

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ROMEO PUNO Y MANALAC, DEFENDANT AND APPELLANT.***G.R. NO. L-31594. April 29, 1974*

Ponente: AQUINO, J.

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Romeo Puno appealed from the decision of the Court of First Instance of Manila, convicting him of robbery with homicide, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Agustin Oyong in the sum of P12,150 and to pay thirty pesos to Magdalena Enorasa and the costs (Criminal Case No. 91378).

The robbery in this case was perpetrated inside a passenger jeepney. Appellant Puno admits that he robbed Enorasa by means of intimidation, while his companion, Pablo Tenarife (Bayoc), who is at large, robbed another passenger, Agustin Oyong, and shot him afterwards. Although Puno did not hold up Oyong, the trial court convicted him of robbery with homicide on the theory that a conspiracy existed between him and Tenarife.

In this appeal Puno contends that he did not conspire with Tenarife to commit robbery with homicide. His alternative contention is that he should be held liable only for simple robbery.

The resolution of his contentions depends on what kind of criminal liability should be adjudged under the following facts unfolded in the prosecution's evidence which includes Puno's handwritten extrajudicial confession (Exh. D, D-1):

The story of this case begins in the afternoon of October 22, 1968 when Tenarife, a resident of the squatters' area near Pier 14, Manila North Harbor visited his friend, Puno, at the latter's residence in Quezon City. Both men were thirty years old and natives of Tarlac. They agreed to drink beer. They took a Marikina bus bound for the Divisoria Market in Manila. From there, they went to Zaragosa Street, Tondo, where they drank beer. Fortified with that frothy, spirituous beverage, the two repaired to the piers at the Manila North Harbor.

Near Pier 4, they boarded a passenger jeepney driven by Rogelio Castelo. At the back of the jeepney there were four passengers, namely, the aforementioned Oyong (a twenty-nine year old certified public accountant), Enorasa, Marcos Espina and Eugenio Gallo. Puno took a seat on the left side, near Enorasa, while Tenarife seated himself on the right side between Oyong and Gallo. Puno poked a dagger at Enorasa's side and quietly took from him his wallet containing thirty pesos. The dagger had an eight-inch blade.

On the other side, Tenarife pulled out his gun and ordered the driver: "Patayin ang ilaw at holdup ito". Tenarife threatened to kill the driver if the light in the jeep was not shut off. He pointed his gun at Oyong and got from him his wallet and his Olma watch valued at P150. Then, Tenarife mercilessly shot Oyong on the neck. The victim fell prostrate on the floor of the jeepney.

Tenarife and Puno scampered out of the slow-moving jeepney. Near Pier 12, they boarded another jeepney, held up also the passengers therein and then fled. They walked along Moriones Street. By a curious happenstance, Castelo's jeepney passed. It ran over Puno, injuring his left foot. Castelo was rushing the mortally wounded

Oyong to the Mary Johnston Hospital. Tenarife fired at the jeepney. To avoid the gunfire, Enorasa instructed Castelo to drive the jeepney faster on its way to the hospital.

Oyong died shortly after his arrival at the hospital. The city medico-legal officer, who conducted an autopsy, found that Oyong's death was attributable to the through and through gunshot wound on the neck which penetrated his larynx, carotid artery and jugular vein. He found burnt gunpowder around the wound of entry (Exh A).

Puno was brought to the National Orthopedic Hospital. Enorasa, in the presence of policemen, identified him as the malefactor who poked a knife at his ribs and robbed him. Tenarife was never arrested.

On October 29, 1968, or a week after the robbery, he executed an extrajudicial confession in the hospital before three Manila policemen.

Appellant Puno claims that he took Enorasa's wallet in obedience to the order of Tenarife who was armed with a gun and, therefore, he (appellant) acted under the compulsion of an irresistible force or under the impulse of an uncontrollable fear (pars. 5 and 6, Art. 12, Revised Penal Code).

