

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PANTO PELAGIO Y ALFONSO, ET AL., DEFENDANTS, PANTO PELAGIO Y ALFONSO, OSCAR CAYMO Y REYES AND JOSE GUICO Y PARAS, DEFENDANTS...

G.R. No. L-16177. May 24, 1967

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PER CURIAM:

This is an appeal from the decision of the Court of First Instance of Pasay City in Criminal Case No. 3380, People v. Panto Pelagio, et al., condemning the appellants, Panto Pelagio, Oscar Caymo and Jose Guico, to death for the crime of robbery with homicide as defined and penalized in Article 294 of the Revised Penal Code.

The amended information under which the above judgment was rendered originally recited six defendants, namely, the three aforementioned appellants, and Arcadio Balmeo, Evelyn Villanueva and Armando Manalang alias Ding Manalang. Subsequently, however, Arcadio Balmeo and Evelyn Villanueva were discharged from the said information when they agreed to turn state witnesses. Armando Manalang, on the other hand, died while the case was pending trial. Thus, the trial proceeded only with respect to the here-in appellants: Panto Pelagio, Oscar Caymo and Jose Guico.

The records disclose that Jose Guico, an ex-convict, and Evelyn Villanueva lived in common law relationship at No. 289-A (Int.) Leveriza St., Pasay City, from about January 1955 to March of the same year. Among their friends were Panto Pelagio, also an ex-convict, and Armando Manalang. At around three o'clock in the afternoon of March 23, 1955, while Manalang was at the above residence, Panto Pelagio came to see the spouses Guico and Villanueva. Pelagio's wife had just delivered a child and he wanted to borrow money for the hospital expenses.

It is not determinable from the records if Panto Pelagio was then accommodated in his request for a loan. The records disclose, however, that Armando Manalang, taking advantage of the said visit, informed Panto Pelagio of a robbery he, Manalang, was planning with some other friends who later were revealed by Manalang to be Jose Guico, Oscar Caymo and Arcadio Balmeo. Pelagio and Manalang decided to talk the matter over and, in fact, did discuss the subject once more later that afternoon in the presence of Jose Guico and Evelyn Villanueva, when Caymo and Balmeo arrived in the same house. The following day, March 24, 1955, the above persons, namely Evelyn Villanueva, Panto Pelagio, Armando Manalang, Oscar Caymo and Arcadio Balmeo, met again at Guico's residence and there finalized and agreed on the plan to rob the house of Guico's former landlady, a certain Aling Nena, at No. 327 G. Villanueva St., Pasay City. At this meeting, Jose Guico was absent.

But the full and exact nature of Jose Guico's participation in the first meeting is unclear because there is evidence to the effect that while the robbery was then being discussed, Guico was in the bathroom taking his shower. (t.s.n. pp. 6, 12-13, Hearing of August 23, 1955) It is established, though, that after Manalang had sketched the intended victim's house and its surrounding, Guico explained the location of the said house in relation to the surrounding streets and the points thereof through which entrance and exit should be effected.

When the meeting broke up at about six o'clock that evening, March 24, 1955, Pancho Pelagio, Oscar Caymo, Armando Manalang and Arcadio Balmeo set out for the execution of their plan. They all walked together towards Aling Nena's residence although before reaching the place, Caymo ordered Manalang to hail and hold a taxi which the latter did. Then, too, only Balmeo and Caymo actually entered the victim's premises because, as was earlier agreed upon, Pancho Pelagio acted as the lookout for the two and he simply posted himself by the gate of the said house.

Caymo and Balmeo gained entrance to the house through its back kitchen door which they found to be open. Once inside, Caymo drew his gun and sought out its occupants. Only an old woman, Mrs. Severina de Gloria, however, was in at the time. Caymo then pointed the gun at the old lady and intimidated her into producing all the money and jewelry she could. All in all, the pair got about P437 in cash, three pieces of jewelry worth about P205.00 and a watch worth about P300.00. After they had taken the above items, Caymo ordered Mrs. de Gloria to lie face downward, covered her with a blanket, and cautioned her against moving or otherwise sounding out an alarm. The two then went down the house and out into the street. At the gate, however, they failed to find Pancho Pelagio.

From G. Villanueva Street where the victim's house was located, Caymo and Balmeo walked till they got to the corner of F. Fernando Street where they found Armando Manalang waiting for them in a taxi. Caymo and Balmeo then rode on it.

As the taxi was about to leave, however, a jeep from the opposite direction blocked its way and as the two vehicles were thus stopped, a man alighted from the jeep and started to walk towards the taxi. When the stranger was very near the taxi already, Manalang instructed Caymo to shoot at the man as the latter was a police officer. Whereupon, Caymo leveled several shots at the latter, about six in all, and the man, who was later identified as Patrol-man Francisco Trinidad of the Pasay Police Department, fell dead.

