

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO ONG Y LAXAMANA, DEFENDANT-APPELLANT.***G.R. No. L-43957. February 10, 1981*

Ponente: ABAD SANTOS, J.

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In the evening of March 16, 1972, at about 10:00 o'clock, Philippine National Railways (PNR) train No. 512 was slowly departing from the station in Biñan, Laguna, to continue its trip to Manila. Train No. 512 was the Bicol Express and it picked up not only passengers but also collections for the day of the stations along the way. Four persons surreptitiously boarded one of the baggage cars hooked to the train. The car had PNR employees Guillermo Lopez, Juan Macapagal, Gregorio Juguilon, Benjamin Guinto and Mauricio Costales plus cargo and a steel safe where the collections were kept. Minutes later, shots rang out and after sometime the four persons who had boarded the car jumped off. When the train stopped at the Paco station in Manila and nobody in the baggage car appeared to receive the station's collection for the day, the PNR police entered it to investigate. There Juan Macapagal was found sprawled on the floor already dead. According to Dr. Angelo Singian of the Manila Metropolitan Police, Macapagal died from two gunshot wounds. (Exh. A.) Benjamin Guinto and the others were found under a pile of boxes with their hands tied.

In an investigation made by the PNR police, it was found that the contents of the steel safe had been taken which according to Exh. B amounted to P32,326.68. Also missing were the guns of Juan Macapagal and Guillermo Lopez.

The Interpol Section of the National Bureau of Investigation conducted an investigation and as a result thereof the following information was filed in the Court of First Instance of Laguna and denominated as Criminal Case No. 252-B, to wit:

"The undersigned 1st Assistant Provincial Fiscal accused ALFREDO LARIOZA, ANTONIO ONG, FAUSTINO BUENCONSEJO, FRANCISCO LARIOZA, RICARDO GONZALES, FLORENTINO RODRIGUEZ (at large), ELINO CRESPO (at large), MAXIMO CASIPIT (at large), CLEMENTE CILLOCO, JR. (at large) and JOHN DOE (at large) of the crime of 'ROBBERY IN BAND WITH HOMICIDE' (Article 294 in relation to Article 296 of the Revised Penal Code), committed as follows:

That on or about March 16, 1972, in the Municipality of Biñan, Province of Laguna, Republic of the Philippines and within the jurisdiction of this Honorable Court the accused above-named conspiring, confederating and mutually helping one another boarded PNR Train 512 at Biñan, Laguna bound for Manila; that accused Florentino Rodriguez, Antonio Ong, Elinio Crespo and Jesus Mendiola (deceased) were armed with unlicensed firearms of different calibers; that accused with intent of gain and by means of violence, force and intimidation of persons, did then and there wilfully, unlawfully and feloniously take, steal and carry away

P39,595.29 in cash and checks; two 22 calibers revolvers, and other personal articles from the Route Agents and belonging to the Philippine National Railways; that by reason and on the occasion of the robbery Route Agent Juan Macapagal was shot by the accused for which he sustained two (2) gunshot wounds which caused his death.

With the aggravating circumstances that the crime was committed with the use of motor vehicle, night time and use of unlicensed firearms."

What took place thereafter is narrated in the decision of the trial court as follows:

"Upon being arraigned on August 14, 1972, the accused Alfredo Larioza y Soriano, Antonio Ong y Laxamana, Faustino Buenconsejo y Ramos, Ricardo Gonzales y Jocson and Frank Larioza y Soriano pleaded not guilty to the offense charged and the trial of the case against them started.

While the trial was in progress, the accused Florentino Rodriguez y de la Paz was apprehended and brought to the jurisdiction of this Court after preliminary investigation was conducted with respect to him by the Municipal Court. After withdrawing the plea of not guilty he had earlier interposed and substituting, in lieu thereof, a plea of guilty to the crime charged, he was sentenced accordingly in a decision rendered by this Court on May 25, 1973, x x x.

