

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELIX DEFENSOR AND ALBERTO LOABLE, DEFENDANTS AND APPELLANTS.

G.R. No. L-3250. June 22, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Felix Defensor and Alberto Loable are appealing from a decision of the Court of First Instance of Iloilo finding them guilty of attempted robbery with homicide with the aggravating circumstance of the crime having been committed in band, but compensated by the mitigating circumstance of voluntary surrender, and sentencing them from 12 years and 1 day to 18 years, 8 months and 1 day of reclusion temporal, to indemnify jointly and severally the heirs of the deceased Alfredo Legayada in the amount of P2,000, and to pay the costs. The appellants have filed separate briefs but the Solicitor General has filed only one.

Because of the penalty imposed by the trial court the case was first appealed to the Court of Appeals but after a study of the case, including the evidence on record, the briefs of the appellants, and that of the Solicitor General, the First Division of said Court arrived at the conclusion that the penalty imposable in this case was reclusion perpetua, which was beyond its jurisdiction to impose and so certified the case to this tribunal.

A careful review of the evidence in this case shows the following facts to have been fully established. On October 1, 1947, early in the afternoon, while Rosita de Betoya was alone in her house with her baby, in the barrio of Catig, municipality of Dueñas, Iloilo, slit armed men, namely, Julio Espiton, supposed leader, the two appellants (Felix Defensor and Alberto Loable), Faustino Gollos, Melecio N. and Masin N., went up her house and asked where the men of the house were. Rosita told them that the only man of the house, her husband was out in the field plowing, whereupon Espiton pointed his carbine without a butt at her and asked for money. Rosita answered that they had no money in the house. In the meantime, the five other marauders began searching the house, evidently, for anything valuable they could carry away. Just then, Alfredo Legayada and his wife Magdalena Laguartilla arrived in the same house, apparently, for a visit because Magdalena was a relative of Rosita. Alfredo was carrying a .45 caliber automatic pistol on his hip. Espiton immediately turned his buttless carbine on Alfredo and demanded that he turn over his pistol, saying that he (Espiton) was an MP (military police), which was not true. Alfredo, apparently believing that his intervenor was a member of the military police, answered that he had a license to carry firearms, and instead of delivering his weapon, took his firearm license or permit from his pocket and delivered it to Espiton, but the latter instead of examining it, tore it up and then immediately shot Alfredo in the abdomen. Although mortally wounded, Alfredo was able to whip out his pistol from his hip and returned the fire, hitting Espiton in the head and killing him instantly. The companions of Espiton had, by this time been alerted by the shooting and they all fired at Alfredo while they hurriedly left the house and their fallen Made.ri without being able to take anything valuable away with them. The shot of Faustino Gollos found its mark in the right shoulder of Alfredo evidently permanently disabling him from continuing his hopeless fight against his adversaries.

According to the written statement of Felix Defensor to the police, he also fired at Legayada but missed his target.

Late that same afternoon Alfredo Legayada was taken to the poblacion and in the evening he was able to make a sworn statement (Exh. G) before the Municipal Mayor with two witnesses, in which he pointed to Felix of Binaba-an Labayno and another, the son of Pili of the same barrio as the persons who shot him. That same night Alfredo Legayada was taken to a hospital in Iloilo but on the way he died.

About three days after the shooting and killing, appellants Defensor and Loable reported to the Chief of Police of Dueñas, evidently, to surrender themselves upon the advice of Municipal Councilor Fermin Sarongon who told them that inasmuch as they were wanted by the police, if they were really innocent, they should give themselves up or report to said police and explain.

The Provincial Fiscal filed an information for attempted robbery in band with homicide against the two appellants, their companions being still at large.

The two defendants admit having been in the house of Rosita Betoya on the afternoon in question. They both claim, however, that they did not go there to rob but to guide Espiton and his companions who were looking for Sinforoso Lañada, brother of Rosita, and that they (appellants) left the house of Rosita before the shooting started although they heard the shots while on their way home.

Considering the circumstances under which the two defendants and their companions went to the house of Rosita and what occurred there culminating in an exchange of shots which produced the death of Espiton and the mortal wounding of Alfredo Legayada, the logical conclusion is that all the six men including the two appellants herein went there to commit robbery, and that frustrated in their intention to commit the crime, they all joined in the shooting although only Espiton and Faustino Gollos could inflict injuries on Alfredo, thereby causing his death.