From the scene of the shooting, Manalang, Caymo and Balmeo went direct to a house in Buendia Street owned by Manalang's sister where they changed clothes and hid the death weapon and the money and jewelry they had robbed.

Shortly thereafter, Caymo and Balmeo proceeded to a house in Blumentritt where they met Pancho Pelagio whom they called to account for his absence at the gate during the robbery. The latter explained that he had to scamper away before Caymo and Balmeo had gone down because he, Pelagio, saw someone slip out of the house apparently to summon the police.

The records do not disclose just how and when the herein appellants and their companions were apprehended by the police. It appears, however, that on March 25, 1955, or the day following the incident, Oscar Caymo was taken to the National Bureau of Investigation and subjected to paraffin test and found positive for nitrate burns in both hands. The next day, he executed his extrajudicial confession (Exh. H) relating to his participation in the crime and implicating Pancho Pelagio, Armando Manalang and Arcadio Balmeo in it.

On March 26, 1955, appellant Jose Guico also executed an extra-judicial confession (Exh. I) owning his participation in the formation of the conspiracy as earlier recited in this decision. He named as co-conspirators Pancho Pelagio and Armando Manalang.

The last to be apprehended was Armando Manalang. On April 8, 1955, he extra-judicially confessed (Exh. G) to the above offense and implicated as his companions in it Jose Guico, Oscar Caymo, Arcadio Balmeo and Evelyn Villanueva.

In the trial court, the herein appellants' common defense was alibi. Pancho Pelagio claimed that at the time of the incident he was playing mahjong at the house of one Angelina Dadivas in Lakandola Street, Tondo, Manila. Oscar

Caymo, on the other hand, claimed that he was then at home at No. 2316 Oroquieta Street, Manila. Finally, Jose Guico maintained that during the incident he was at the residence of one Jose Obligacion where he stayed until about 11:00 in the evening. Consistently with their alibi, the appellants charged that the extrajudicial confession given by them were secured by the police through threat and maltreatment.

In the appeal before us now, only Oscar Caymo sticks to the defense of alibi. Appellant Pancho Pelagio now admits he participated in the crime in the manner recited above but submits that, under the circumstances, he should only be convicted for simple robbery and not for robbery with homicide. Appellant Jose Guico, on the other hand, argues in this appeal that even under the facts found by the trial court regarding his participation, he cannot justly be convicted for the crime charged. The Office of the Solicitor General, for its part, urges the affirmance of the decision under review with respect to Pancho Pelagio and Oscar Caymo but recommends the acquittal of Jose Guico on reasonable doubt.

After a careful and thorough review of the evidence, this Court believes that the decision appealed from should be modified to the end that Oscar Caymo's conviction should stand, Pancho Pelagio's guilt be reduced to simple robbery, and Jose Guico, as recommended by the Solicitor General, be acquitted on reasonable doubt.

Appellant Oscar Caymo's insistence on his alibi is absolutely futile. The evidence against its credibility is both forceful and overwhelming.

To begin with, Oscar Caymo was positively identified by Mrs. Severina de Gloria as one of those who broke into her house on the night of the incident and robbed her at gunpoint. He was likewise positively identified during the trial by Francisco Juni, the driver of the get-away taxi, as the gunwielder in the fatal shooting of Pat. Trinidad. Additionally, state witnesses Evelyn Villanueva and Arcadio Balmeo testified at the stand that he was among those who hatched and agreed on the robbery at the house of Jose Guico previous to the execution of the same. And then, too, he was found positive for nitrate burns in both his hands by the National Bureau of Investigation the very day following the incident. Against this finding, he has offered neither denial nor any reasonable explanation. Even if this Court disregards his extrajudicial confession, therefore, though we do not here now find the same in-admissible, the acceptance of Caymo's alibi would still be completely anomalous and irrational. No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime. (People v. Briz, 104Phil., 329; People v. Asmawil, G.R. No. L-18761, March 31, 1965; People v. Lumayag, G.R. No. L-19142, March 31, 1965) When nothing supports it except the testimonies of relatives and friends and the defendant's own urging of the same, the said defense weighs and is worth nothing. (People v. Bañaga et al., G.R. No. L-14905, January 28, 1961) Besides, the rule is to the effect that for alibi to prosper, it is not enough to prove that he was also somewhere when the crime was committed but the defendant must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at such time. (People v. Limpo, et al., G.R. No. L-13058, January 28, 1961) Caymo's alibi does not meet this standard. Consequently, this Court would only do wrong and miscarry justice to set aside his conviction.

This Court, however, concurs with appellant Pancho Pelagio's submission that, by the trial court's own factual determination, his criminal liability cannot be extended beyond simple robbery. We hold Pancho Pelagio guiltless or innocent of Pat. Trinidad's death.