That pretense cannot be accorded serious consideration. There is no evidence that Puno acted under duress in taking Enorasa's wallet. No violence was used against Puno by Tenarife. There is not a scintilla of proof that he was intimidated by Tenarife. To all appearances, he was Tenarife's confederate in the nefarious trade of extortion. Their concerted action implied that they had planned the robbery during the conference at Puno's residence. They boarded the jeepney together. While Puno poked at the ribs of Enorasa with his dagger and got his money, Tenarife pointed his gun at Oyong and got his watch and wallet and then shot him. They were together when they left the jeepney. Their conduct reveals coordination of efforts and community of design which are the infallible earmarks of a conspiracy.

Puno's other contention is that, assuming that there is conspiracy, the lower court erred in not finding him guilty only of simple robbery. That contention would not bolster at all his side of the case.

Once conspiracy is conceded, appellant Puno would be liable for robbery with homicide which was indisputably committed in this case. The circumstance that Puno and Tenarife were both armed with deadly weapons signifies that they were determined to kill their victims should there be any resistance. It is true that Puno and Tenarife held up separate victims. But, as conspirators, they had agreed to commit robbery inside a jeepney (Art. 8, Revised Penal Code). They implemented that agreement by actually boarding a jeepney and committing extortion. It is undeniable that the homicide was committed by reason or on the occasion of the robbery. Puno should answer for all the consequences of the conspiracy, including the homicide which was interlaced with the robbery committed by his co-conspirator.

The rule is that where the conspiracy to commit robbery was conclusively shown by the concurrent and coordinate acts of the accused, and homicide was committed as a consequence or on the occasion of the robbery, all of the accused are guilty of robo con homicidio whether or not they actually participated in the killing (*People vs. Lingad*, 98 Phil. 5).

Generally, when robo con homicidio has been proven, all those who had taken part in the robbery are guilty of the complex crime unless it appears that they endeavored to prevent the homicide (*U.S. vs. Macalalad*, 9 Phil. 1; Decisions of Supreme Court of Spain dated February 23 and April 30, 1872 and June 19, 1890; 3 Viada, *Codigo Penal*, 347, 354, 358). *

It may be observed that, although Puno did not actually take part in the killing of Oyong by Tenarife, his presence

in the jeepney was a crucial factor that emboldened his confederate in perpetrating that homicidal act with impunity.

The rampancy, since liberation, of holdups in jeepney, buses and taxicabs is a notorious fact of which even judges leading a reclusive life are cognizant. Article 294 of the Revised Penal Code, which was designed to discourage and penalize robbery with violence against or intimidation of persons, covers that form of extortion.

There being no mitigating nor aggravating circumstances, the lesser penalty of reclusion perpetua for robbery with homicide was properly imposed on appellant Puno (Arts. 63[2] and 294[1], Revised Penal Code).

WHEREFORE, the trial court's judgment is affirmed with costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

* Cuestion II. Cometido un robo con violencia e intimidacion en las personas por dos sujetos, uno de los cuales dispara un trabuco, dejando muerto en el acto a un tercero que acude en auxilio de los robados, el que no disparo sera solo responsable del robo, o al igual que su consorte, incurrira en la pena del robo con homicidio, previsto en el numero 10 del art. 516 que comentamos?

El Tribunal Supremo ha declarado que siendo ambos procesados autores del roho, lo son igualmente del homicidio que ocurrio en el mismo acto, al tiempo de ser perseguidos por el interfecto; porque este ultimo delito esta de tal manera enlazado con el de robo, que no haber mediado este, ni los robados hubieran pedido auxilio, ni al prestarselo el tercero hubiese sido muerto coma lo fue; y qua por consiguiente, habiendo tomado parte directa en la ejecucion del robo amhos procesados, so autores uno y otro, segun el art. 13 delCodigo penal, y por lo mismo responsables los dos de todas las consecuencias de su accion. (Sentencia de 30 de Abril de 1872; 3 Viada, Codigo Penal 347).

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