

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPEELEE, VS. AUGUSTO ROGEL, ET AL., DEFENDANTS. ELISEO RAMOS, DEFENDANT-APPELLANT.

G.R. No. L-15318. March 31, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

Appellant Eliseo Ramos, Augusto Rogel, Sixto Rogel, Feliciano Bugagao, Glicerio Cabingan, Vicente Padua, Felicito Martillos, Gerardo Desacula and Prudencio Doe, were charged with the crime of robbery with homicide. Before the trial, the case as against Gerardo Desacula and Felicito Martillos was dismissed for insufficiency of evidence, while Vicente Padua was discharged and utilized as State witness. Sixto Rogel and Prudencio Doe are still at large. Only appellant Eliseo Ramos, Augusto Rogel, Feliciano Bugagao and Glicerio Cabingan stood trial, the last one pleading guilty during the course thereof, and all four were found guilty as charged, and sentenced each to reclusio perpetua, to indemnify, jointly and severally, Teofila Asuero, Lo Han Suy and the heirs of the deceased Ty Twi, in the respective sums of P5,000.00, P300.00, and P3,000.00 and to pay proportionate costs. Only Eliseo Ramos appealed.

It appears that in the early afternoon of August 10, 1955, after arrangements previously had, appellant Eliseo Ramos and his co-accused Feliciano Bugagao, Glicerio Cabigan, Prudencio Doe, Sixto Rogel, Augusto Rogel and Vicente Padua gathered and met at the house of Francisca Alday, the common-law wife of Feliciano Bugagao, in the barrio of Calabangan, municipality of Sipocot, Camarines Sur, and there discussed the robbing of the Chinese owned Tigman Sawmill, located at the barrio of Tigman, Sipocot. They agreed that they would rob the Tigman Sawmill that night and kidnap the Chinaman for a P50,000.00 ransom, then divide the booty among themselves. Bugagao, who at the time had a pending felony criminal case in court, told the gathering that his share in the ransom would be spent in his case, and that inasmuch as he was known in the sawmill, he could not go with the party; instead, he appointed his tenant, now appellant Eliseo Ramos, as the leader, who accepted the commission. Bugagao further informed the gathering that there was nothing to fear about, because Gerardo Desacula, the sawmill guard, had already an understanding with him. Appellant Ramos thus suggested that they should tie Desacula as soon as they got to the sawmill. Vicente Padua (turned State witness), then left upon an excuse that he would ask permission from his wife. On second thought, however, and because he did not want to be involved in a robbery, instead of joining the party, he decided, later that afternoon, to see Felicito Martillos and invited him to cut lumber in the mountain. On their way thither, however, they ran into appellant Ramos and his gang who were heading for the sawmill. Thereupon, Ramos ordered Glicerio Cabingan to point the latter's gun at Martillos and compelled him to join the band. Padua could not do anything, so all of them proceeded to the sawmill at a slow pace so as to get there by nightfall. In fact, they arrived at about six o'clock, at dusk, but the sawmill was still in operation and they had to bide at a gasoline station until the work stopped at about seven o'clock, when they proceeded to the sawmill premises. Upon reaching the sawmill, Sixto Rogel and Prudencio ordered the watchman Gerardo Desacula and three others to lie down, after which appellant Ramos tied their hands; Glicerio Cabingan,

Sixto Rogel and Prudencio went upstairs, broke a wardrobe open where they found and took P133.00 in cash and a .38 cal. pistol. They then ransacked the place and took everything of value they could lay their hands on and placed them in a sack and a box container, while Ramos was on guard at the doors and supervised the plunder. Augusto Rogel, in turn, entered the room of Chinaman Ty, Twi, took the latter out and tied his hands. The malefactors left the sawmill taking the Chinaman with them. On the way, Ty Twi was placed in front, followed by Padua and Martillos who were the carriers of the loot, and appellant Ramos stayed behind the group. When they reached the national road, Padua and Martillos were relieved of their burden by Cabingan and appellant Ramos. The latter delivered to Padua a bunch of clothes, supposedly his share, and both Padua and Martillos detached from the group and headed for their respective homes. The band then proceeded to the house of Francisca Alday, and later the Chinaman was taken to an isolated place about half a kilometer from Alda's house. The following day, August 11th, Cabingan dug a grave beyond the creek upon orders of Bugagao and his companions. The Chinaman was blindfolded and made to squat at the edge of the pit. Augusto Rogel then struck the Chinaman on the neck with the blunt edge of a bolo, who fell into the grave, and his body was right away covered with earth. Two days later, or on August 13th, Augusto Rogel dropped at the house of Padua and told the latter not to wait anymore for his share in the ransom as Ty Twi had to be slain because he was always shouting.

Going back to the sawmill, a rough inventory of the stolen goods revealed that Teoila Asuero, owner of the mill canteen, lost P8,000.00 in cash and P7,000.00 in kind; and that Lo Han Suy, the assistant general manager, lost P600.00 in cash and his .38 cal. pistol worth between P200 and P300. It was also revealed that Ty Twi was the "cantinero" or canteen manager of Teofila Asuero.

