, aggravated by internal dissensions of the stockholders, the claims of creditors and the strike of its employees.

In July, 1955, the Raytranco employees union of drivers, conductors inspectors, mechanics and others, headed by appellant Maximo Sta. Ana, staged a strike, directed against the fraudulent management of Toribio Raymundo, president of the Board of Directors of Raytranco thereby paralyzing the operation of the company. The strikers demanded, among others, the ouster of Toribio Raymundo and his nephew Ruben Romero from the Board. In view of the fact that creditors have filed collection suits against the Raytranco and that the Manila Trading Company, and the U.S. Royal Company had foreclosed mortgages on several trucks of the Raytranco, the latter decided to lease the Pililla-Manila and the Jalajala—Manila lines of the Raytranco, together with one truck, to the Riz-Man Transit, the lease contract exhibit E, executed on September 23, 1955, having been authorized by the Raytranco's Board of Directors and approved by the Public Service Commission. Under the lease contract, the Raytranco was prohibited from operating its buses along the leased lines and the Riz-Man (lessee) was not bound to retain in employment any officer or employee of the Raytranco. Said contract, therefore, affected adversely the livelihood of the employees of the Raytranco. On the day the lease contract was executed, Toribio Raymundo received an order from the Rizal Court, placing the Raytranco under receivership, in virtue of Civil Case No. 3782 for receivership, accounting and damages, filed on September 13, 1955, by some rival stockholders against Toribio Raymundo and several officers of the Raytranco (Exh. 7).

The receivers started operation of the buses and tried to get back the lines of the Raytranco leased to the Riz-Man Transit and the LTB Trans. Co. They filed a petition with the Public Service Commission to rescind the lease contract with the Riz-Man, but failed (Exh. MM). The strikers, who were sympathizers with the group fighting Toribio Raymundo, returned to work upon the placing of the Raytranco under receivership. But when they learned of the execution of the lease contract by Toribio Raymundo, accused Maximo Sta. Ana called a strike and the union of which he was the president, filed a motion to intervene in the receivership case to annul the lease contract. On October 1, 1955, when the Riz-Man Transit began operating on the two lines acquired from Raytranco, the striking unionists began also all kinds of harassments and caused all sorts of difficulties, to obstruct its operation. Raytranco men placed nails on the roads where Riz-Man buses run. They also attacked Riz-Man personnel. During the strike, the following occurred:

Accused Sta. Ana figured in an incident with a lawyer of the Riz-Man which led to the filing of grave threats against said lawyer and his companions. The charges were dismissed (Exh. P).

As a result of the fight between the strikers and employees of the Riz-Man Transit, a complaint was filed in the JP Court of Morong, Rizal (Case No. 96), against accused Crisostomo Unida and Agripino Reyes, etc. for mauling and boxing Roque Omelinjo, a driver of the Riz-Man, on Oct. 1, 1955 (Exh. 00); a complaint against accused Unida and Reyes and seven others, for malicious mischief (Case No. 97), in that on October 1, 1955, they stopped Riz-Man bus No. TPU 22968 and hurled stones at the bus (Exh. NN) ; a complaint for grave coercion (Case No. 98) against the same accused Unida and Reyes and others, for having used force and violence upon a Riz-Man driver to prevent him from proceeding to his destination (Exh. PP); a complaint for less serious physical injuries (Case No. 99) against accused Ariston Mallari, Unida, Sta. Ana and Reyes for injuring Gregorio Ermita, a Riz-Man driver on October 1, 1955 (Exh. RR); a complaint for malicious mischief (Case No. 100), against accused Mallari, Unida, Sta. Ana and Reyes, etc. for stoning Riz-Man Bus No. TPU 21300 in Morong, on October 1, 1955 (Exh. SS); a complaint for grave coercion against accused Sta. Ana, Mallari and Unida, filed by a Riz-Man driver (Exh. QQ). Criminal Case Nos. 98 and 101 reached the Court of First Instance; and the Fiscal filed the corresponding informations. The JP Court found the accused guilty in criminal cases Nos. 96, 97, 99 and 100 (Exhs. NN-1; VV-1; PP-1; QQ-1, against which they appealed (Exhs. RR-2, SS-2, NN, 00).

