

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
APOLONIO ADRIANO Y SANGUESA, MARIO SAN DIEGO Y
RONQUILLO, LEONARDO BERNARDO Y GONZALES (AT LARGE),
MARIANO DOMINGO Y LUMAG...**

G.R. Nos. L-25975-77. January 22, 1980

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PER CURIAM:

For automatic review by this Court is the judgment of conviction rendered by the Court of First Instance of Manila in Criminal Cases Nos. 72284, 72333, and 72500 which imposed the penalty of death on Apolonio Adriano, Leonardo Bernardo, Mariano Domingo, Mario San Diego, for the crime of robbery with homicide, and lesser penalties on Anastacio Adriano, for robbery only, and on Pedro Bernardo and Gervacio Santos, as accessories. Gervacio Santos however, died on October 17, 1971, and the case was dismissed as against him by Resolution dated August 30, 1973 (p. 522, Rollo).

The recital of the facts attendant to the commission of the crime charged, as set forth in the People's brief being accurate and exhaustive, and the principal accused having admitted participation in the robbery aspect of the charge, the same may, just as well, for convenience sake, be quoted as follows:

"Five days or so before the RCA robbery of August 25, 1963, the four accused, namely: Apolonio Adriano, Mario San Diego, Mariano Domingo and Leonardo Bernardo met at the house of Mario San Diego at 883 Carola St., Sampaloc, Manila, to lay out their plans to rob the RCA (short for Rice and Corn Administration). (pp. 40-44, tsn., Apr. 21, 1965, Exhs. ZZZZ, OOOO, Folder; pp. 4, 5, 18, tsn., May 6, 1965, Exh. QQQQ, pp. 22, 23, tsn., May 24, 1965, Exhs KKK, RRR, AAAA, BBBB, NNNN). This meeting was followed with subsequent meetings--for the stake indeed was high--almost a half million pesos, lying within the vaults of the RCA, representing three days undeposited collections. (Exhs. QQQQ, ques. & ans. no. 6; CCCC, Q. & A. 31-34; KKK, Q. & A. 65-68; ZZZ, Q. & A. 20-26, 31-33).

"The accused knew the layout of the building for they were employees, past or present, of the RCA. Leonardo Bernardo was the former driver of the Chief of Security; Mario San Diego and Apolonio Adriano, former security guards, and Mariano Domingo, a security guard at the time of the robbery assigned to the RCA office at Polo, Bulacan (Id.).

"As planned, Apolonio Adriano would get two men from Nueva Ecija to capture and keep the guards in a room and, he would enter the main gate with a disposition form to make it appear that he was instructed to inspect the guards; Mariano Domingo would secure a jeep to be driven by Rolando Cruz of Bo. Tikay, Malolos, Bulacan, and he would be the lookout inside the RCA compound; Leonardo Bernardo would also borrow and drive the jeep of his brother, Pedro Bernardo; and Mario San Diego would take charge of procuring an acetylene torch and oxygen tank complete with accessories from his brother-in-law, Victoriano David, and he and Apolonio Adriano would open the safes with it. (Id., p. 5, tsn., Oct. 23, 1963, Exh. R). To gain entrance to the RCA compound, Apolonio Adriano would present the disposition form to the guard on duty while Mariano Domingo would pose as a security guard supervisor (Id.).

"At past noon of August 25, 1963, Leonardo Bernardo, Apolonio Adriano, Mariano Domingo and Mario San Diego, met again at the latter's house to discuss their plan for the robbery (Exh. ZZZZ), after which Mario San Diego borrowed the acetylene and oxygen tanks equipment of his brother-in-law, Victoriano David. As said equipment were in his shop at 2446 Juan Luna St., Tondo, Manila, David instructed one of his employees by the name of Demetrio Ribances to accompany Leonardo Bernardo and Apolonio Adriano in getting the needed paraphernalia from said shop. The tanks were loaded on board the jeep owned by Pedro Bernardo (Exh. K) and brought to San Diego's house (pp. 5, 6, 7, 8, 9, 10, tsn., Apr. 21, 1965).

