

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AVELINO RONCAL, ALIAS BELEN, AND FELICIANO GABRIELES,
ALIAS FELING, DEFENDANTS-APPELLANTS.**

G.R. Nos. L-26857-58. October 21, 1977

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PER CURIAM:

The defendants-appellants Avelino Roncal and Feliciano Gabrieles were sentenced to death on April 27, 1966 by the Court of First Instance of Samar.

Together with three others, namely, Faustino Rosario Rolly, Salvador Cafranca and Rodolfo Enote who have remained at large, the appellants were charged, in separate informations, with robbery with homicide (Crim. Case 4173) and robbery with physical injuries (Crim. Case 4182). Upon arraignment, the two pleaded not guilty to both charges which were later tried jointly. After the prosecution had closed its evidence, however, Roncal was allowed to change his original plea to that of guilty.

The victims in the case at bar were Pedro Paano, who died after he was shot by Roncal, and his son, Felipe Paano, who also sustained a gunshot wound but survived. The offended parties were shot in the ground floor of the house of Pedro Paano which was then used as a combination bodega and store.

Based on the findings of the court below, it is established that at about 1:30 o'clock in the morning of October 8, 1962, the deceased Pedro Paano and several others, namely, Amado Maestre, Angel Tegio, Gerardo Paano, Elena Detalo and Bonifacio Lazzarra, were on the ground floor of Pedro Paano's house. Maestre's abaca, which he had sold to Pedro Paano, was then being weighed by Tegio. After the abaca was weighed and Maestre paid its price, Pedro Paano invited Maestre to a motorboat anchored nearby. As the two were about to leave, the appellant Roncal and a companion, with drawn pistols, entered the ground floor of Pedro Paano's house through a door facing the street. Roncal pointed a .45 caliber pistol at Pedro Paano and demanded money. Meanwhile, Roncal's companion levelled his gun at Maestre. In the course of the hold-up, Pedro Paano addressed Roncal with these words: "Belen, do not kill me, if you only ask for money I have." But Roncal nevertheless shot Pedro who slumped to the floor.

Apparently scared, Tegio ran to a window of the bodega with the intention of jumping out. On opening the window, he saw four men just a few meters away from the door, one of whom he identified later at the hearing as the other appellant Feliciano Gabrieles. Tegio had never met Gabrieles before, but he attributed his recognition of the appellant to the moonlight which then illuminated the area. Tegio further recounted that Gabrieles chased him for some distance after he jumped out of the window.

Meanwhile, Roncal's companion ordered Maestre to go up the house through a staircase inside. They were followed by Roncal and Elena Detalo. The sala upstairs was lighted by an ordinary kerosene lamp. Maestre, after some time, heard Roncal's voice asking for money. When Roncal's companion went to the bathroom and the kitchen, apparently to explore, Maestre hid under an army cot in the sala and remained there until the robbers left.

Roncal who had previously followed Elena Detalo to her room tried to forcibly open the door of another room which was later opened by Maria Paano who was inside. Roncal immediately grabbed her neck, pulled off her necklace, levelled his gun at her, and demanded money. Roncal succeeded in getting P19,426 in cash.

Meanwhile, Felipe Paano, who was in a motor launch anchored nearby, and who had heard the gun report, arrived in a rush, and while yet on the ground floor demanded to know what was happening, and what had happened to his father, Pedro, who failed to respond to his inquiries. Felipe picked up a crowbar and ran upstairs, calling for his mother. In the living room, he was met by Roncal's companion who ordered him to put down his crowbar and warned him not to move one step farther or he would be shot. Felipe moved, and was shot. Hit at the base of his neck, he lost consciousness.

Roncal and his companion, with their loot in a handbag, ran downstairs and out of the house through the same door they came in. Maria Paano opened a window facing the street and shouted for help; she saw four persons near the door allegedly armed with pistols. She saw them run away with Roncal. One of them, a big man, was at the tail end of the escaping group. In court, Maria Paano pointed to the appellant Feliciano Gabrieles as the big man she saw.

Pedro Paano and Felipe Paano were brought to the clinic of Dr. Manuel Blanco in Dolores, Samar. Dr. Blanco did not conduct an autopsy on Pedro Paano whom he at once noted was already dead. Dr. Blanco treated Felipe and advised that he be brought to the Leyte Provincial Hospital which had suitable facilities. Felipe was confined there from October 9 to 23, 1962. As a result of the gunshot wound he sustained, half of Felipe's body became paralyzed.

Roncal was apprehended on October 10, 1962 by Philippine Constabulary' soldiers in Catomsan, Arteche, Samar. At the time of his arrest, a .45 caliber pistol was found on his person. Ballistic examination disclosed that the slug found in the body of Pedro Paano came from that gun. The sum of P940 was also found on Roncal's person at the time of his arrest. He named certain relatives with whom he had left P284 and who willing turned over the said sum to the Philippine Constabulary, disclaiming awareness that it was part of a loot.