While the struggle between Riz-Man Transit and the Raytranco employees Union was in progress, the following events and developments were also taking place in the Hacienda Gonzales, at Pililla, Rizal.

Daniel Vidanes, an employee in the Hacienda had known Romeo Paz alias Commander Romy, who frequented the hacienda and who, in 1951, killed Santiago Paso, a companion of Vidanes in the same hacienda. Since 1951, Comdr. Romy used to employ Vidanes for errands, such as getting food, money, water, etc. for him. Accused Januario Patenia alias Mario Patenia, a striker of the Raytranco, knew that Comdr. Romy could be contacted through Vidanes.

So, in the night of May 6, 1956 , Patenia accompanied by his co-workers, accused Ariston Mallari, Crisostomo Unida and Juanito San Marcos, went to see Vidanes. Patenia inquired from Vidanes of Comdr. Romy's whereabouts. Vidanes told him he might meet Comdr. Romy the next day at Mapuputing Paa, a place inside the hacienda, and they could go to the hacienda the next morning.

At 8:00 a.m. May 7, 1956 , accused Patenia, Mallari, Unida and San Marcos , arrived at the Hacienda. Having been asked to find out if they could see Comdr. Romy, Vidanes and Emilio Quitalig, went to Comdr. Romy at Mapuputing Paa. Comdr. Romy told them he would not see Patenia, if the latter had companions. Patenia agreed to see Comdr. Romy alone, and he left accompanied by Quitalig. But after a while, Patenia returned to fetch Mallari, Unida and San Marcos and the four met Comdr. Romy and his companions. Comdr. Romy's place was a forested area inside the Hacienda Gonzales. Here, accused San Marcos urged Comdr. Romy: "Pinsalain si Heras upang mawalan nang kalaban", to which Romy remarked: "Tankilikin ang puhunang Filipino at iwaksi ang Puhunang dayuhan". Heras was then the president of the Riz-Man Transit.

On the same day also, accused Pablo Castalone went to see Vidanea at the Hacienda and inquired for Comdr. Romy, telling him (Vidanes) that he (Castalone) was assigned by accused Maximo Sta. Ana to verify Comdr. Romy's arrival.

On the same day Comdr. Romy assembled some of his men, all armed, including a woman, Anita Reyes, Numeriano Villapando, alias Noming Villapando, alias Commander Noming (a notorious Huk), the latter's deputy called Tiburcio Pilarasio alias Wilfredo Villacorta, alias Commander Flower, Daniel Vidanes, Pedro Miranda and Emilio Quitalig. After telling them that Vidanes could be trusted, Romy gave Vidanes a letter for delivery to accused Patenia. The letter was merely folded and Vidanes read that the letter contained an instruction from Comdr. Romy who signed his alias "Sali", for Patenia to inform Maximo Sta. Ana to gather the strikers and meet

at a pre-arranged place. Vidanes, however, gave the letter to Castalone in the Raytranco station at the Jalayjalayin crossing. Comdr. Villapando told Vidanes that same day, that the strikers should be at the meeting place early the next day.

On June 8, 1956, accused Sta. Ana, San Marcos, Castalone, Patenia, Unida and Reyes, conferred with Comdr. Romy at the hacienda. Sta. Ana asked -Comdr. Flower (Villacorta) to help them, as they were oppressed and aggrieved (aping-api at agraviado) and they could not seek help from the government. Accused San Marcos also remarked: "Pinsalain pi Heras at patayin ang negosyo" and advised Comdr. Flower that the strikers were ready to help the TTuks. Unida and Reyes expressed their conformity to the statements. Vidanes left the group and took his lunch in his house; and when he returned to the hacienda in the afternoon, he saw Sta. Ana and his companions at the Raytranco waiting shed.

On June 9, 1956, Pedro Miranda brought a can of paint ordered by the Huks to the hacienda. Villapando and Villacorta used the paint to make propaganda posters, containing "Tankilikin ang puhunang Filipino at iwaksi ang puhunang dayuhan" (Exh. B).

On June 10, 1956, Vidanes went to the Hacienda to deliver sugar. There, he saw San Marcos and Patenia conferring with Villapando and Comdr. Flower and San Marcos was demonstrating to them how to destroy gasoline tanks of trucks, with a pick mattock (Exh. C).