Again, when the trial of the case was about to be terminated, the accused Clemente M. Silloco, Jr. was arrested by agents of the law. As it was already during the late stages of the proceedings when this accused was placed under custody, his motion for separate trial was granted. However, since the prosecution's principal witness Ricardo Gonzales can no longer be located and his whereabouts cannot be ascertained notwithstanding efforts exerted, the case against Clemente Silloco, Jr. was provisionally dismissed, with his express consent, pursuant to the order of this Court dated April 18, 1974.

At the outset, in a motion dated September 13, 1972, the prosecution sought the discharge of the accused Faustino Buenconsejo y Ramos and Ricardo Gonzales y Jocson from the information in order that they may be utilized as witnesses for the government. In their written opposition dated October 25, 1972, the accused Alfredo Larioza, Frank Larioza and Antonio Ong, thru counsel, offered no objection to the discharge of the accused Faustino Buenconsejo but vehemently opposed the discharge of the accused Ricardo Gonzales. In its order dated October 27, 1972, this Court discharged the accused Faustino Buenconsejo from the information but held in abeyance its resolution on the motion to discharge the accused Gonzales until after it has heard the other witnesses for the prosecution. Finally, in its order dated January 11, 1973, this Court likewise allowed the discharge of the accused Ricardo Gonzales after it was convinced of the propriety thereof. This ruling of this Court was contested by the defense of the accused Alfredo Larioza, Frank Larioza and Antonio Ong by filing with the Supreme Court a Petition for Certiorari, Prohibition with Prayer for a Writ of Preliminary Injunction, which petition, however, was denied by the Supreme Court in a resolution rendered by it on May 7, 1973.

In view of these circumstances, the trial of this case proceeded only against the accused Alfredo Larioza y Soriano, Frank Larioza y Soriano and Antonio Ong y Laxamana."

After trial, Frank (Francisco) Larioza was acquitted. According to the trial court, "he was an innocent participant in the commission of the offense." Antonio Ong was found guilty as principal of the crime of robbery in band with homicide and sentenced to DEATH while Alfredo Larioza was found guilty as an accessory after the fact and sentenced to an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional to ten (10) years and one (1) day of prision mayor. Both of them were also "ordered to indemnify, jointly and severally, the heirs of Juan Macapagal in the sum of P15,000.00 and P800.00, the latter amount being the value fixed by the Court of his .22 caliber firearm, Guillermo Lopez in the sum of P800.00, value of the .22 caliber firearm taken from him, and the Philippine National Railways in the sum of P32,326.82, to suffer the accessory penalties prescribed by law and to pay the proportionate costs of the proceedings."

Alfredo Larioza did not appeal his conviction. Hence, only the case of Antonio Ong is before us on automatic review.

The four persons who surreptitiously boarded train No. 512 as it was leaving Biñan, Laguna, in the evening of March 16, 1972, were Antonio Ong, Jesus Mendiola (who died at the Trece Martires Hospital from a gunshot wound during the robbery), Elinio Crespo (still at large) and Florentino Rodriguez (who pleaded guilty and was sentenced as above stated).

That Ong boarded the train was proved not only by the testimony of Benjamin Guinto, Guillermo Lopez, Mauricio Costales and Gregorio Juguilon, the PNR employees who were with Juan Macapagal in the baggage car, but also by Ong himself. The testimony of Ong as summarized by the trial court is as follows:

"Testifying for his defense, he declared that he came to know Florentino Rodriguez about the month of January, 1972; that Ricardo Gonzales was introduced to him by Rodriguez in Malabon, Rizal about February of 1972; that he came to know Faustino Buenconsejo, Maximo Casipit and Elinio Crespo only in the house of Ricardo Gonzales when the robbery was being planned; that he came to know Alfredo Larioza after the train hold-up already; that he came to know Francisco Larioza only on the day of the robbery; that he was brought by Rodriguez to Gonzales because he was looking for work as his wife was on the family way and when they talked to Gonzales, the latter talked to them about the hold-up of the train from Bicol; that sometime later, Gonzales sent for him and when he arrived in the former's house, Rodriguez, Buenconsejo, Mendiola, Casipit and Gonzales himself were there and they planned the robbery with Gonzales giving the instructions; that Alfredo Larioza and Francisco Larioza were not present during the meeting; that their first attempt to hold-up the train did not push through because the train had already passed the Biñan station when they arrived; that they agreed to execute their plan the following day so together with Gonzales, Rodriguez, Mendiola, Casipit, and Crespo, they boarded the jeep of Francisco Larioza, driven by the latter, and they proceeded to Biñan station again; that Gonzales told them inside the house not to talk about the plan because Francisco Larioza did not know it; that they were not able to carry out their plan because of the presence of PC men so Gonzales said that they will proceed with the hold-up the following day; that in their group this time were Gonzales, Rodriguez, Casipit, Mendiola, Crespo, Frank Larioza and himself and they were again riding in the jeep driven by Larioza; that they never talked about their plan during their trip to Biñan; that they arrived in Biñan at 8:00 o'clock in the evening and the train arrived past 10:00 o'clock; that it was Mendiola, Rodriguez, Crespo and himself who boarded the train but before they did, he had a quarrel with Mendiola near the railroad tracks because he was already withdrawing as he was scared and besides his wife was about to give birth and if it comes to the knowledge of his wife, she might have a miscarriage; that Mendiola got angry and told him, with his gun drawn and pointed against him, that if he will not board the train, he will kill him right then and there; that he was not carrying any gun at that moment and he got scared of Mendiola, hence, he was forced to board the train; that it was he who first boarded the train, followed by Mendiola, then Crespo and Rodriguez; that he did not have any gun and was carrying only a bag but his three companions were all armed; that once aboard

the baggage car, he was asked by one of the guards where they were going and he answered that he will get off at Paco station; that they were asked whether they were carrying anything and when they answered that they were not, one of the guards told his companion to search them; that when Ben Guinto, one of the train personnel, was approaching him, he (Ong) was pushed by Mendiola and as a result, he and Guinto fell down; that after they fell, Rodriguez shouted that that was a hold-up and then a commotion ensued; that he then heard a shot fired by Rodriguez and then he heard two (2) more shots fired by Mendiola and Juan Macapagal, the train employee who died; that after the shooting, Crespo ordered all the train personnel to lie down, one on top of the other, then his companions took the money from the safe and placed it in the bag he was carrying and later they jumped off the train one by one at the designated spot; that he did not do anything inside the train during the commotion because he was scared and he just kept on sitting in the place where he landed after he was pushed by Mendiola; that they later saw the jeep of Francisco Larioza waiting for them and they boarded the same and proceeded to the house of Alfredo Larioza upon request of Mendiola who had a gunshot wound and wanted a doctor to be called; that Alfredo Larioza was not in the house and he was summoned by his son and when he came, he protested the bringing of Mendiola to his house claiming that he might be implicated but he was forced to quiet down when Gonzales, drawing his pistol, told him to keep quiet; that the money was then counted and divided but the brothers Francisco and Alfredo refused to accept any part of it; that he also did not accept the share being offered to him as he was afraid he cannot reason out to his wife how he got the money; that he was arrested by the agents of the NBI on June 20, 1972 and like Alfredo Larioza, he was tortured and subjected to all kinds of mal-treatment to make him confess to the hold-up; that finally, he was forced to sign an already prepared written statement which he was not even allowed to read; that when he was brought before the Municipal Judge of Biñan, Laguna, he told the judge that he did not know the contents of the statement, so it was read to him and he thereafter signed it, but he did not report the maltreatment he suffered because before he was brought to the Municipal Court he was warned by an NBI agent that if he will not sign the statement, he will be tortured again."