"The parties agreed to meet as planned at the Luzon Bus Line (LBL) terminal canteen at 8 o'clock in the evening of the same day. At the appointed hour, the following persons arrived at the LBL Compound, namely, Leonardo Bernardo, Apolonio Adriano, Mario San Diego, Mariano Domingo, Rolando Cruz, Pedro Miranda, Gregorio Liwag and Anastacio Adriano (pp. 22, 23, tsn., Oct. 9, 1963; pp. 18, 19, tsn., Oct. 7, 1963; pp. 4, 5, tsn., May 6, 1965; pp. 5, 9, tsn., May 24, 1965). They discussed anew the projected robbery (Id.). At around 11 o'clock in the evening, Apolonio Adriano, Mario San Diego, and Leonardo Bernardo left the LBL terminal on board a jeep with plate No. J-14363, Quezon City, 1963 (Exh. I) which was borrowed by Leonardo Bernardo from his brother, Pedro Bernardo, to get the acetylene and oxygen tanks equipment from Mario San Diego's house (pp. 30-33, tsn., Oct. 9, 1963; pp. 12, 13, tsn., Apr. 21, 1965; pp. 4, 5, tsn., May 6, 1965; pp. 3, 5, tsn., May 24, 1965). After loading said equipment on board their jeep, Leonardo Bernardo and Mario San Diego proceeded to the gasoline station opposite the bowling alley located at United Nations Avenue, while Apolonio Adriano rejoined the other accused at the LBL terminal canteen (Id.).

"At around midnight of August 25, 1963, Apolonio Adriano, Mariano Domingo, Pedro Miranda, Gregorio Liwag, and another man (p. 36, tsn., Oct. 7, 1963) boarded the jeep with plate No. J-18552, Bulacan, 1963 (Exh. H), which was rented for P13.00 by Mariano Domingo, with the help of Rolando Cruz, from Fernando Manikad of Guiguinto, Bulacan, to be used from 6:00 p. m. of August 25, 1963, to 2:00 a. m. the following morning, and driven by Rolando Cruz and proceeded to the gasoline station at U. N. Avenue where Leonardo Bernardo and Mario San Diego were waiting. (pp. 3, 4, tsn., Oct. 11, 1963; 30-33, tsn., Oct. 9, 1963; pp. 28, 30-33, tsn., Oct. 7, 1963; pp. 12, 13, tsn., Apr. 21, 1965; pp. 5, 6, tsn., May 6, 1965; pp. 4, 5, 9, tsn., May 24, 1965).

"A roving Buick convertible car had for its occupants Anastacio Adriano, a certain Capt. Justino David and a driver called Frank (Exh. RRR; tsn., id.). Their role was to support and act as lookout for the first two teams on board the jeeps and eventually to keep the money taken from the RCA office. As such, they had strict instructions not to enter the RCA compound but only to reconnoiter the place (Exh. AAAA, tsn., id.).

"While jeep bearing plate No. J-18552 was being filled with gasoline, the Buick convertible car bearing Anastacio Adriano, Capt. Justino David and an unknown driver stopped in front of the gasoline station and Apolonio Adriano talked with Anastacio Adriano (Id.).

"Having been filled up with gasoline, jeep bearing plate No. J-18552 (63) surveyed the surrounding streets and the RCA compound. Thereafter, Apolonio Adriano signaled the other jeep with Plate No. J-14362 that they were entering the compound (Id.).

"Upon reaching the gate at around one o'clock in the morning of August 25, 1963, Francisco Timbol, RCA guard on duty, approached the jeep and Apolonio Adriano told the guard to open the gate as it was supposedly an inspection (Exhs. I, I-1, 1-2, pp. 34, 35, tsn., Oct. 7, 1963). The guard peered through the wire gate and on seeing Mariano Domingo opened the same (pp. 33-35, tsn., Oct. 7, 1963; Exh. L, L-1, L-2). The jeep entered the RCA compound and stopped in front of the stairs leading to the RCA office. It was followed by Mariano Domingo and Apolonio Adriano who alighted near the gate, and security guard Timbol, whose gun was already taken by Apolonio Adriano (p. 36, tsn., Oct. 9, 1963; p. 122, Oct. 16, 1963). Except for Rolando Cruz who was driving, all the other occupants of the jeep (p. 36, tsn., Oct. 7, 1963) alighted from the jeep (Exh. TT, TT-1 to 5). Apolonio Adriano showed a "disposition form" to security guard Francisco Zablan (Exhs. M, M-1

to M-3) and while the latter was reading the same, Apolonio Adriano grabbed his Thompson submachine gun lying on the table (Exhs. UU, UU-1 to UU-2). Then Zablan and Timbol were handcuffed by Mariano Domingo (p. 122, tsn., Oct. 16, 1963) while the other security guards, namely, Roberto V. Gonzales, Ricardo de la Cruz, and Alfredo Adaza, were disarmed and herded inside the office adjoining that of the RCA cash division, by threatening them with a .45 cal. pistol (Exhs. QQQQ, CCCC, VV, VV-1 to 5). Meanwhile, Apolonio Adriano gave Gregorio Liwag a Thompson submachinegun (p. 39, tsn., Oct. 9, 1963) while he got the other gun (Exh. CCCC, q. & a. 30 & 36, ZZZZ q. & a. 35-36).