At About 11:00 o'clock in the evening of the same day (June 10, 1956), the Riz-Man Transit Garage was raided by a group of individuals. Some of the drivers were sleeping inside the trucks parked in the garage. Mauro Tobana, an LTB driver was awakened by an armed man in soldier's uniform who told him to join the Riz-Man's employees guarded by two, who were also in soldier's uniform. Two of the raiders went to the office and had conversation with Antonio Lee, the Riz-Man traffic manager. But Lee escaped and hid himself under an office table, and the two pursued him. They grabbed a bag of one of the passengers and ordered the cashier of the company, Remigio Fernandez, to put his collections, amounting to about P2,500, inside the bag, which he reluctantly did, after having been pistol whipped by one of the armed men. The two armed men searched the room and after discovering Lee under the table, they fired shots at him. Then and there, one of the men took away Lee's gun and placed it inside the bag with the cash. They were also about to shoot Fernandez, but he implored their mercy. Another member of the raiders, entered the office and after seizing a Borrough's adding machine told his men, "That's enough."

Another member of the raiders gave orders to bore holes on all the trucks (Butasan lahat ang truck). Some of his companions destroyed the gasoline tanks with a pickmattock and set the trucks on fire. Some employees were ordered to get empty cans and place them under the punctured gasoline tanks and poured the accumulated gasoline inside the trucks and the garage. The fire spread to the other buses inside the garage. The raiders left the propaganda materials (Exh. U) prepared in the hacienda by Miranda, ViHapando and Villacorta, the day before. On June 11, 1956, Comdr. Romy called Vidanes and warned him not to reveal to any one what he knew about the burning of the Riz-Man trucks. Comdr. Flower gave the pickmattock (Exh. D), to Quitalig. This pickmattock was the same one appellant San Marcos was holding when he was demonstrating to his companions how to destroy a gasoline tank with it and this pickmattock fitted the punctured holes on the gasoline tanks of the destroyed truck.

On June 26, 1956, Comdr. Romy asked Vidanes about the carbines which had been promised by San Marcos to him.

As a result, fifteen buses and one patrol car of the Riz-Man Transit were completely burned, valued at P162,883.30 (Exh. IT). The adding machine taken was valued at P902.15 and the electric generator was worth P6,787.50. The amount of damages to the 10 partially burned buses was P5,000.00. The patrol car, radio

transmitter and pistol of Antonio Lee were valued at P1,000 or a total of P197,443.55. Two buses owned by LTD Co. body No. 193 and body No. 203, were valued at P8,313.35 and P12,553.60, respectively. The store and contents, belonging to Amelio Sioson and the house of his son, located near the garage, were burned and were valued at P200.00 each. The adding machine was one of the equipments whose possession was contested by the warring groups of Raytranco stockholders and it was found by the PC men near a river in sitio Malubang Pililla.

Antonio Lee suffered 6th degree burns and his body was completely carbonized; and a gunshot penetrated the right lobe of the liver and fractured the 10th rib on the right side. Dr. Pedro Solis, the necropsy Doctor, (Necropsy Report Exh. KK, June 11, 1956) expressed the opinion that judging from the direction of the bifflut, Lee was in a bending position while his assailant was at a higher level when shot, and that this death was due to shock secondary to the extensive burns.

On June 29, 1956, in an encounter between a P.C. patrol of 5 men and supposed Huks at Mapuputing Paa, Tiburcio Palirasio alias Comdr. Flower alias Wilfredo Villapando was killed. In a search of his belongings, the P. C. found a diary Exhibit 5, and some documents in Code. Capt. Jose Fernandez, P.C. concluded after his examination, that the documents and diary were made by Comdr. Flower and after deciphering the coded documents, he also found that they mentioned meetings, "welgistas" (strikers) and the name of Vidanes (Exhs. CC, DD, EE, FF, J, J-I to J-10). Daniel Vidanes was picked up and he revealed his own and the participation of the accused herein, in substantially the same manner as heretofore narrated. They were interrogated one by one.