The defense of Ong can be denominated as "confession and avoidance." He admitted his participation in the robbery but nonetheless claims exemption from liability because he allegedly acted "under the compulsion of an irresistible force" or "under the impulse of an uncontrollable fear of an equal or greater injury." (Art. 12, pars. 5 and 6, Revised Penal Code.) And according to him, the one who was the cause of it all was Jesus Mendiola who died as aforesaid.

It has been held that fear or duress as a valid defense should be based on real, imminent, or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful, or remote fear. (*People vs. Semañada, et. al.*, 103 Phil. 790 [1958].) Does the appellant's defense meet this test? The answer is in the negative and again we quote with approval from the well-written and well-reasoned decision of the trial court:

"The evidence presented by both the prosecution and the defense establish the fact that Ong was with the group that originally discussed the plan to rob the PNR train. It is not disputed that he was present during the meetings held in the house of Ricardo Gonzales on March 14, 15 and 16, 1972. He likewise admitted that he was with the group who went to Biñan on March 14, 1972 and he was among those supposed to board the train and stage the hold-up. Again, on March 15, 1972, he was with the party that was supposed to climb the train. Finally, on March 16, 1972, when the robbery was carried out, he was among the four who boarded the baggage car. He claims, however, that before he boarded the train, he was already withdrawing from the plan as he was afraid because something might happen to him and his wife might learn about it and she might have a miscarriage as she was then pregnant. Because he was already desisting from taking part in the robbery, he had a quarrel with Jesus Mendiola in the presence of Florentino Rodriguez near the railroad station of Biñan. Finally, Mendiola got angry and told him that if he will not board the train, he will kill him "right then and there", Jesus Mendiola at the same time pulling out his gun and pointing it at him. He got scared and for this reason, he was forced to obey Mendiola and he boarded the train. He claims, however, that inside the train, he

did not do anything in pursuance of the robbery. He did not fire any shot; he did not tie anybody; and he did not take anything from the train. He likewise denied having received any amount from the proceeds of the robbery because he refused as he might not be able to justify, in case his wife inquires, where he got the money.

It is surprising why, after Ong was all set to participate in the robbery, as shown by his readiness on two previous occasions which did not materialize, he would suddenly change his mind and desist from doing so. The reasons he had given do not seem plausible enough. He stated before that he agreed to participate in the robbery because he needed money as his wife was on the family way. Later he claims that he was desisting because of the same reason - that his wife was about to give birth and he was ashamed she might learn about it. Moreover, had he really wanted to back out from the plan, he could have not proceeded to the house of Gonzales on that evening of March 16, 1972. He admitted that even before he went to Gonzales' house, he was already thinking about his wife. Thus, he stated:

"FISCAL:

'Q - Were you already afraid when you started from the house of Carding going to Biñan?

A - Yes, sir.

Q - Were you already thinking of your family when you left the house of Carding going to Biñan?

A - Yes, sir.

Q - And you were already thinking about your wife who was going to deliver a baby and you might be killed?

A - Yes, sir.

Q - All those thoughts were with you when you went to the house of Carding?

A - Yes, sir.

Q - As a matter of fact, before you arrived to the house of Carding, those thoughts were already in your mind?

A - Yes, sir.

Q - And despite all those thoughts that were already in your mind, you still went to the house of Carding?

A - Yes, sir.

Q - You were alone when you went to the house of Carding?

A - Yes, sir.

Q - Nobody forced you to go to the house of Carding?

A - None, sir.

Q - You voluntarily went to the house of Carding?

A - Yes, sir.

Q - And you know that when you go to the house of Carding, you and your companions will proceed to Biñan to proceed with the hold-up?

A - Yes, sir.'

It is also absurd to think that Ong would not accept his share in the loot after he had undergone all the dangers in committing the offense. His primary purpose in participating therein, as he had admitted in Court, was for him to have money as his wife was about to give birth. Can he resist his share when offered to him?

