

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANITO BEBERINO ALIAS NIT (APPEAL WITHDRAWN), GERARDO CASAÑA ALIAS BANDONG (APPEAL WITH-DRAWN), LEODEGARIO ESTRADA (APPEAL ...

G.R. No. L-23092. October 28, 1977

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal of the accused Ignacio Calvario from the judgment of the Court of First Instance of Surigao del Norte finding him guilty as an accomplice in the crime of simple robbery and sentencing him to suffer an indeterminate penalty ranging from four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with the accessory penalties provided by law; and to indemnify, jointly and severally, together with his co-accused Anito Beberino, Gerardo Casaña, and Leodegario Estrada, the heirs of Gregorio Nuñez in the amount of P605.00; and to pay proportionate costs.

It is undisputed that in the evening of February 3, 1960, the house of Gregoria Nuñez, situated in sitio Balibayon, barrio Lakandula, Placer, Surigao del Norte, was broken into and robbed by several persons of cash and other articles of value amounting to P605.00, on the occasion of which Gregoria Nuñez was strangled to death.

Gregoria Nuñez, a septuagenarian with ample means, lived alone in her house built on her coconut plantation close to the seashore. Her grandchildren took turns in keeping her company at night. On the night of February 3, 1960. Victor Ugay and Julian Dublois, both 16 years of age, spread a mat in the sala, while their grandmother slept on a wooden bed inside a small room. Before retiring, the boys placed a wooden bar across the door, on the inside, and locked the windows with pieces of wire and tuned in the radio. They went to sleep at about 10:00.[1]

Towards midnight, the boys were awakened by three men,[2] two of whom were armed with revolvers, who ordered them to lie down on their stomach, after which they were bound hand and foot and their mouths stuffed with cloth.[3] After the boys were tied, the three men entered the room occupied by Gregoria Nuñez, and soon thereafter, the boys heard choking sounds (tika-tikan) and kicking in-side the room. They also heard the clinking of bottles and the snorting of pigs, under the house, as if there were people there. After a while, the men came out the room and left, passing through the window facing the sea. Not long thereafter, they heard the sounds of a departing motor launch, so that they tried to loosen the ropes that bound them.[4]

At about 5:00 o'clock in the morning, Librada Dob-doban de Ugay was awakened by her son, Victor Ugay, shouting for help. She ran to the house of Gregoria Nuñez, about 20 brazas away. The door was still barred from the inside, so that she passed through an open window. Inside, she saw her son, Victor, and her nephew, Julian Dublois, bound hand and foot. She called her mother-in-law and, receiving no answer, she entered her room. There, she saw her mother-in-law, Gregoria Nuñez, lying down apparently lifeless. So she went back to the sala and untied Victor Ugay and Julian Dublois. After a cursory check of the house, she found that the money from the sale of copra amounting to P147.50, as well as the radio-phono, records, Coleman lamp and flashlight, all

belonging to Gregoria Nuñez, were missing.[5] The matter was reported to the police, and an autopsy of the cadaver of Gregoria Nuñez showed that she died of strangulation by hand.[6]

Dissatisfied with the apparent inability of the local police force to solve the crime expeditiously, the relatives of the victim sought the assistance of the Philippine Constabulary.[7] On March 1, 1960, Cpl. Michael Desoloc was dispatched to Placer to conduct an investigation. In barrio Lakandula, he received information that one Ignacio Calvario had knowledge of the crime and was willing to testify if the authorities would utilize him as a witness in the case.[8] Ignacio Calvario was, accordingly, taken into custody, and after questioning, he executed an affidavit wherein he described the means by which the crime was committed and the role he played in the commission thereof. He also named (Bandong) Gerardo Casaña, (Nit) Anito Beberino, (Mandot) Rinaldo Guibao, Floro Abas, Garbo Estrada, Rose Bebang, Penoy, Busio, and (Pelesio) Simplicio Guibao as his confederates.[9]

Following further investigations, a complaint for robbery in band with murder was filed by Cpl. Desoloc before the Justice of the Peace Court of Placer, Surigao against the afore-named persons. Ignacio Calvario was listed in the complaint as one of the witnesses for the prosecution.[10] Finding a prima facie case against the accused, the Justice of the Peace issued a warrant for their arrest, [11] and, upon termination of the preliminary investigation, remanded the case to the Court of First Instance of Surigao for trial on the merits. [12] A re-investigation of the case was conducted by the Fiscal after which he filed an information before the Court of First Instance of Surigao charging the accused, including Ignacio Calvario who had by then demonstrated hostility to the prosecution and indicated that he would no longer testify for the government, with the crime of robbery with homicide.[13]

In due time following the conclusion of the trial, judgment was rendered finding the accused Anito Beberino, Gerardo Casaña and Leodegario Estrada guilty of the crime of robbery with homicide, and sentenced to suffer the penalty of reclusion perpetua, and to indemnify, jointly and severally, the heirs of Gregoria Nuñez in the amount of P3,000.00. The accused Ignacio Calvario was found guilty as an accomplice in the crime of simple robbery since he did not actually participate in the killing of Gregoria Nuñez and no conspiracy was proved among the accused, and sentenced to suffer the penalty hereinbefore stated.[14] For insufficiency of evidence, the accused Simplicio Guibao, Rinaldo Guibao, Floro Abas, and Rudy Casaña were acquitted; while the case was dismissed as against Rose Bebang and Penoy, nicknamed Busio.[15]

From this judgment, Gerardo Casaña, Anito Beberino, Leodegario Estrada, and Ignacio Calvario appealed. However, the appeals of Gerardo Casaña, Leodegario Estrada, and Anito Beberino were subsequently withdrawn,[16] so that the appeal of Ignacio Calvario alone is left for consideration.