Capt. Fabian Ver, P.C. questioned accused Pablo Castalone. The investigation was reduced into writing by an agent of the P.C. (Exh. Q). Castalone subscribed his statement before the Provincial Fiscal on July 5, 1956 . Castalone admitted that he received from Vidanes a letter on June 7, 1956 for delivery to accused Mario Patenia and that he was with Sta. Ana, Unida, Pieyes, San Marcos and Patenia when the latter conferred with Comdr. Romy on June 8, 1956 , inside the hacienda of Gonzales (Exhs. G to G-6). Col. Esmeraldo Lozano, P.C. helped in the questioning of Reyes, who admitted that on June 8, 1956 , he was with accused Sta. Ana, San Marcos and Unida in the conference with Comdr. Romy (Exh. G). They corroborated the testimony of state witnesses Vidanes, Quitaig and Miranda.

Appellant Sta. Ana alleged he had received a letter from Comdr. Romy demanding contributions, but he denied having gone to hacienda Gonzales to meet him and that there existed bad blood between him and his companions and Toribio Raymundo who threatened to put them in jail.

Appellant Patenia declared that he went to buy fish in Laguna de Bay and had stayed there the whole day of June 9, 1956 .

Appellants Sta. Ana and Patenia also claimed that they had been in their respective homes, when the Riz-Man Station was burned on June 10, 1956 .

Appellant Unida declared that he had left his house in Morong at 7:00 P.M. of May 7, 1956 , for Pasig and returned home only at 2:30 P.M.

Appellant Mallari testified that on the evening of May 6, 1956 , he was with San Marcos and Unida in the cockpit of Pililla, from 6:30 to 8:00 o'clock when they left to take their dinner in the house of the Mayor, and after seeing the procession, he went home at 11:00 P.M.

Appellant San Marcos testified that on May 7, 1956 , he went to Pasay City , to look for work.

Appellant Castalone averred that he did not meet Vidanes at noon of June 7, 1956 , at the Jalayjalayin station and that he did not receive any letter that day from Comdr. Romy, through Vidanes.

Appellants Patenia, Unida, Mallari and San Marcos denied having visited Vidanes on the night of May 6, 1956, for and having been in the hacienda Gonzales on May 7, 1956 for a meeting with Comdr. Romy.

Appellants San Marcos and Reyes denied having joined the meeting on June 8 and 10, 1956.

Appellant Mallari declared that he went home to Morong on June 10, 1956 at 6:00 P.M. and joined his wife at the movies at 7:00 P.M.; that he and his wife went out and took some refreshment with accused Unida, accused San Marcos, Simeon Pascual, Alfredo San Juan, the Chief of Police and two policemen, and went home at 11:30 P.M. Unida and San Marcos confirmed Mallari's statement that they were together at the restaurant in the night of June 10, 1956.

Appellant Reyes testified that he slept at the municipal building of Morong on June 10, 1956, as he had done for several nights after someone "took a potshot at him" on May 31, 1956. Reyes likewise averred that the P.C. investigator told him to sign a typewritten statement which he refused to do, he was then brought to a room by three men who ordered him to undress and sign the papers given him; as he refused, he was blind-folded, boxed on the belly, hips and mouth by the three men, resulting in the breakage of a molar; that one of the three pulled out his pistol and threatened to shoot him; that overcome with fear, he signed the statement (Exh. G); that once in the stockade, the Fiscal offered him money, if he would testify against Sta. Ana; that some of his statements on Exhibit G were not the ones given to the investigator and some of the questions were not even propounded; that he did not make the diagram Exh. G-6, but he signed it after he was maltreated.

Accused Castalone asserted that he had refused to sign the statements prepared by Capt. Ver, but the latter reminded him of what had happened to one Jose Samson who was mauled by P.C. agents; and because he feared he might be pushed out of the jeep and killed on the pretext of attempting to escape, he signed Exhibit Q, without even reading it; that he inserted the name "Mario Patenia" on page 2 of Exh. Q upon orders of the agents; that the provincial Fiscal and Capt. Ver had promised to give him work and that Vidanes had told him that the two would have plenty of money if he (Castalone) would turn state witness and corroborate his (Vidanes) testimony; that the questions he marked with red ink were not even asked of him.