We are not prepared to believe the story of the appellants that they went to the house of Rosita merely to serve as guides to Espiton and his companions, for if this were true, why should Defensor and Loable find it necessary and convenient to arm themselves. Again, the evidence shows that while Espiton was covering Rosita with his carbine and demanding money, his companions including the appellants were searching the house and looking for valuables to loot. As already stated, Defensor in his affidavit admitted and even boasted to his companions that he also took a shot at Alfredo but missed him. What the two appellants were still in the house when the shooting started, contrary to their claim, is established by the fact that Defensor took part in the shooting according to his own statement and when leaving the house of Rosita, Defensor when asked by someone who met him, he said that Espiton had shot Alfredo. After the shooting, these two appellants were seen running away from the house of Rosita.

If appellants had merely gone there as innocent guides, as they assert, they would not have fled therefrom as though escaping to avoid apprehension for committing something unlawful. And, as the trial court aptly observed, if their conscience were really clear, they should have gone directly to the authorities to explain that they had no part or participation in the shooting and in the attempted robbery. Instead, they kept away from the authorities, until advised by a municipal councilor to surrender themselves to the police, which advice they later followed.

The evidence shows that Sinforoso Lañada for whom Espiton and his companions were supposedly looking for, had his own house, separate from that of Rosita, and there is further evidence to show that one of the men whom the malefactors met on the way told them that Sinforoso was in town on the occasion of the town fiesta and, therefore, could not be found in the barrio, and yet the appellants and their companions went to the house not of Sinforoso but of Rosita and once there, made no inquiry about Sinforoso. All that they did was to inquire about the men of the house to be sure that there would be no opposition or resistance, and when assured of the absence

of men in the house, proceeded to intimidate Rosita and searched the house for valuables until they were interrupted by the arrival of Alfredo and his wife when they again proceeded to face and solve the interruption and do away with any resistance which Alfredo with his pistol could put up.

It is contended on behalf of the appellants that inasmuch as they did not take part in the infliction of the injury or injuries which caused the death of Alfredo Legayada, they may not be held liable for his death. In the first place, even if this were a simple case of homicide, inasmuch as the circumstances point to a conspiracy and unity of purpose and action in shooting, if not killing Alfredo as shown by the fact that the six armed men, including the appellants herein, fired at Alfredo, they will all be liable for the result, regardless of whether the wounds or injuries which caused the death was inflicted by them. In the second place, this being a case of robbery with homicide, all the accused including the appellants who had conspired to commit the robbery are responsible for any homicide committed on the occasion thereof, unless the defendants or conspirators concerned who did not actually perpetrate the killing made any attempt to prevent the same which in this case, they did not.

The crime committed is that of attempted robbery with homicide defined and penalized under Art. 297 of the Revised Penal Code. The fact that the information filed by the Provincial Fiscal was entitled "Attempted Robbery in Band with Homicide" does not affect adversely the conviction of the appellants inasmuch as the body of the information amply describes the offense with which the defendants were charged. The caption of the information is merely a conclusion of the Fiscal. It is the body of the complaint or information that counts or prevails.

Incidentally, it may be stated that we are satisfied that the sworn statements (Exhs. A and I) of the appellants were given voluntarily as they were sworn to before the Justice of the Peace without the presence of any of the policemen who prepared said affidavits, based on questions and answers propounded to and given by the affiants.

We agree with the Court of Appeals that the penalty imposable in this case is that of reclusion perpetua. In addition to the aggravating circumstance of the crime having been committed in band, as found by the trial court, compensated by the mitigating circumstance of voluntary surrender, there is the aggravating circumstance of dwelling without any mitigating circumstance to offset the same. Under these circumstances, the penalty which is reclusion temporal in its maximum degree to reclusion perpetua should be imposed in its maximum degree or reclusion perpetua. The indemnity awarded by the trial court should also be increased to P6,000. With these modifications, the decision appealed from is hereby affirmed, with costs.

Ozaeta, Paras, Pablo, Bengzon, and Tuason, JJ., concur.

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