

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TAGO ESMAEL AND TAILISAN CAMARODIN, DEFENDANTS-APPELLANTS.*G.R. No. L-28533. February 24, 1971*

Ponente: CONCEPCION, C.J.

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Appeal, taken by defendants Tago Esmael and Tailisan Cama-rodin, from a decision, of the Court of First Instance of Lanao del Sur, convicting them of the crime of robbery with homicide, with which they are charged, and sentencing them to life imprisonment, with the accessory penalties provided by law, to jointly and severally indemnify the heirs of the deceased Lamberto Mendoza in the sum of P6,000, in addition to the sum of P180, representing the value of the objects stolen from him, and each to pay one-half of the costs.

The facts established by the prosecution are correctly set forth in the appealed decision, from which we quote:

"The evidence of the prosecution show that in the morning of July 28, 1965, while Lamberto Mendoza was driving a tractor plowing the farm of Luis Ocsio at Masao, Lalabuan, Malabang, Lanao del Sur with Fernando Capilitan, accused Tago Esmael and Tailisan Camarodin, approached the tractor while at a standstill and, at a distance of four steps from the tractor, accused Tago Esmael, shot Lamberto Mendoza with a pistol while Mendoza was sitting on the driver's seat holding the steering wheel of the tractor; that when Tago Esmael shot Lamberto Mendoza he was at the right side of the tractor while Camarodin was at the left side six brazas from Lamberto Mendoza; that Tago Esmael shot Lamberto Mendoza five times and the latter slumped dead on the steering wheel after he was shot; that after Tago Esmael shot Lamberto Men-doza, Camarodin told Tago Esmael to get the revolver and watch of Mendoza so that Tago Esmael took said revolver valued at P120.00 and watch valued at P60.00; that after Tago Esmael took the watch and revolver of Lamberto Mendoza, he fired at Fernando Capilitan, who was then ten meters away from the tractor, but Fernando Capilitan was not hit and he ran away towards the house of Macario Mendoza, the father of Lamberto Mendoza where they were living; that on his way, he met Alfonso Mendoza, the brother of Lamberto, and told Alfonso Mendoza that Lamberto Mendoza was shot by Mus-lims; that before the incident, Fernando Capilitan was familiar with the face of both accused but not their names because they were neighbors and often times saw them; that the dead body of Lamberto Mendoza was examined by Dr. Rafael Lucido on July 28, 1965 less than one hour after death and found five gunshot wounds as described in the Medical Certificate, Exh. 'A', as follows:

"POSTMORTEM FINDINGS:

"1. Wound gunshot entrance 9 mm diameter located at the right posterior sygomatic bone, exit 12 mm diameter at the left superior border temporal bone.

"2. Two gunshot wound entrance roughly oval in shape 9 mm in diameter located at the mid axillary line right 2 inches apart level of the 4th intercostal space, no exit.

"3. Wound gunshot entrance roughly oval in shape 9 mm diameter located at the mid axillary line right level of the 7th rib, exit oval in shape 12 mm by 15 mm loca-ted at superior border of the left scapula.

"4. Wound gunshot entrance roughly oval in shape 9 mm diameter located at the mid axillary line level of the

10th rib, no exit.

"CAUSES OF DEATH: Hemorrhage severe internal and external due to multiple gunshot', and that the dead body of Lamberto Mendoza was buried in the cemetery of Malabang, Lanao del Sur, the next day."¹

The defense tried to impeach the testimony of Fernando Capilitan upon the ground that he had, at first, identified Usman Moro as the person who killed Lamberto Mendoza. Appellants, moreover, set up their respective alibis. Tago Esmael would have us believe that, on July 28, 1965, he was in the coconut plantation of Maitowamama Mangondato, four kilometers away from the scene of the occurrence, from early morning to long after noontime, whereas Tailisan Camarodin claimed that he was then fishing in Parang, Cotabato, about 55 kilometers away, where he stayed for three days.