"Then Rolando Cruz and Mariano Domingo returned to the gasoline station at U.N. Avenue on board the jeep bearing plate No. J-18552 (63) (Exhs. WW, WW-1 to WW-2) to fetch the other jeep with plate No. J-14362 (63) where the acetylene and oxygen tanks were loaded, having for its occupants Mario San Diego and Leonardo Bernardo who was driving the same. (Id.).

"On arrival at the RCA compound, Mario San Diego took the ropes of the flagpole (Exhs. G, G-1 to G-2; DDDD, DDDD-1 to 3; EEEE, EEEE-1 to 3), and with these, he hogtied the five security guards in the position depicted in Exh. P (Exhs. FFFF, FFFF-1; GGGG). Apolonio Adriano on the other hand destroyed the lock of one of the doors (Exhs. JJ, JJ-1, JJ-2) leading to the office of the RCA cash division, and as soon as said lock was finally destroyed, the acetylene torch and oxygen tank equipment were brought inside the office of the cash division (Id.).

"Apolonio Adriano tried to operate the acetylene torch (Exhs. AAA, AAA-1 to 2), but when he could not even light it, Mario San Diego took over (Exh. BBB, BBB-1 to 2; CCCC). In cracking the steel safe, a hole was first drilled into the door. Then the fire-proof asbestos wall was hammered with the pointed end of an axe. After the first door of the steel safe was "cracked" (Exhs. CCC, CCC-1 to 2; S, S-1, S-1-a, S-1-b) and opened, the second door followed (Exhs. DDD, DDD-1 to 2, EEE, EEE-1 to 2). The cash money stored therein was taken and placed by the culprits in three (3) leather bags and several cartoon boxes (Exhs. GGG, GGG-1 to 2; HHH, HHH-1 to 3; III, III-1 to 3, ZZZZ). While Mario San Diego and Leonardo Bernardo were busy taking the money, Apolonio Adriano manipulated the combination of the smaller safe and somehow it opened (Exh. JJJ, JJJ-1). The robbers were also able to collect lesser denominations therefrom (Id.).

"Two (2) leather bags and several cartoon boxes filled with money were loaded in jeep bearing plate No. J-14362, after which Leonardo Bernardo drove the jeep out of the RCA compound with Mario San Diego (Exh. KKK).

"Outside the RCA compound, one of the occupants of the jeep bearing plate No. J-14362 signalled Rolando Cruz who was at the wheel of jeep bearing plate No. J-18552 to enter the RCA premises. But instead of following instructions, Rolando Cruz drove the jeep towards the direction of Pandacan and before reaching the Manila Gas Corporation, stopped the jeep and fled. Mariano Domingo was then obliged to drive the jeep to the RCA compound. Meanwhile, the other jeep driven by Leonardo Bernardo proceeded to a house at 132 K-7, Kamias Road, Q. C., owned by a brother of his (Id.).

"The jeep driven by Mariano Domingo was loaded with one leather bag and a cartoon box containing part of the loot, together with the acetylene torch and oxygen tank. Then Anastacio Adriano, who went inside the RCA compound presumably to find out how his companions were progressing in the robbery, boarded the jeep of Mariano Domingo (Exhs. CCCC, q. & a. 30, 43; YYY; ZZZ; p. 113, tsn., Oct. 16, 1964). Mariano Domingo, with Anastacio Adriano as passenger, drove the jeep in front of the Paco Church where the Buick convertible car joined them. But first, Mariano Domingo drove the jeep up to Sto. Sepulcro St. where they abandoned the acetylene torch and the oxygen tank (Exhs. CCCC; J, J-1, J-2). The leather bag and cartoon box containing some loot were transferred to the Buick car, after Anastacio Adriano took some bundles of money and gave them to Mariano Domingo for expenses pending division of the booty. Then the Buick car with Anastacio Adriano left, and Mariano Domingo proceeded to Guiguinto, Bulacan, to return the jeep with plate No. J-18552 to its owner, Fernando Manikad (Exhs. AAAA; ZZZZ).

