

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE RAMIREZ, DEFENDANT AND APPELLANT.

G.R. No. L-5875. May 15, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Jose Ramirez was originally charged in the Justice of the Peace Court or Opon, Cebu, with frustrated robbery with homicide together with George Sadler, James Davis and William Franch. Because Davis and Franch turned out to be deserters of the United States Army and Sadler was a United States seaman, they were claimed by the United States Army and Navy authorities and were transferred to their custody pursuant to Executive Order No. 151 of the President of the Philippines. The three Americans underwent a court martial trial with the result that Davis and Franch were sentenced to be hanged by the neck until dead and Sadler to 24 months confinement. The case was continued against Jose Ramirez who, after trial, was found guilty of the charge and sentenced to an indeterminate penalty of from 6 years and one day of prison mayor to 17 years, 4 months and 1 day of reclusion temporal, to indemnify the heirs of the deceased in the amount of P2,000, to suffer the accessory penalties of the law, and to pay the costs.

The case was appealed to the Court of Appeals but was certified to this Court on the ground that the penalty involved includes reclusion perpetua.

The evidence shows that sometime before the commission of the crime, Sadler, Davis, Franch and the accused agreed to take from the navy boat pool situated in Mactan Island two LCM boats with the idea of selling them for profit. It was arranged that they would meet Sadler in Opon. This was done on January 11, 1947, and with the exception of Sadler, the three spent the night in the house of a girl friend by the name of Mary Watkins. On the following day, January 12, they attended some errands and when night came, after joining a party that was held in the house of Sadler, the four took a tartanilla and proceeded towards the boat pool. That night, the pool was under the guard of Roberto Baniel who was in the employ of the United States Naval Airbase in Opon. The place was located along the seashore at a certain distance from the main road and from the houses occupied by the navy officers and personnel. It was lonely and secluded. Civilians were not allowed to enter the pool, especially at night, the only ones allowed being uniformed men. After being informed that none of the officers or personnel was present in the place and that the guard was alone, the four men proceeded to the pool. They approached the guard whom they informed that they were on a mission to take some of the boats out and were authorized to do so. Suspicious of their errand, the guard tried to reach the phone to report the matter but was prevented by them who, making use of a ruse, disarmed him and forced him to allow them to go to the boats. While some attempted to start the motor of the boats the others took care of the guard and when they failed to take the boats out, they decided to kill him. The last time the guard was seen alive was at about 9 o'clock that evening when sergeant Godornez of the security guards made an inspection of the post and found him performing his duty. Early in the following morning, his dead body was found lying on the beach with wounds on the neck, face and head. In the written confessions made by these men when they were investigated by the authorities, they all admitted that the

guard was killed on the night they attempted to steal the boats but gave a different version as to who actually inflicted the blows that killed him. Franch and Ramirez tried to put the blame on Davis, while the latter said that it was Franch who killed the guard.

The post-mortem examination of the body of Roberto Baniel was performed by Dr. Leon R. Horlanda, President of the Sanitary Division of Opon, who found contusions and wounds on the face and the head which must have been caused by heavy blows with a butt of a rifle or blunt instrument.

The manner and circumstances under which the victim met death were narrated in detail not only in the written confessions signed by the accused but also in those signed by the three Americans who accompanied him in the ghastly errand. The facts therein narrated show that the accused and the three Americans agreed to steal two LCM boats of the United States Navy that were anchored at the boat pool with the idea of selling them for profit and that in their attempt to carry out their plan, which was frustrated by circumstances beyond their control, they deemed wise, for their own security, to put out of their way the unfortunate guard. While in the confessions signed by the accused and his companions the blows that killed the victim were inflicted by Davis and the rest did not have any actual participation in the killing, this circumstance cannot obliterate the responsibility of the accused because he not only failed to forestall the act but it is a necessary consequence of their preconceived plan to rob the United States Navy of its property. The rule is well-settled that when conspiracy has been established, like in the present case, the act of one conspirator is imputable to the others.

The only defense of the accused is alibi. Although he admitted having been in the company of Sadler, Davis and Franch in Opon in the night in question, he denied having gone with them to the boat pool alleging that after having attended the party in Sadler's house, he separated from them and went with two girl friends for a walk along the beach somewhere near the pool and thereafter went to Opon and slept in the house of a girl friend by the name of Mary Watkins. He also repudiated the written confession he made during the preliminary investigation conducted by the Justice of the Peace of Opon alleging that, if he signed said confession, it was because he was subjected to torture and intimidation. But the lower court found this alibi too weak to be entertained considering the strong circumstantial evidence obtaining in this case as well as the imputations made against him by his co-conspirators, to which we agree. On the other hand, his claim of torture and intimidation stands sufficiently refuted by the Justice of the Peace who merely intervened in the case as a matter of official duty. The chain of circumstances which show that the accused and his companions conspired together to rob the United States Navy and in the course of which the security guard was killed, are narrated in detail by the Solicitor General in his brief which, for the purpose of this decision, we need not repeat here. These circumstances conclusively prove the guilt of the accused.

The crime committed falls under Article 297 of the Revised Penal Code, which imposes a penalty of reclusion temporal in the maximum period to reclusion perpetua. Considering the aggravating circumstance of night time, which is not offset by any mitigating, said penalty should be imposed in the maximum period, or reclusion perpetua.

Thus modified, the judgment appealed from should be affirmed, with costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

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