A report of the robbery-kidnapping sent the Camarines Sur Constabulary to Tigman. Three of the victims, Avelino Roda, Crispin Loria and Federico Odiamar told the PC how they were hogtied during the robbery. Finding Gerardo Desacula, one of the arrested suspects, nervous and trembling during the investigation, and having learned that previously Desacula and Feliciano Bugagao and others had a meeting in the house of one Mrs. Hernando, P.C. Sergeant Bulalacao, concentrated his investigation on Desacula. Desacula admitted that before the robbery, Bugagao told him of their plan to rob the sawmill and kidnap the chinaman for ransom of P50,000.00. Bugagao confessed but pointed to Eliseo Ramos as the master-mind. Eliseo Ramos who was arrested in his house at Sipocot, also confessed and named Cabingan, Padua, Martillos and Rogel as his companions and pointed to Cabingan as the one keeping the firearms used in the robbery. Sgt. Bulalacao proceeded to Cabingan's house where Cabingan surrendered a shotgun (Exh. A) to the officer, a .45 cal. pistol (Exh. B), with several rounds of ammunition in it (Exhs. A-1 to A-3), and part of the loot consisting of several packages of cigarettes (Exhs. K. K-1 to K-8). On August 14, 1955, Padua and Martillos were arrested. Both confessed their participations and Padua surrendered the clothing given him as his share of the loot (Exhs. B-1 to B-3). Augusto Rogel when arrested also confessed his participation and surrendered the pistol he seized from the sawmill.

The body of Ty Twi was exhumed and the autopsy made by Dr. Macalino disclosed that the deceased died of suffocation and asphyxia for having been buried while still alive. It was also found that he had a broken jaw as a result of a bolo blow, and that he could have survived had he not been buried alive.

Appellant Ramos declared that on August 10, 1955, he was in the land of Isaac Beltran in Calanog, Lupi, with Juan Joven, clearing the banana plantation of the former the whole day; and because it was raining very hard beginning the afternoon of that day which lasted through the evening, he slept in the house of Isaac with Juan Joven; that he did not know anything about the robbery in the Tigman Sawmill and the kidnapping of the Chinaman, and if he signed the affidavit Exhibit J, it was because he was maltreated by the P.C. soldiers who investigated him, by boxing and hitting him with the butts of their guns and by dipping his head in a drum full of water; that Exhibit J which was prepared by the P.C. was signed by him by force and without knowing its

contents; that he was not able to submit to a medical treatment of his injuries because he was well guarded and held incommunicado even from his relatives, and that the imputations of Padua and Cabingan against him were not true. The trial court gave absolutely no credence to the defense of alibi, weak and feeble as it was, in the face of the positive, direct and convincing testimony of Padua and Cabingan. There was no reason at all shown why the Constabulary officers who took Exhibit would have employed third degree methods upon appellant and his co-accused who did not appeal anymore. They were not their friends or foes. Moreover, he does not now seriously insist in his defense of alibi. In fact, in his lone assignment of error counsel alleges that the trial court erred:—

"In declaring that the appellant Eliseo Ramos was also responsible for the killing of the chinaman Ty Twi although he was not present when the chinaman was killed, and that said killing was not the subject-matter of the conspiracy and neither did he know anything about the killing."

In other words, appellant claims that he should be convicted of simple robbery only, considering that the subject matter of the conspiracy was merely the kidnapping of the Chinaman and not his killing; that the kidnapping should be disregarded in this appeal as it was not alleged, the information being for robbery with homicide; and besides, he did not take part in said killing nor was he present thereat.

It is undisputed that on August 10th Ramos was among that group which met in the house of Francisca Alday where they discussed and agreed to rob the Tigman Sawmill owned by a Chinaman, and kidnap the Chinaman for a P50,000.00 ransom to be divided among themselves; that Ramos accepted his designation as the leader of the "gang"; that Ramos suggested that Desacula, the sawmill guard, should be hogtied as soon as they got to the mill; that Ramos, on their way, ordered Cabingan to point the latter's gun at Martillos and compelled him to join the band; that once in the sawmill Sixto Rogel and Prudencio ordered Desacula and three others to lie down, after which Ramos tied their hands; that during the commission of the robbery in the premises by his companions and when Chinaman Ty Twi's hands were tied, Ramos stood guard at the doors and supervised the plunder; and that in the act of kidnapping Ty Twi, and during the march, Ramos stayed behind the group until they reached the national road where Ramos delivered to Padua a bunch of clothes as the latter's share. It appears also that Padua, Martillos and Ramos detached themselves from the group, as they were not present at or participated actually in the killing of Ty Twi the following day, August 11th, in a place one-half kilometer away from Francisca Alday's house. Contrary to appellant's contention, kidnapping is alleged in the information.