"In the meantime, inside the RCA, Toriano de Guzman, a security guard, was awakened by a loud noise (p. 42, tsn., Nov. 4, 1963, afternoon session). Instantly, he peered through a one foot wide opening of the door to see what was happening, and all at once, he saw Apolonio Adriano in the act of striking the five helpless security guards who were hogtied with an axe (p. 43, tsn., Nov. 4, 1963, afternoon session) while a companion stood by and pointed to Apolonio Adriano one security guard who was still alive (pp. 45, 46, 48, tsn., Id.). Whereupon, Apolonio Adriano finished him off (Id.). Toriano de Guzman witnessed this gruesome incident with the aid of a lighted electric bulb (pp. 35-41, tsn., Nov. 6, 1963, morning session; pp. 183-190, tsn., Nov. 5, 1963, morning session; pp. 246, 247, 250, tsn., Nov. 5, 1963, afternoon session).

"After axing his defenseless victims, Apolonio Adriano rushed out to the balcony of the RCA building still with axe in hand to tell Gregorio Liwag who was outside to wait for them (pp. 25, 26, tsn., Oct. 11, 1963; morning session; p. 17, tsn., May 24, 1965; morning session). Thereafter, Apolonio Adriano went back inside the room. Here, he finished the gruesome massacre so as to insure that no one squealed and revealed their identities (Id.).

"Mario San Diego took a bundle and went home to 883 Carola St., Sampaloc, Manila, and gave P1,000.00 to the wife of his brother-in-law, Victoriano David, as payment for the acetylene torch and oxygen tank (Exhs. ZZZZ; AAAAA; BBBB; testimony of Josefina R. de David). After changing his clothes, Mario San Diego returned to 132 K-7 Kamias Road where he saw Leonardo Bernardo and Asiong still removing the RCA labels from the bundles of money. On learning that Apolonio Adriano took Several bundles of money which he placed in a leather bag, Mario San Diego likewise helped himself freely with several bundles of the stolen money while Leonardo Bernardo placed the remainder of the loot in three (3) jute sacks and loaded it inside the Volkswagen car of his brother, Pedro Bernardo, who arrived and who agreed to keep the money until the furor over the robbery subsided. He brought the money to the house of his father-in-law, Gervacio Santos, who, on being told that the money came from the RCA, buried part of it in his yard and the rest at Bundok na Mataba, Bo. Gulogod Baboy, Montalban, Rizal (Exhs. SSSS, QQQQ, TTTT, VVVV, XXXX).

"Not long thereafter, justice had its day. The first to be arrested was Leonardo Bernardo in whose possession was found a box containing P9,457.00 (Exh. QQ). He was followed by Gervacio Santos from whom was recovered P1,810.00 (Exhs. TTTT, UUUU, VVVV, WWWW). Other recoveries were: the money that was pointed to by Gervacio Santos as having been buried at Bundok na Mataba, Bo. Gulogod Baboy, Montalban, which totalled P5,826.50 (Exhs. XXXX, YYYY); the share of the loot of Mariano Domingo which he kept in a clay pot at the house of his grandmother, Antonia Miguel, at No. 840 Tikay, Malolos, Bulacan, totaling P5,499.00 (Exhs. CCCC, RR); and the share of Apolonio Adriano contained in a leather bag which entrusted to his compadre, Leandro Magnait, for safe-keeping, amounting to P90,075.00. This sum was deposited by the latter in his name with the Pasig Branch of the Philippine Bank of Commerce on August 27 and 28, 1963, as per Savings Account No. 2409 (Exhs. MMM, MMM-1 to 5; NNN, NNN-1; OOO, OOO-1 to 6; PPP, PPP-1 to 8; QQQ, QQQ-1 to 7; LLL; WWW; RRR; RRR-1; SSS, SSS-1; TTT; UUU; VVV), while the leather bag containing an RCA label was thrown by Magnait into a river to get rid of an incriminating evidence (Exh. WWW).

"The total cash contents of the RCA safe at about 10:30 in the evening of August 25, 1963, was P332,248.27, aside from checks amounting to P573,654.01, or a total of P903,902.28. In the morning of August 26, 1963, that is, after the robbery, the sum missing was P330,236.27. Of the latter amount, P112,688.00 was recovered, thereby leaving P216,568.27 as unrecovered (Exhs. T, T-1; U; V, V-1 to 6; X; Y; Y-1 to 15).