Predicated upon the above evidence, the trial court, found the accused guilty and imposed the penalties, heretofore recited. The appellants presented separate briefs. Their assignments of errors may be grouped as follows—

- Degree of credibility in be attached to the testimony of state witnesses Vidanes, Miranda and Quitalig (Briefs of Sta. Ana, San Marcos, Reyes and Maltaii).
- Existence of conspiracy between appellants and Comdr. Romy to destroy the Riz-Man Transit garage (Briefs of Sta. Ana, San Marcos, Reyes and Mallari).
- Admissibility of (a) the statements of appellants Reyes (Exh. G) and Castalone (Exh. Q), as evidence against each other and against Sta. Aina and other accused (Briefs of Sta. Ana and Reyes); (b) Exh. A, piece of folded paper; and (c) Exh. 5, the diary of Comdr. Flower (Brief of San Marcos, et al.)
- Assuming the existence of conspiracy (a) whether appellants Patenia, San Marcos, et al., are guilty as principals in the crime of robbery with homicide (Briefs of San Marcos and Patenia); (b) The failure of the trial court to find that appellant Mallari had desisted before the crime was committed (Brief of Mallari).
- In not holding that the crime committed was only simple rebellion (Briefs of Patenia and Mallari).
- In not sustaining the appellant's defense of alibi, closely related with credibility of witnesses (Briefs of Patenia and Mallari).
- In not granting new trial prayed for by appellant Patenia (Brief of Patenia).

State witnesses Vidanes, Quitalig and Miranda were participants in the preliminary activities of the appellants. In fact they had served as contracts and errand boys for the Huks. They knew whereof they spoke—and they testified in a direct, clear and straightforward manner; so sincere and convincing were their testimonies that the trial court, notwithstanding the intensive and extensive cross-examination by the defense, had given them faith and credence. The findings and conclusions of the trial court on the question of credibility of witnesses, command great respect, especially, as in these particular cases, the same are fully supported by the evidence of record.

The defense claims that (1) these witnesses being as guilty as the other appellants, their testimony has little, if any value and (2) that the conversation had between Comdr. Romy, Villasanta and Villapando, on one hand and said three witnesses, on the other, particularly the instructions given by the Huks to them are hearsay and inadmissible, because the appellants had no opportunity to cross-examine these Huk leaders. Vidanes and the two other witnesses were victims of circumstances; they just happened to work in hacienda Gonzales, a Huk infested territory and had to fraternize and obey the Huks, for self-preservation; which circumstance can not be said of the appellants. As appellant Sta. Ana himself admitted, the defense did not object to the admission of evidence regarding the said conversation. Failure to object to hearsay evidence (in the supposition that the said conversation is hearsay), is a waiver to the right to cross-examine and said evidence becomes admissible. But the conversations are not hearsay at all. Accused Comdr. Romy's statement to Vidanes that he would not see Patenia if the latter had companions, or Comdr. Romy's introduction of Vidanes to his companions, are not hearsay because Vidanes knew of said facts of his own knowledge (sec. 30, Rule 130, Rev. Rules). While the defense could not cross-examine Comdr. Romy and the other Huks, still it did examine and cross-examine Vidanes. The same thing may be said with respect to the statements as to what the Huks had done or what third parties had promised, such as "they told me they scattered this poster"; "Villasanta told me that he gave the pickmattock to Emilio Quitalig"; "He said: 'We distributed posters * * *'. "He answered that Juaning promised to give him these carbines", all admitted without objection.

It is alleged that the evidence for the State abounds with contradictions and incongruities. The defense pointed out it was incredible and surprising, unexplained and strange (a) that the killing of Santiago Paso was announced in loud voices and thereafter to tell those who heard it to hold the matter a secret; (b) that during the first meeting of Vidanes and Comdr. Romy after liberation, they hardly conversed with each other, in spite of the fact that Vidanes had known said Comdr. Romy since the latter was a child; (c) that if Vidanes and Comdr. Romy hardly conversed on their first meeting, the latter would have told Vidanes that he (Romy) also used the alias "Sali"; (d) why San Marcos, a mere conductor should teach Comdr. Villasanta, a good mechanic, how to destroy a fuel tank of a truck; (e) why Vidanes had to give the letter to Castalone when it was addressed to Patenia; (f) why Comdr. Romy had told Vidanes, three days before the town fiesta, to go and see him in Mapuputing Paa, only to tell him to bring him (Romy) food; (g) why Vidanes had to leave the conference between the strikers and the Huks, whenever the conversation reached an interesting stage, on the pretext that he was hungry; (h) why Comdr. Romy and Comdr. Villasanta had to tell Vidanes of their leaving the posters and helmet on the scene of the crime and the burning of the garage and at the same time, to warn him to keep it a secret, etc. It should be noted that the alleged contradictory and incredible statements, are more apparent than real, and refer to collateral and minor matters and could, as the State prosecutors did, explain them satisfactorily.