Gabrieles was arrested in Tacloban City where he lived with his common-law wife.

At the hearing, Gabrieles testified in his own behalf, and presented two witnesses, Bienvenido Indoy and Jose Tobogoca, to corroborate his defense of alibi.

According to Gabrieles, on October 5, 1962, he, his parents, his common-law wife, his children and some friends went to Guiuan, Samar, by means of a pumpboat operated by Jose Tobogoca. October 7, 1962 was feastday of Guiuan's patron saint, and the group stayed there until October 8. Gabrieles and his family stayed in the house of Alejandro Abrera while in Guiuan. The daily routine of Gabrieles, his relatives and friends, while in Guiuan, was going to church, hearing mass and going to the cockpit.

In the afternoon of October 8, 1962, the group went by the same pumpboat to Solangan, a sitio of Guiuan, to fulfill a religious vow relative to the sickly condition of the appellant Gabrieles' father, Felix Gabrieles. The group passed the night in Solangan, returned to Guiuan the next morning, and then proceeded back to Tacloban City.

In his testimony, Gabrieles never mentioned what specifically he and his party did at Solangan. His witness, Jose Tobogoca, testified that on October 8, 1962, the group heard mass. Tobogoca, however, could not say that he had seen a priest or that a priest said mass in Solangan. The following day, October 9, Tobogoca went to church; he did not see a priest. When asked whether there was a convent beside the church, Tobogoca, who was on his second trip to Solangan, could not make a categorical reply, "because after going to church I went out without paying attention to the surrounding around." But when asked whether he saw any "particular tree" near the

church, Tobogoca replied he saw a tree, "the same as Camayse (but) I already forgot its name." Tobogoca, who had been a waterfront friend of Gabrieles for about 15 years and knew the members of the appellant's family, said that Ines Lacanaria, the appellant's mother, was not with the group that took his pumpboat to Guiuan, thereby directly contradicting Gabrieles' testimony, as well as that of Bienvenido Indoy, the appellant's other witness, who was allegedly with the appellant's party through-out their alleged religious pilgrimage.

Bienvenido Indoy testified that in the morning of October 9, 1962, the appellant and his family, as well as he, heard mass in Solangan. On cross-examination, Indoy said that the party heard mass upon their arrival in Solangan and also heard mass there the next morning. When asked whether there was a priest in Solangan, Indoy said yes, but when asked whether a priest said mass in Solangan on the days in question, his reply was that he was not sure.

Indoy also mentioned that the father of the appellant Gabrieles never left the pumpboat at Guiuan and Solangan because he could not walk. This matter was never mentioned by either Gabrieles or Tobogoca. Considering that the main reason for the alleged religious pilgrimage was the health and well-being of Gabrieles' father, it is quite surprising and no explanation was preferred why Gabrieles and the pumpboat owner Tobogoca never mentioned that the appellant's father stayed all the time in Tobogoca's pumpboat, that is, he never attended mass nor went to church either at Guiuan or Solangan.

1. It is a well-known rule in criminal jurisprudence that alibi is a weak defense, especially when it is advanced against the positive identification of witnesses who have neither reason nor motivation to fabricate evidence. In the case at bar, the testimonies adduced to prove Gabrieles' alibi show no consistency on vital matters; a reading of the record as well convinces this Court that the said testimonies were concocted to enable the appellant Gabrieles to escape criminal liability. Thus, the conclusion made by the court below that the fact that Gabrieles was for years president of a defunct waterfront union of which Indoy was secretary-treasurer and Tobogoca was for years a member, has a measure of materiality and relevance in the appraisal of the credibility of the defense of alibi foisted by the appellant Gabrieles, is not without reasonable basis.

With regard to the other appellant, Avelino Roncal, his voluntary plea of guilty, after the prosecution had finished presenting its evidence which clearly established his direct participation in the crimes charged, constitutes a definite admission that he can offer no plausible or credible defense to the mentioned indictments. Indeed, in the proceedings before this Court, all that his counsel contends is that the prosecution failed to prove that the bullet which felled Pedro Paano caused his death because no autopsy was made on the victim's body.

2. The appellants contend that the court below erred in concluding that the accused conspired to rob the house of Pedro Paano.