"After their arrest, these four appellants gave extrajudicial confessions: Apolonio Adriano, Exhibits KKK, RRR, AAAA, BBBB and NNNN; Leonardo Bernardo, Exhibits NN, OO, XXX, JJJ, KKKK and QQQQ; Mariano Domingo, Exhibits YYY, ZZZ, CCCC, LLLL and MMMM; and Mario San Diego, Exhibits OOOO, PPPP, and ZZZZ. In these extrajudicial confessions, these appellants described in detail how they planned the commission of the crime, the execution of the plan by themselves and their other co-conspirators such as Pedro Miranda, Gregorio Liwag, and Rolando Cruz, and disposition of the stolen money, the conduct of the accused,

and their eventual arrest." (Pages 9-22, Brief for the Plaintiff-Appellee.)

As previously stated, the principal appellants who were meted the death penalty, namely, Apolonio Adriano, Leonardo Bernardo, Mariano Domingo and Mario San Diego did not deny their participation in the crime of robbery. Each one, however, disclaimed liability for the killing on the insistent pretension of having had no part therein. But the Solicitor General points to Apolonio Adriano as the actual killer, and contends that, together with one Pedro Miranda who has gone in hiding and is still at large, all the abovenamed appellants conspired to commit the crime of robbery, and the killing was within the contemplation of the conspiracy as to make every one of them equally guilty for the crime of robbery with homicide.

A very thorough-going review of the evidence is thus a solemn and exacting task which this Court has to discharge, as it has done, with extreme care and painstaking study.

The evidence convincingly reveals that there was only one axe-wielder, and he is no other than Apolonio Adriano. The latter's gruesome act of killing the victims with an axe was seen by Toriano de Guzman in the entire savagery of its performance. This eye-witness testified without any motive to depart from the truth and falsely incriminate Apolonio Adriano whom he never knew before, with such grave consequence as death on the electric chair. His testimony that he saw the spine-tingling carnage from a very close range, and with the aid of a lighted electric bulb[1] must, therefore, be accepted with full faith and credence.

Gregorio Liwag, himself a participant in the commission of the crime and therefore charged accordingly in Criminal Case No. 72414, but discharged to become a state witness, declared that after the jeep driven by Mariano Domingo left the RCA compound, he saw Apolonio Adriano at the balcony of the RCA building holding an axe telling him to wait for a while, after which Apolonio Adriano went back inside the building.[2] It was then that the latter evidently struck at the five defenseless security guards to silence them forever. This corroborative testimony of Gregorio Liwag was fully affirmed by Apolonio Adriano himself when he declared that he ran to the RCA building with an axe in hand and asked Liwag to wait for him.[3]

In further corroboration, with most inculpatory effect, is Apolonio Adriano's extrajudicial confession.[4] It appears therefrom that before Mariano Domingo left the RCA compound just after the commission of the robbery, the latter said to Apolonio Adriano: "Papaano ito, kakilala ako ni Francisco Zablan at ni Alfredo Adaza," two of the hapless security guards, to which Apolonio gave the reassuring answer: "Hamo't ako ang bahala." Getting hold of an axe from a canteen, while Mario San Diego got a piece of wood, Apolonio Adriano went to the room where the security guards were tied together, Mario San Diego going with him. Once in said room, Apolonio Adriano struck at the five helpless guards with the axe he armed himself with. Then he appeared again with Pedro Miranda at the balcony, his pants and polo shirt smeared with blood. From the balcony, Apolonio Adriano ordered Leonardo Bernardo and Mario San Diego, the latter's polo shirt also with blood stains, to proceed ahead, and he would follow. Leonardo Bernardo and Mario San Diego proceeded, as ordered, in their jeep to Aurora Boulevard where they waited for Apolonio Adriano past the Pepsi Cola plant. When Apolonio Adriano appeared minutes later in a taxi-cab, he joined his companions in the jeep with Leonardo Bernardo on the wheel, making the reassuring remark: "Ayos na, wala tayong suliranin."