The next question posed is the existence of conspiracy among the appellants and the Huks. Appellants contend that the meetings between the Huks and appellants do not establish conspiracy. Appellant Sta. Ana argues that during the raid, he and his co-appellants were not seen or found in or near the destroyed garage. Appellant Reyes claims that mere attendance in a conference where the plan for the commission of the crime was discussed did not make him a principal therein. Appellant Reyes further argued that Vidanes' testimony regarding his attendance in one meeting with the Huks was uncorroborated. Appellant Mallari averred that no evidence was adduced

showing he had taken part in the execution of any criminal act or that he had executed an act, without which the crime could not have been committed. Appellant San Marcos and ther appellants contend that they merely proposed the commission of the crime to the Huks and cannot, therefore, be convicted of conspiracy (citing Art. 8, Rev. Penal Code). In other words, appellants submit that the conspiracy was based merely on conjectures. If, one believes, as We do, the testimony of State witnesses Vidanes, Quitalig and Miranda, (supra), then it can safely be concluded that the evidence showing conspiracy is based on facts. Moreover, the participation of appellant Reyes was established by his admissions (Exh. G). Appellant Mallari was a privy to the conspiracy. Conspiracy implies concert of design and not participation in every detail of execution. It is sufficient that there is a general plan to accomplish the result sought, by such measures as may from time to time be found expedient. It is not material that Mallari or his co-appellants, for that matter, had taken part in every act or that he knew the exact part to be performed by the other conspirators, in the execution of the conspiracy. Article 8, Rev. Penal Cede, is not applicable herein, because the crimes subject of the conspiracy or proposal in question were consummated.

In (his connection, appellant Mallari claims that in the assumption that he was a party to the conspiracy, he desisted therefrom, long before they were executed, and that robbery and homicide was not a part of the original plan. It is to be noted, however, that he denied any knowledge participation in the offers. Consistent with his theory and defense, he was not able or did not prove such alleged desistance or that the original plan did not include the commission of robbery and homicide. We can not infer the truth of his desistance, by the fact that he was not seen in all the conference and in the actual raid.

The defense assails the admissibility of Exhibits A, J, G and Q. Exhibit A is a piece of paper, presented to prove the manner in which an original letter was folded. Exhibit J, is the dairy of Comdr. Flower which shows a tie-up between the Huks and the Raytranco. Exhibits G and Q are the extra judicial admissions of appellants Reyes and Castalone, respectively. Appellant Sta. Ana questions the admissibility of Exhs. G and Q, as evidence against him, contending that he had not in any way taken part in their preparation. It is a familiar rule, however, that a vicarious declaration of a conspirator, made after the termination of the conspiracy, may bind his co-defendants; that al- though a co-conspirator's extrajudicial confession is ordinarily not admissible against his co-defendants, same becomes admissible against them, if corroborated by other evidence of record (U.S. vs. Empeinado, 9 Phil., 613). The objection to Exh. J, is that the same is hearsay on the ground that Comdr. Flower was dead and could not be examined. Comdr. Flower was a co-conspirator and an accused. This kind of evidence is likewise admissible, as an admission by a co-conspirator and as a link in the chain of circumstantial evidence around the appellants (Wigmore, Secs. 2148-49; Sec. 12, Rule 123, now Sec. 27, Rule 130, Rev. Rules). Appellants object to the admission of Vidanes' testimony as to the contents of a letter, to prove conspiracy, because, according to them, proof of loss was not offered. It appears, however, that appellants did not object to the testimony of Vidanes to prove the contents of the letter, and moreover, evidence was presented showing that the letter was actually delivered by Vidanes to Castalone and as Castalone is one of the accused, the prosecution could not be legally allowed to compel him to produce the said letter.