In seeking a reversal of the judgment appealed from, the appellant Ignacio Calvario claims that the evidence of the prosecution is insufficient to sustain a conviction because the extra-judicial confession upon which said judgment is based was obtained from him by means of threats, and, therefore, inadmissible in evidence.

The appellant testified that he was threatened by Cpl. Michael Desoloc who said that if he would not affix his thumbmark on the document, he (Calvario) would be brought to the barracks and sent to Bilibid to be burned.[17]

Cpl. Desoloc, however, denied having threatened or coerced the appellant into executing the said extra-judicial confession and claimed that Ignacio Calvario furnished the statements contained therein freely and, voluntarily. His claim is corroborated by the Justice of the Peace of Placer, Surigao, before whom Ignacio Calvario swore to the veracity of its contents, who testified that he read the extra-judicial confession to the accused and asked the latter if he understood what had been read to him; and that when the accused answered in the affirmative, he requested the accused to affix his thumbmark on the document, which he did.

The appellant's claim that he had been threatened into executing the extra-judicial confession in question appears

to be more of an after thought than a valid claim. The circumstances surrounding its execution positively show that the document was executed freely and voluntarily and the reason that prompted the accused to do so was that he had been promised immunity from prosecution as he would be utilized as a government witness. Thus, Cpl. Michael Desoloc testified that he went to sitio Balibayon on March 1, 1960 to investigate the robbery and killing of Gregoria Nuñez. After questioning Librada Ugay, Victor Ugay, and Julian Dublois, he proceeded to barrio Lakan-dula where he was informed by one Eliot Dublois, who obtained his information from Eugenio Cinco, that Ignacio Calvario was one of the robbers. He went to Cinco who told him that Ignacio Calvario was indeed willing to testify if utilized as a government witness. On that very same day, Ignacio Calvario was arrested. Apparently, an agreement had been reached for Ignacio Calvario was brought to sitio Balibayon where they reenacted the commission of the crime. The next day, March 2, 1960, Calvario was brought to the poblacion of Placer where he pointed to Cpl. Desoloc the perpetrators of the crime. On March 6, 1960, Ignacio Calvario executed the extra-judicial confession after which he was released from custody.[18] On March 8, 1960, Cpl. Michael Desoloc filed a complaint before the Justice of the Peace Court of Placer, Surigao, charging Gerardo Casaña and others with the crime of robbery in band with murder. Ignacio Calvario, true to the promise, was merely listed as one of the witnesses for the prosecution.[19] After the preliminary investigation, the case was remanded to the Court of First Instance of Surigao for trial. However, a re-investigation was conducted, during which time Ignacio Calvario turned hostile, so that he was included in the information as one of the accused.[20]

As will be seen, the appellant was to be used as a government witness which was not done because he later denied the facts that he had revealed in his confession. This Court has earlier held that where one of several co-defendants turns state's evidence on a promise of immunity by the prosecuting attorney, but later retracts and fails to keep his part of the agreement, his confession made under such a promise may then be used against him.[21] In view thereof, the extra judicial confession of the appellant is admissible as evidence against him.

Finally, counsel for the appellant claims that the trial court erred in convicting Calvario as an accomplice in the crime of robbery although he had no knowledge of the criminal intent of his co-accused.

The contention is without merit. In his extra-judicial confession, the appellant stated that he was in Placer, Suri-gao on February 3, 1960 and that at about 7:00 o'clock in the evening of the said day, he was told by Gerardo Casaña to get aboard the latter's boat ("lancha") as they were sail-ing for barrio Cawilan. Already on board were Anito Be-berino, Rinaldo Guibao, and Rudy Casaña, the son of Gerardo Casaña. Thirty minutes after lifting anchor, they reached the island of Maytubig where they met the group composed of Floro Abas, Gario Estrada, Rose Bebang, Penoy, Busio, and Simplicio Guibao. He then heard the two groups discussing whose boat they would use in going to sitio Balibayon to rob Gregoria Nuñez. After some time, they agreed to ride on the boat of Simplicio Guibao, so that Rudy Casaña took the boat of his father to sitio Sanisani. A while later, they landed on the seashore near the house of Gregoria Nuñez. They disembarked and Simplicio Guibao sailed for Nonoc, promising to come back for them later. Upon reaching the house of Gregoria Nuñez, he and Gerardo Casaña, Anito Beberino, and Gario Estrada went upstairs, while their other companions remained below. Gerardo Casaña then removed the latch securing the win-dow with a screw driver, after which Gerardo Casaña and Anito Beberino, both of whom were armed with revolvers, and Gario Estrada entered the house through the open win-dow. The appellant stayed behind, on the porch. Once inside, Gerardo Casaña kicked the two persons then sleep-ing in the sala of the house who were subsequently gagged and hogtied by Anito Beberino and Gario Estrada. Then, Gerardo Casaña entered the room of Gregoria Nuñez and strangled her to death. After killing Gregoria Nuñez, Gerardo Casaña removed the victim's ring from her finger while Anito Beberino and Gario Estrada ransacked the room. Thereafter, they opened five bottles of wine, which they mixed with beer, and gave a glass of the con-coction to Calvario. On coming out of the room, Gerardo Casaña opened the "comoda" and removed the radio there-from and passed it on to Calvario who put it atop a bench on the veranda. Gario Estrada