It appears from the examination of the axe for fingerprints by expert Bonifacio Marcelo of the Manila Police Department that Apolonio Adriano's fingerprints tally with those found on the axe.[5] It was also found by Servillano David, Chemical Analyst of the MPD, as stated in his report of examination (Exhibits II and II-1) that the axe and ropes he examined were found positive for human blood.[6]

With all the evidence as explained above tightly ringed against him, Apolonio Adriano's bare denial of being the axe-slayer would simply be futile and unavailing. Only one among the malefactors could have held and wielded

the axe. No one is pointed to by the evidence as a possible suspect for the gruesome axe-killing other than Apolonio Adriano. The Court is thus convinced beyond all doubt that Apolonio Adriano was the actual slayer of the five hapless victims. Significantly, no one among the appellants, not even Apolonio Adriano himself, gave even the slightest hint that the axe-wielder is Pedro Miranda who could have been conveniently pointed to as such, since he was not at hand to deny the accusation. He pointed to Leonardo Bernardo, who, from the evidence, did not even know of the killing when he left the RCA compound.

With Apolonio Adriano definitely identified as the real killer of the five security guards, the next question that poses itself is whether he and his co-appellants as principals in the present charge acted under a previous conspiracy to rob and to kill. As to the robbery, the principal appellants (excluding the accessories) admit their guilt therefor. However, as to the killing, as previously shown, the idea was evidently prompted by Mariano Domingo's expressing his fear after the robbery had been consummated, of being identified as one of the malefactors because he was known by guards Francisco Zablan and Alfredo Adaza, who could then identify him as one of the culprits. It was then that Apolonio Adriano assured him that he would take care of the matter, and, thereupon took hold of a fireman's axe. For his part, Mario San Diego also got a piece of wood. When Apolonio Adriano and Mario San Diego appeared again, together with Pedro Miranda, their clothes showed stains of blood. There cannot be any mistake or doubt then as to Mario San Diego's involvement, possibly by actual participation in the killing of the RCA guards, or at least as a co-conspirator therein.

As to Mariano Domingo, it was he who prompted the killing in his fear of the guards, of which he was one, pointing him as one of the malefactors. Being known personally by the guards he could readily be named to the peace authorities who would instantly be mobilized to track down the culprits. The awareness that just one of them being known and arrested would lead to the apprehension of the other participants in the robbery, the common design of liquidating the possible witnesses to avoid the grim possibility of their being all brought before the bar of justice entered the minds of those specifically named above, and moved to act accordingly. Quite obviously Mariano Domingo did nothing to prevent the killing which he himself hinted at as the next practical move to take following the consummation of the robbery. The conspiracy to kill, born of the exigency of the situation, therefore clearly involved Apolonio Adriano, Mario San Diego, Mariano Domingo and possibly Pedro Miranda who is yet to be apprehended. Their respective acts clearly were directed to the same object and for the same purpose. Once the conspiracy is established, which may be done by mere circumstantial evidence, as direct evidence is not so easily obtainable,[7] the conspirators are all liable as co-principals, regardless of the extent and character of their respective participation in the commission of the crime (*People vs. Candado*, 84 SCRA 508; *People vs. Pilonas*, 84 SCRA 167).

The Court, however, finds Leonardo Bernardo seemingly unaware of the intention to kill the guards. The idea of killing them arose only when Mariano Domingo called the attention of Apolonio Adriano to his being known by the guards, being one of them. By that time, the robbery had been consummated, the jeep driven by him (Leonardo Bernardo) with Plate No. J-14362, was already loaded with bags and carton boxes containing the stolen money. As the driver of the jeep above described, Leonardo Bernardo always stayed near or inside the vehicle. He only helped in loading it with the loot together with Mario San Diego who took over from Apolonio Adriano in operating the acetylene torch to crack the steel safe. The evidence fails to show that he (Leonardo Bernardo) even knew of the idea of killing the guards which germinated only upon Mario Domingo expressing to Apolonio Adriano his fear of the dire consequences of his being known by guards Zablan and Adaza who saw him among the malefactors. At the time of the actual slaying, Leonardo Bernardo was at the jeep, for he was there waiting as its driver, for Apolonio Adriano's order to go, which the latter gave from the balcony after he had mercilessly slain the guards.

From the evidence as just evaluated, the mind cannot set at rest to include Leonardo Bernardo in the conspiracy to rob and to kill. From the incipency of the execution of the conspiracy, his role was only to drive one of the vehicles used in the robbery, and he never stayed away from the jeep he had driven throughout the commission of the crime. The killing was evidently not in the original plan, for it was an axe taken only from the crime scene, not the weapons with which the malefactors had armed themselves to commit the robbery, that was used in the killing. It was clearly only at the spur of the moment, so to speak, that Mariano Domingo and Apolonio Adriano, joined by Mario San Diego and Pedro Miranda, thought of having to kill, the guards, entirely without the knowledge of Leonardo Bernardo.