It is settled that conspiracy need not be proved by direct evidence and may be deduced from the mode and manner in which the offense was perpetuated.[1]

In our opinion, no error was committed by the trial court. The presence, during the wee hours of the morning, of six persons at the scene of the crime, two of whom with drawn pistols entered the bodega of the victims, with the rest standing guard outside, definitely points to a joint purpose and coordination of design and effort to rob the victims. This conclusion is further enhanced by statements contained in the extrajudicial confession of Roncal, a native of Can-avid, Samar, that the plan to rob certain places in Samar by the co-conspirators was hatched in the house of the appellant Gabrieles in Tacloban City, a place only several kilometers away from Can-avid, Samar.[2] Gabrieles claimed below that he did not know his co-accused. If this is true, it seems next to a miracle that Roncal would be able to connect Gabrieles and his residence in Tacloban City to the crimes charged.

3. The appellants also aver that the trial court erred in concluding that the crimes were committed by a band. We agree. The trial court's conclusion was based on a single statement of Maria Paano that when she looked out of the window to shout for help she espied four persons standing at the door of her house "armed with pistols." Such a statement, even if coming from the lips of a credible witness, cannot be taken on its face value without the corroboration of other circumstances which would definitely show that she could not have been misled by what she saw. It must be further considered that Maria Paano was living in a rural area, and her knowledge of, or familiarity with, pistols cannot be readily accepted without corroborative evidence.

4. The appellants further contend that the court below erred in finding that the aggravating circumstances of dwelling and evident premeditation are present in the case at bar. The contention has merit as to the latter circumstance, but none as to the other.

The rationale for appreciating this aggravating circumstance is the offender's deliberate invasion of the tranquility of one's domicile which, therefore, shows greater perversity.[3] The real objective of the culprits -- to rob -- was consummated on the second floor of the house, which floor was used as a dwelling. Hence, the trial court correctly concluded that the aggravating circumstance of dwelling accompanied the commission of the crime.

As to evident premeditation, the Solicitor General agrees, quite correctly, that the same was not sufficiently shown. From neither the extrajudicial confession of Roncal nor the evidence adduced below can it be inferred with absolute certainty that there was previous concert among the culprits to deliberately cause the death of or to inflict injuries upon the victims, or that they especially planned to rob the Paano household.

5. The trial court, however, should have appreciated the aggravating circumstance of nocturnity as charged in the information below. The evidence adduced clearly shows that nighttime was intentionally and specially selected by the culprits in order to better insure the commission of the crime and make good their escape.[4]

6. The plea of guilty subsequently entered by Roncal cannot be considered mitigating as it was made after the prosecution had presented its evidence.[5]

7. Although the appellants were charged below in two separate informations, the crimes committed in the case at bar should be classified, for purposes of imposing the appropriate penalty, as the special complex crime of robbery with homicide defined and penalized under article 294, par. 1 of the Revised Penal Code.[6] As held in *People vs. Saquing*,[7] the term "homicide" in par. 1 of article 294 of the Revised Penal Code is to be understood in a generic sense.

ACCORDINGLY, the judgment rendered below imposing the death penalty on the appellants Avelino Roncal and Feliciano Gabrieles is hereby affirmed.

With regard to civil indemnity, the sum of P6,000 awarded for the death of Pedro Paano is hereby increased to P12,000. Aside from the moral damages of P10,000 and exemplary damages of P5,000 awarded to the heirs of Pedro Paano by the court below, moral and exemplary damages of equal amounts are hereby also awarded to the other offended party Felipe Paano. The burial expenses incurred by the family of Pedro Paano in the sum of P800 are hereby awarded. In all other respects, namely, (a) the return of the unrecovered sum of P18,202 out of a total sum of P19,426 stolen from the offended victims; (b) the award of P3,000 for medical expenses; (c) the return by the clerk of court of the court a quo to Maria Paano of the sum of P1,224 recovered from the appellant Avelino Roncal; and (d) the forfeiture to the Government of the .45 caliber pistol confiscated from the appellant Avelino Roncal, the judgment a quo is affirmed. Costs against the appellants.

Castro, C.J., Teehankee, Barredo, Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., Martin, Santos, Fernandez, and Guerrero, JJ., concur.

Fernando, J., took no part.

[1] People vs. Pudpud, 39 SCRA 618; People vs. Alviar, 59 SCRA 136; People vs. Cariño, 55 SCRA 515.

[2] An extrajudicial confession serves as a corroborative evidence when it is clear from other facts and circumstances that other persons had participated in the perpetration of the crime charged and proved. It is admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime. (People vs. Domondon, 43 SCRA 486; People vs. Aquino, 57 SCRA 43).

[3] See People vs. Magnaye, 89 Phil. 223.

[4] See People vs. Luna, 58 SCRA 198.

[5] See People vs. Co Chang, 60 Phil. 273; People vs. Quesada, 107 Phil. 1068; People vs. Bucu, 21 SCRA 5.

[6] See People vs. Cornelio, 39 SCRA 435; People vs. Genoquin, 56 SCRA 181.

[7] 30 SCRA 834.

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