Commenting on these alibis, His Honor, the trial Judge, said:

"The evidence of denial and alibi put up by both accused could not prevail over the clear, explicit and positive identification of both accused by prosecution witness, Fernando Capilitan, as the very person who shot and robbed Lamberto Mendoza of his .45 caliber pistol and wrist watch. Considering that alibi is the weakest of all defenses and easy to concoct and the alibi of accused, Tago Esmael, was merely established by the testimony of his uncle, Maitowamama Mangondato, and the alibi of accused, Tailisan Camarodin, was merely corroborated by his brother-in-law, Camarodin Sadon, said defense of denial and alibi could not prevail over the positive identification of both accused by Fernando Capilitan as the authors of the crime. (People vs. Luomayag, L-19142, March 31, 1965; People vs. Amiril Asmawil, L-18761, March 19, 1965; People vs. Cunanan, et al., L-17599, April 24, 1967; People vs. Caymo, et als., L-16177, May 24, 1967; People vs. Reyno, L-19071, April 30, 1965; People vs. Paz, et al., L-17320, May 31, 1965; People vs. Reyes, et al., L-19892, May 30, 1960; People vs. Torino, L-18787, May 30, 1964; People vs. Susano, et al., L-19098, May 31, 1964).

"Besides, it could not be physically impossible for Tago Esmael to be at the scene of the crime even if he was working in the coco-nut plantation of his uncle, Maitowamama Mangondato, because the distance is only four kilometers. Neither is it physically impossible for Tailisan Camarodin to be with Tago Esmael in committing the crime because the distance of his house to the scene of the crime is only five kilometers so that it was easy for him to immediately leave for Parang, Cotabato, fifty kilo-meters away just after the commission of the crime by taking a truck in order to invent an alibi. For alibi to prosper, it is not enough to prove that the accused were somewhere when the crime was committed but that they must likewise demonstrate that it was physically impossible for them to have been at the scene of the crime. (People vs. Caymo, et als., L-16177, May 24, 1967)."¹

We are fully in agreement with this view. Besides, Mangondato could not possibly recall the date on which Tago Esmael had allegedly worked with him, for he (Mangondato) is not familiar with the Gregorian Calendar and did not even know what date it was when he took the witness stand. Neither could Camarodin Sadon - who tried to corroborate the alibi of his brother-in-law, Tailisan Camarodin - reckon dates, so that the former could not be positive as to the date when the latter was allegedly with him in Parang, Cotabato.

As regards the identification of Usman Moro by Fernando Capilitan as the person who had shot Lamberto, the following facts should be noted. Immediately after the occurrence, the same was reported to the Philippine Constabulary, which forthwith sent a team of investigators, headed by then Captain Jimmy Bangcola. The team divided itself into two (2) groups. One, including a medical officer, went to the house of the Mendozas, where the body of Lamberto Mendoza had already been taken. The other proceeded to the scene of the occurrence, which the members of the group examined and where they picked up some empty cartridges. Nearby, they, likewise, found Usman Moro - who turned out to be about ten (10) years old,² although he was rather tall for his age - who could not give a categorical answer to the questions propounded to him by the peace officers, who asked him to

explain his presence in that place. What is more, he was pale and trembling. These circumstances led the peace officers to suspect and detain him. Then, they brought him to the house of the Mendozas.

There, the PC asked Fernando Capilitan whether Usman Moro was the very person who had killed Lamberto Mendoza. Although Capilitan answered in the affirmative, he told Captain Bangcola that he (Capilitan) was not certain about it. Upon the other hand, having been tipped that defendants herein had been seen in the vicinity of the scene of the occurrence, Captain Bangcola bade the local chief of police to pick them up for questioning. As the chief of police did what he was told and brought the defendants to the PC, Capilitan identified them positively as the culprits, and admitted that he had committed a mistake when he, at first, said that Usman Moro was one of them. Thereupon, Capilitan executed, before the local municipal judge, an affidavit to this effect, the contents of which he reiterated on the witness stand.

Considering that Capilitan was barely 16 years old when he testified in court; that he had not even finished fourth grade elementary school; that, like Usman Moro, he was, also, scared when the peace officers first interrogated him; that, soon after, he confided to Captain Bangcola that he (Capilitan) was not certain that Usman Moro was one of those who had participated in the commission of the crime; that he has no motive whatsoever to falsely incriminate appellants herein; and that he had seen them several times before the occurrence, they being neighbors of the Mendozas, for whom he had been working for one (1) year, we find no reason to doubt either his veracity or the accuracy of his testimony regarding the identity of the culprits.

Appellants maintain that the lower court erred: (1) "in appreciating facts not introduced in evidence"; (2) "in convicting appellants for the crime charged without Exhibit B having been admitted in evidence for the prosecution"; and (3) "in holding that notice of appeal in criminal cases perfected the appeal," and that, accordingly, their motion for reconsideration, filed after the filing of their notice of appeal, could "no longer be entertained" by said court.