The killing of the guards was undoubtedly by reason, or on the occasion, of the robbery. It was motivated by the desire to destroy the evidence by eliminating the guards who could identify the perpetrators, particularly Mariano Domingo, who was himself a security guard at the time. Had it not been for the robbery, the commission of which appellants wanted concealed from the authorities to prevent their apprehension for the said offense and eventual prosecution and punishment, they would not have resorted to killing the hapless victims. What gives the killing that intimate and direct relation to the robbery, necessary to raise the offense to that of robbery with homicide punishable by death, has been laid down by this Court in the cases very appropriately cited by the Solicitor General. Thus -

"It is, however, well settled in this jurisdiction that when, as in this case, there is "a direct relation, an intimate connection between the robbery and the killing - whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time - it is unquestionable that they constitute the complex special crime defined and penalized in article 503, paragraph 1, of the Penal Code." (robbery with homicide). (People vs. Hernandez, 46 Phil. 48). (See also People vs. Madrid, 88 Phil. 1; People vs. Cocoy, et al., 94 Phil. 91; U.S. vs. Palmares, 7 Phil. 120, 124, citing the decision dated August 21, 1872 of the Supreme Court of Spain; U.S. vs. Ibañez, et al., 19 Phil. 463).

What has been said in the cases above cited makes it clear that the killing, whether done before, during or after the robbery, with obvious and unmistakable connection with the robbery, raises the crime to the special complex crime of robbery with homicide, defined in Article 294, paragraph 1, of the Revised Penal Code. This is the crime for which Apolonio Adriano, Mariano Domingo and Mario San Diego, as well as Pedro Miranda who is still at large are guilty as principals, for which death is the imposable penalty. Leonardo Bernardo, as already explained, is guilty only of simple robbery.

Appellant Anastacio Adriano's alibi to the effect that he was in the house of Aurelio Lopez in Sta. Rosa, Nueva Ecija on the night of August 25, 1963, leaving the place only 2:00 o'clock in the morning of August 26, 1963 does not inspire belief. His alibi is a weak defense, and is made more so in his case, when it was not impossible for him to be at the scene considering that it would take less than two (2) hours to negotiate the distance from Sta. Rosa to Manila easily to bring him within the space of time consumed which was not less than three (3) hours, in the commission of the crime (People vs. Pedro Bautista, et al., G. R. No. L-17772, October 31, 1962, 6 SCRA 522).

Appellant Anastacio Adriano's participation in the robbery was also positively established by the testimony of Gregorio Liwag and Mariano Domingo, the latter declaring in open court that it was said appellant who gave him the money. He was thus positively identified as among the culprits, which would make his alibi totally unavailing. His participation in the conspiracy is, however, not clearly established, as the Solicitor General observed. His liability should be just like Leonardo Bernardo, only for simple robbery, penalized under paragraph 5 of Act 294 of the Revised Penal Code.

With respect to Pedro Bernardo who, together with Gervacio Santos who had died on October 17, 1971, is charged as accessory, his profession of innocence is not quite convincing, with his pretension of having no

knowledge that the money turned over to them for safekeeping was the product of robbery. Pedro Bernardo removed the RCA labels from the bundles of money entrusted to him at nighttime.[8] His suspicion could not have remained un-aroused to have kept quiet without in anyway asking how the money got into the possession of the principal appellants. If he had inquired, as was but natural for him to do so under the circumstances--the huge amount of money being entrusted to him, and the unholy hour the delivery to him was done--then he should have had no doubt that the money was the fruit of a crime. By his acts, Pedro Bernardo is accessory to the crime of robbery, but only as defined in paragraph 5 of Article 294 of the Revised Penal Code. The most that could be found against him is that he knew of the robbery only, but not of the killing. He should, therefore, be held as accessory only of simple robbery, not of the grave offense of robbery with homicide, specially as the offender who delivered the money to him, Leonardo Bernardo, is herein being found as guilty only of simple robbery. To make them accessory for the much greater offense, a capital one at that, would be unjust, as lacking of rational basis in law and in fact.