Even the decision under appeal recites that when Arcadio Balmeo and Oscar Caymo hurried out of the victim's house after the robbery, Pancho Pelagio had evidently fled from his lookout post because the pair, Balmeo and Caymo, failed to locate him at the gate where he was supposed to have stationed himself. To be sure, the said decision itself renders the account that it was only Balmeo and Caymo who walked together from the said house

to the corner of Villanueva and F. Fernando Streets where then they saw Armando Manalang waiting for them in a taxi and that it was only when these three had taken to the said taxi, and the cab was about to leave, that the shooting of Pat. Trinidad happened. 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 v. 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.

Finally, we find the Solicitor General's recommendation for the acquittal of appellant Jose Guico well founded. While it seems proven that the said appellant did participate in the first of two meetings in the discussion of the plan to commit the robbery in question by answering Armando Manalang's inquiries relating to the intended house and its surrounding streets and the means of entrance thereto and the channels of exit therefrom, the evidence is as much that, thereafter, his involvement with the conspiracy ceased. It should be recalled that the conferences on the robbery were held on March 23, and 24, 1955. At the first meeting, the participants were Jose Guico, Pancho Pelagio, Oscar Caymo, Armando Manalang, Arcadio Balmeo and Evelyn Villanueva. At the meeting of the 24th the same group, save for appellant Jose Guico, conferred and finalized the plan and, in fact, proceeded to execute the same almost immediately after the conference adjourned. There is ample and positive evidence on record that appellant Jose Guico was absent not only from the second meeting but likewise from the robbery itself. To be sure, not even the decision under appeal determined otherwise. Consequently, even if Guico's participation in the first meeting sufficiently involved him with the conspiracy, such participation and involvement, however, would be inadequate to render him criminally liable as a conspirator. Conspiracy alone, without the execution of its purpose, is not a crime punishable by law, except in special instances (Article 8, Revised Penal Code) which, however, do not include robbery.

Besides, appellant Jose Guico's absence from the second conference as well as from the robbery itself strongly points to his evident change of mind regarding his commitment the previous day to be in on the robbery. Under the circumstances and under a policy of liberal consideration for timely retreat or repentance, he may be deemed to have desisted voluntarily from the conspiracy before the contemplated crime could actually be carried out and therefore, free from penal accountability. (People v. Timbol, et al., G.R. Nos. 47473--47474, August 4, 1944 [unreported]) As Viada expounds on the rule, "when the action of the felony starts and the accused, because of fear or remorse desists from its continuance, there is no attempt. x x x If the author of the attempt, after having commenced to execute the felony by external acts, he stops by a free and spontaneous feeling, on the brink of the abyss, he is saved. It is a call to repentance, to the conscience, a grace, a pardon which the law grants to voluntary repentance." (Cited and translated in Padilla, Criminal Law, p. 120, 1964 Ed.)

In summary then, this Court finds appellant Oscar Caymo guilty beyond reasonable doubt of the crime of robbery with homicide attended by the aggravating circumstances, all recited in the information and proven at the trial, of nocturnity and use of a motor vehicle without any compensating mitigating circumstances. On the other hand,

appellant Pancho Pelagio is hereby determined to be guilty beyond reasonable doubt of simple robbery under Article 294, paragraph 5 of the Revised Penal Code, attended by the aggravating circumstances of nocturnity and recidivism, having been at the time of the trial, as recited in the information and proven at the trial, previously convicted for robbery. There is no mitigating circumstance appreciable in his favor. For both appellants, therefore, the penalties prescribed by law should be imposed in their maximum period, although appellant Pancho Pelagio is still qualified to avail of the benefits of the Indeterminate Sentence Law. For the reasons given above, appellant Jose Guico should be, as he is hereby acquitted.

WHEREFORE, this Court affirms the decision under appeal insofar as it imposes the death penalty on appellant Oscar Caymo, but modifies the conviction of appellant Pan-cho Pelagio from robbery with homicide to simple robbery under Article 294, paragraph 5, R.P.C., with the aforementioned aggravating circumstances. Accordingly, and applying the Indeterminate Sentence Law, the said appellant is hereby sentenced to a prison term of from four years and two months of prison correccional to eight years and one day of prison mayor. The abovenamed appellants, moreover, are hereby ordered to indemnify, jointly and severally, the offended parties named in the decision under appeal the sums therein stated. The indemnity for the death of Pat. Francisco Trinidad, payable to his heirs, should be raised from P3,000.00 to P6,000.00 and charged alone against appellant Oscar Caymo. Finally, the conviction of appellant Jose Guico is hereby set aside and let judgment be entered acquitting him for the reasons given above. Costs against the appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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