Had Ong really wanted to desist from participating in the robbery, he could have done so without fear from anybody. He admitted that even before going to Bifian that evening of the robbery, he was already scared to participate in it. No one among his companions knew about this intention of his to withdraw from the plan. As

a matter of fact, they were about to board the train when he told this to Mendiola. He did not have to tell any of his companions about his plan of backing out. According to him the group arrived at Biñan station at about 8:00 p.m. and the train arrived at 10:00 p.m. (tsn, Nov. 9, 1973, p. 62) and during the two-hour period that they were waiting, he could have easily disassociated from the group and simply returned to Manila. Nobody, particularly Jesus Mendiola, would be watching him as he did not know that he was desisting. Furthermore, Ong admitted that there were many people milling at the station on that evening, only a few meters away from the place where he and Mendiola were allegedly quarreling. He could have easily attracted the attention of those people and resisted the threat being made on him by Mendiola.

In his statement given before the agents of the NBI, Ong made no mention of the fact that while at Biñan, he was already desisting from participating in the robbery. Neither did he make it appear therein that Mendiola forced him to board the train against his will. There was no indication whatsoever in said statement that he was an unwilling perpetrator of the hold-up. He claims that he was forced to sign the said statement by the NBI agents who used all forms of maltreatment against him and that he did not even know the contents of the statement when he signed it. But this is negated by his own testimony in Court wherein he admitted that when he was brought before Judge Leonardo Paner of the Municipal Court of Biñan, Laguna, he did not tell the Judge that he was maltreated by the NBI agents and he was forced to sign the statement. Instead, notwithstanding that Judge Paner told him that because they were alone in the room and nobody will harm him so he can tell him the truth, he just affirmed the contents of his statement and took his oath on it (tsn, Feb. 22, 1974, p. 22).

Moreover, the occupants of the ill-fated baggage car disprove Ong's claim that he did not do anything after he boarded the same. Prosecution witnesses Ben Guinto, Guillermo Lopez, Melencio Costales and Gregorio Juguilon corroborated one another in testifying that it was Ong who tried to make Macapagal believe that they were merely hitchhiking up to Paco station because they had no money. It was also Ong who tried to hit Guinto with a gun at his forehead. This was not denied by Ong in the course of his testimony. Are these the acts of a person who wanted to stay within the folds of the law as claimed by him?"

The conspiracy to commit the robbery is clear and convincing. So it matters not who of the four persons that boarded Train No. 512 shot and killed Juan Macapagal. (People vs. Espejo, et al., L-27708, Dec. 1970, 36 SCRA 400.)

The aggravating circumstances of use of a motor vehicle (a jeep owned and driven by Francisco Larioza) and nocturnity which were found to be present by the trial court have not been contested by the appellant.

What he contests is the finding of the trial court that the crime was committed by a band. To discuss this matter seems to be a useless exercise on a legal point for the conspiracy to commit the robbery which resulted in a homicide and attended by two aggravating circumstances has been established. Whether or not it was committed by more than three armed malefactors is immaterial and will not affect the imposable penalty. (People vs. Espejo, et al., supra.) In any event, the evidence shows that Ong, Mendiola, Crespo and Rodriguez were all armed.

WHEREFORE, the judgment of the lower court finding the appellant guilty of the crime of robbery in band with homicide is hereby affirmed. However, for lack of the required number of votes, the penalty imposed by the lower court is hereby reduced from death to reclusion perpetua; the judgment is affirmed in all other respects.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., filed a brief concurrence.

CONCURRING OPINION

TEEHANKEE, J.:

Considering that the herein accused was not shown to have a direct active participation in the commission of the robbery, much less in the exchange of gunshots which resulted in the deaths of the PNR employee Juan Macapagal and Jesus Mendiola who appeared to be the gang leader, I vote for the imposition of the lesser penalty of reclusion perpetua.

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