likewise gave Calvario a petromax lamp which he also placed, on the bench. Then, the three left the house passing through the open window and rejoined their companions below. Afterwards, all of them boarded the boat of Simplicio Guibao who had re-turned for them and sailed towards Sanisani. He and Floro Abas, Rose Bebang, Penoy, and Busio disembarked at Sanisani, while Gerardo Casaña, Rumaldo Guibao, and Gario Estrada boarded the boat of Rudy Casaña and re-turned to Placer.

The appellant's statement is corroborated by Severo Enriquez who declared that he saw the appellant Ignacio Calvario, Leodegario Estrada, Gerardo Casaña, Anito Beberino, Floro Abas, and several others disembark from a launch at about 10:00 o'clock in the evening of February 3, 1960 and proceed towards the house of Gregoria Nuñez with the appellant Ignacio Calvario in the lead.[22]

The evidence thus presented proves conspiracy, and that the appellant not only knew of the plan to rob Gregoria Nuñez, but also participated in its commission by previous and simultaneous acts which lent to the accomplishment of the criminal intent. Although the appellant may not have foreseen the killing of the victim and did not take part in its execution, he is nevertheless guilty of the crime of robbery with homicide. The rule is that when homicide takes place as a consequence of or on the occasion of a robbery, all those who took part in the robbery shall be guilty as principals of the crime of robbery with homicide, unless there is proof that they have tried to prevent the killing.[23] Here, there is nothing in the record which would tend to show that the appellant ever attempted to prevent the homicide.

The appellant is, therefore, guilty of the crime of robbery with homicide, covered by Article 294, No. 1, of the Revised Penal Code, which is punished with reclusion perpetua to death. The commission of the offense was attended by the aggravating circumstances of nocturnity, abuse of superior strength, and disregard to the age of the offended party, the victim being 70 years of age. The case thus calls for the application of the maximum penalty provided by law, namely death. But for lack of the necessary number of votes, appellant is hereby sentenced to reclusion perpetua.

As principal in the commission thereof, the appellant should also be ordered to indemnify the heirs of the victim, jointly and severally, with Gerardo Casaña, Anito Beberino, and Leodegario Estrada, the amount of P12,000.00 for the death of Gregoria Nuñez aside from the amount of P605.00, the value of the articles stolen. Considering, however, that Gerardo Casaña, Anito Beberino, and Leodegario Estrada had previously withdrawn their appeals so that the judgment of the trial court is already final as to them, their joint and solidary liability with the appellant for the death of Gregoria Nuñez shall not exceed P3,000.00.

Modified in the manner above indicated, the judgment appealed from should be, as it is hereby, affirmed with costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Antonio, Aquino, and Santos, JJ., concur.
Barredo, J., no part.

[1] pp. 40-42, t.s.n.

[2] later identified as the accused Leodegario Estrada, Gerardo Casaña, an Anito Beberino (pp. 53-55, t.s.n.).

[3] pp. 44-45, t.s.n.

[4] pp. 47-50, t.s.n.

- [5] pp. 6-12, t.s.n.
- [6] Exhibit A; see also p. 37, t.s.n.
- [7] p. 209, t.s.n.
- [8] pp. 250, 251, 25, 31, t.s.n.
- [9] Exh. C, C-1, D, D-1, D-2, E, E-1.
- [10] Exhibit 2.
- [11] pp. 6-9, Orig. Rec.
- [12] p. 2, Orig. Rec.
- [13] p. 26, Orig. Rec.; p. 3, rollo.
- [14] See p. 1, supra.
- [15] pp. 25-44, rollo.
- [16] pp. 314, 392, 405, rollo.
- [17] pp. 734, 735, t.s.n.
- [18] pp. 243, 250, 251, 258, 262, 271, t.s.n.
- [19] Exhibit 2.
- [20] pp. 283, 717, t.s.n. p. 26, Orig. Rec.
- [21] People vs. Panaligan and Andulan, 43 Phil. 131.
- [22] 89; 90, 108, t.s.n.
- [23] People vs. Carununggan, 109 Phil. 534.

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