WHEREFORE, the decision appealed from is affirmed with respect to appellants Apolonio Adriano, Mariano Domingo and Mario San Diego, insofar as it imposes the supreme penalty of death; but modified as to Leonardo Bernardo who, for lack of the necessary votes, is hereby sentenced to reclusion perpetua, affirmed as to Anastacio Adriano on whom was imposed an indeterminate penalty of 8 years and 1 day to 10 years of prision mayor, and modified as to Pedro Bernardo who is hereby sentenced to 4 months of arresto mayor, as accessory for simple robbery, together with the accessories of the law. Modified as just indicated, the appealed decision is affirmed in all other respects, with costs.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Fernandez, Guerrero, and De Castro, JJ., concur.

Teehankee, J., votes for the affirmance in toto of the trial court's decision.

Barredo, J., agrees with J. Aquino as to respective responsibilities of the appellants but votes for the imposition of life imprisonment in view of the usually long detention of appellant after their conviction by the lower court.

Antonio, J., concurs in a separate opinion.

Aquino, J., concurs in the affirmance en toto of the decision of the lower court (Judge Placido Ramos). Therefore, he dissents as to the modification of the penalties imposed by the trial court on Leonardo Bernardo and Pedro Bernardo.

Santos, J., concurs with the views of JJ. Abad Santos and Melencio-Herrera.

Abad Santos, J., votes for affirmance in toto and the award of P12,000.00 indemnity for the heirs of the deceased.

Melencio-Herrera, J., votes for the affirmance en toto of the appealed judgment, but with the indemnity increased to P12,000.00 for each deceased, as observed by J. Abad Santos.

[1] Pages 35-41, t.s.n., November 6, 1963; pp. 246, 250, t.s.n., November 5, 1963.

[2] Pages 25, 26, t.s.n., October 11, 1963.

[3] Page 17, t.s.n., May 24, 1965.

[4] Exhibit KKK, Pages 125-132, Folder of Exhibits.

[5] Pages 10, 23, t.s.n., November 29, 1963.

[6] Pages 25, 27, 29, 30, t.s.n., January 10, 1965.

[7] People vs. Candado, 84 SCRA 508; People vs. Cabiling, 74 SCRA 285; People vs. Mejia, 55 SCRA 453;

People vs. Cariño, 55 SCRA 516; People vs. Cadag, 2 SCRA 388.

[8] Pages 18, 19, 20, t.s.n., May 24, 1965.

CONCURRING OPINION

ANTONIO, J.:

Although in *People v. Rogel*, 4 SCRA 807, this Court abandoned the ruling in *People v. Basisten*, 47 Phil. 493 (1925) and reverted to the former doctrine enunciated in *U.S. v. Macalalad*, 9 Phil. 1, reiterating the rule that 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, this Court abandoned that rule in the subsequent case of *People v. Pelagio*, 20 SCRA 153. In that case, this Court reverted to *People v. Basisten*, supra, and held that where the appellant conspired to commit robbery and he acted as lookout during the commission of the robbery, but after the robbery was consummated and as the other conspirators were leaving the scene of the crime, they encountered a policeman whom they killed, the lookout is guilty only of robbery with intimidation and not of robbery with homicide. As this Court stated therein:

"* * * When the homicide was committed, therefore, Pancho Pelagio could not have had the least intervention or participation as might justify penalizing him likewise for the said killing. So far as the records disclose, the conspirators were agreed only on the commission of robbery; there is no evidence that homicide besides was determined by them when they plotted the crime. All these warrant the exclusion of Pancho Pelagio from any responsibility for the said killing (*People vs. Basisten, et al.*, 47 Phil. 493). Considering that those who actually participated in the robbery were only three, Pancho Pelagio included, and only one of them was armed, the same evidently was not 'in band' (Art. 296, Revised Penal Code). This being the case, then it would indeed be irregular or questionable to hold Pancho Pelagio similarly responsible as Caymo and Balmeo for the killing of Pat. Trinidad. Under the code, it is only when the robbery is in band that all those present in the commission of the robbery may be punished, for any of the assaults which its members might commit. Thus, in *People v. Pascual*, G. R. No. L-4801, June 30, 1953 (unreported), we held that where three persons committed robbery and two of them committed rape upstairs on its occasion, while the third guarded the owner of the house downstairs, only the two who committed the assault should be punished for robbery with rape while the third was liable for robbery only." (At pp. 159-160).

This ruling in *Pelagio*, therefore, appears applicable to the case of Leonardo Bernardo, hence my concurrence.

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