In connection with his assignment of error, appellant seeks shelter under the ruling in the case of *People vs. Basisten*, 47 Phil., 493 (1925), wherein we held that where homicide has not been the subject matter of the conspiracy to commit robbery, the conspirator committing homicide by reason or on the occasion thereof, is alone guilty of the complex crime of robbery with homicide, and the rest who did not have any intervention in the killing are guilty of simply robbery only.

We do not share appellant's view, in this respect; for as early as 1926, one year after we enunciated the ruling in the *Basisten* case, supra, We decided to revert to the 1, in the following language:

"x x x The Supreme Court of Spain, interpreting the provisions of the Penal Code touching the complex crime of ROBO CON HOMICIDIO, has frequently decided that, where the complex crime has been committed, all those who took part as principals in the commission of the robbery are guilty as principals in the commission of the crime of ROBO CON HOMICIDIO, unless it appears that they endeavored to prevent the unlawful killing. (Decisions of the supreme court of Spain, April 30 and February 23, 1872, and June 19, 1890. See also Viada, Vol. 3, pp. 347, 354, and 366.)" (Italics supplied).

Thus, in *People vs. Bautista, et al.*, 49 Phil., 389, (1926), We held that—

"x x x Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who

took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide (U. S. vs. Macalalad, 9 Phil., 1)". (*Italics supplied*). We have consistently followed and applied this doctrine thenceforth in *People vs. Morados, et al.*, (9th Supp. Off. Gaz. 40 No. 13, Sept. 27, 1941, p. 75) ; in *People vs. De la Rosa*, 90 Phil., 365, where We even went further by saying that proof of conspiracy is not essential, as it was sufficient that "by reason or on occasion of the robbery the crime of homicide shall have been committed;" and in *People vs. Flores de Garcia et al.*, 111 Phil., 393, 58 Off. Gaz., [41] 6664. The subsequent killing of the deceased without appellant's knowledge or presence was merely incidental to the execution of the conspiracy to rob and to kidnap for ransom, which had to be resorted to as a convenient if not necessary expedient (considering that the deceased was always shouting during his detention) in order to hide the band's deed from prying eyes, and/or to silence a potential witness who might reveal the identity of the scoundrels should they eventually be brought to justice.

"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 Hidalgo's Penal Code, pp. 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 or on 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 to the commission of the crime, that has to be taken into consideration (Decision of January 12, 1889—see Cuello Calon's Codigo Penal, pp. 501-502." (*People vs. Agustin Mangulabnan, et al.*, 52 O.G. No. 15, November 15, 1956)

Furthermore, appellant Ramos did not only conspire with his co-accused, but he also led and engineered the robbery and the kidnapping. As a conspirator, he is liable for all the consequences of the acts of his co-conspirators. The fact that appellant participated in snatching the victim (Ty Twi) along, makes him liable as a principal thereto; and it is immaterial whether or not the victim was killed by his co-conspirators (*People vs. Soares*, 82 Phil., 484). It is not even necessary that he takes part in every act; neither is it imperative that he knew the exact role of the others in the conspiracy. It is enough that they agreed on the plan to accomplish a purpose; by means and methods, which from time to time, might be found expedient. Appellant should have anticipated or known that when the Chinaman was hogtied and kidnapped for ransom, by appellant and by his band, harm or death awaited him, if the ransom was not given. Only objection to or resistance from taking part in the detention and killing of the victim could have saved appellant from liability therefor (*People vs. Guerrero, et al.*, G. R. No. L-9559, May 14, 1958).

It is likewise immaterial that the killing was made at another place the following day. To determine the existence of the crime of robbery with homicide, the accessory character of the circumstances leading to the homicide is not of much importance, provided that the homicide be produced by reason or on the occasion of the robbery (*People vs. Mangulabnan, et al.* (99 Phil., 992; 52 Off. Gaz., [15] 6532, citing Decision of SC of Spain, Jan. 12, 1869; Cuello Calon's Codigo Penal pp. 501-502). In the instant case, Ty Twi was killed by reason of the robbery, or on the Occasion of the robbery. As he was always shouting and by so doing, the malefactors could no longer conceal the robbery, they killed him (U. S. vs. Palmadres, 7 Phil., 120). As the intention to kill or the killing comprehends the robbery, it is immaterial that the homicide may precede or follow the robbery in point of time (*People vs. Manuel, et al.*, 44 Phil., 333).

The record shows that the commission of the offense charged, was attended by the following aggravating circumstances: (1) treachery, the victim having been killed while bound and blind-folded; (2) cruelty, the victim having been buried alive; (3) nighttime, which was purposely sought; (4) evident premeditation of the killing; and

(5) aid of armed men (People vs. Suarez, et al., 82 Phil. 484), and there being no mitigating circumstance to appreciate, capital punishment is in order. In view, however, of the absence of the required statutory vote, the penalty of reclusion perpetua imposed by the trial court appealed from is affirmed, with costs.

The civil indemnities adjudged, should be increased as follows: to Teofila Asuero, P15,000.00; to Lo Han Suy, P600.00; and to the heirs of Ty Twi, P6,000.00.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, and De Leon, JJ., concur.

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