Appellants advanced the theory that, if at all they may be liable for simple rebellion only, and not for robbery and homicide, because they never intended or agreed to commit the latter crimes; the only objective, according to their allegations now, having been only to burn the Riz-Man Transit buses. There was no evidence presented by them to this effect. Such a defense must be established by appellants, in the same manner that the mitigating circumstance of lack of intention to commit so grave an offense, is a matter for the defense to prove (Sec. 13[3] Rev. Penal Code). The appellants' defense is alibi, weak and unsupported, as it is. Moreover, the appellants were prosecuted for arson and robbery with homicide; they were arraigned and tried on the basis of these charges, and appellants had not assailed the correctness and propriety of the crimes charged. There is no evidence presented to show that appellants had risen publicly and taken arms against the government, for the purpose of removing

allegiance to said government or its law, Philippine territory or any part thereof (Art. 134, Rev. Penal Code). There is no taint of political complexion in the crimes committed. The fight was between appellants, disgruntled strikers, and the supposedly abusive management of the Riz-Man Transit. While in the commission of the crimes, the appellants were aided by a Huk band in the locality, it is a fact, however, that the Huks were merely recruited by appellants "to help execute their criminal design to settle a grudge against a private individual." The Huks' aid did not alter the intrinsic nature of said crimes and reduce them into simple rebellion. They have been aided by goons, or any band of malefactors, not as known, notorious and decided, as the Huks, and appellants' act could not have been branded a simple rebellion only.

It is true that the plan of the strikers was to destroy the Riz-Man transportation in order to prevent the latter from competing with them, and that nothing clear was said about robbery (looting) and homicide (killing of Antonio Lee). It should be well, however, to remember, that in a plan to destroy a garage, where trucks, valuables, money, of lice equipments were kept, and people were working and staying, robbery and looting were to be expected, and violence or killings might ensue, either to silence or prevent them from making any effort to resist or repel the raiders (appellants in this particular case). As adequately commented by the trial court, "and this is more to be expected when we take into consideration that the burning of the Riz-Man garage was entrusted for execution to Commander Romy and his Hukbalahop followers, who were wanted by the government not only for acts of vandalism and murder but some other crimes." So that it can be said, that the robbery and on the occasion thereof, the killing of Antonio Lee, was a necessary ingredient of the conspiracy, to destroy the Riz-Man garage in order to put them out of competition. Looting and robbery, is, clearly one form of committing destruction.

And Lastly, appellants had a powerful motive to destroy the Riz-Man buses and kill the Manager thereof Antonio Lee. As heretofore stated, the rivalry between the Riz-Man Transportation and the strikers had developed to court litigations which resulted in the invariable conviction of the appellants. No other persons would and/or could have any strong reason to sabotage and do violence upon the Riz-Man Transportation than the appellants and their Huk cahoots. And the appellants could not point to any other.

IN VIEW OF THE FOREGOING, the trial Court was correct in denying appellant Petania's petition for new trial, based upon the statements given by accused Commander Romy, when he was arrested, before the appealed decision could be promulgated. Commander Romy tried to exculpate appellants, by asserting that the raid was Huk inspired and a link undertaking. This testimony, if presented, would have only repeated the denials of appellants, which had been discredited by positive and direct assertions of the state witnesses, and would not alter in any manner, the result of the case.

The decision appealed from, is in conformity with the evidence of record and the law on the matter. In the case of arson, No. L-15052, the decision is AFFIRMED, with proportional costs. However, in the case of robbery with homicide, No. L-15053, for failure to obtain the requisite vote, the death penalty imposed by the trial court on the appellants, is reduced to life imprisonment, with proportional costs, affirming the decision in said case, in all other respects.

Pending decision of these cases, appellant Juanito San Marcos died. Upon joint petition of his lawyer and the Solicitor General, the above-entitled cases were dismissed as to said appellant in a Resolution dated April 22, 1964, which is hereby reiterated.

Bengzon, C. J., Bautista, Concepcion, Reyes, Regala and Makalintal, JJ., concur.

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