Under their first assignment of error, it is urged that the lower court was not justified in stating in the decision appealed that "possession of a firearm is precious to a Muslim, hence the reason for the robbery," no evidence having been introduced in support thereof. Said statement reflects, however, a common belief among Christians in Mindanao, of which judicial cognizance may be taken. At any rate, even if the expression objected to were stricken out or disregarded, still there is the positive testimony of Fernando Capilitan to the effect that, after killing Lamberto Mendoza, appellant Tago Esmael, upon indication of his co-defendant, divested the deceased of his pistol and a wrist watch, thus indicating that robbery was the motive of the culprits.

Exhibit B, to which the second assignment of error refers, is the permit or license to possess said pistol. Exhibit B was identified and marked during the trial. It was not available, however, to the public prosecutor when he made a formal offer of his exhibits, immediately before closing his evidence, inasmuch as said document was in the possession of the private prosecutor, who happened to be absent at that time. At any rate, Exhibit B is not indispensable to find that Lamberto had the pistol in his possession and that it was taken away from his person by Tago Esmael, immediately after the latter had killed him, said fact having been duly established by the testimony of Capilitan. Besides, such testimony was partly corroborated by that of Francisco Cariño, former manager of the Southern Plantation, in whose favor a permit had been issued to possess a .45 caliber pistol. The same was, according to Cariño, turned over by him to Lamberto's father, Macario Mendoza, who succeeded him (Cariño) as manager of the Southern Plantation. It is, thus, quite probable that Lamberto took the pistol from his father before proceeding to the place of the occurrence, in the morning of July 28, 1965, for his (Lamberto's) protection while plowing the land with a tractor.

In any event, it has been proven, by the testimony of Capilitan, that Lamberto had in his possession a pistol at the

time of the occurrence. Whether he had a permit or not to possess the firearm, the taking thereof by Tago Esmael, after killing Lamberto, constituted the crime of robbery with homicide. Then, too, there is positive evidence to the effect that Tago Esmael had, also, taken a wrist watch from the body of Lamberto Mendoza, which - in the light of the attending circumstances and independently of said pis-tol - suffices to establish the motive of the culprits, there being no animosity between them and the deceased.

With respect to the last assignment of error, it appears that the decision of the lower court was promulgated on September 30, 1967. Two (2) days later, or on October 2, 1967, counsel for appellants filed their notice of appeal from said decision, after serving copy thereof, on the same date, to the prosecution. On October 7, 1967, the defendants filed a motion for reconsideration of the aforementioned decision. This motion was denied on October 20, 1967, upon the ground that the lower court had no jurisdiction to entertain it, owing to the perfection of defendants' appeal prior thereto by the filing of their aforementioned notice of appeal, in view of which His Honor, the trial Judge, ordered that the records be forwarded to the Supreme Court. This action is in accordance with sections 3 and 6 of Rule 122 of the Rules of Court and our jurisprudence. Indeed, we have held that:

"x x x As a matter of principle, when an appeal has been perfected from a judgment in a criminal case, the court from which the appeal is made loses jurisdiction over the case, and this (case) means both the record and the person of the accused-appellant. In the same manner that after the judgment has become final, the trial court loses jurisdiction to amend the same, so also upon the perfection of the appeal which brings about the finality of the judgment or order of the court, the sentencing court must also lose jurisdiction or power to do anything or any matter in relation to the person of the accused-appellant."¹

Although courts may allow the withdrawal of an appeal, for the purpose of allowing the filing of a motion for reconsideration and passing upon the same, the exercise of such authority is discretionary in nature, and the records do not show that His Honor, the trial Judge, had abused his discretion or otherwise erred in acting as he did. In fact, appellants' motion for reconsideration does not state that they were withdrawing their notice of appeal. At any rate, We have examined said motion for reconsideration and found the same to be devoid of merit.

The crime of robbery with homicide committed by the accused is punishable - under Article 294, 1st subdivision, of the Revised Penal Code - with life imprisonment to death. The lower court gave appellants the benefit of the mitigating circumstance of voluntary surrender to the authorities - since they offered no resistance when the chief of police picked them up for investigation, upon orders of Captain Bangcola - and imposed the penalty of life imprisonment. This, indeed, is the proper penalty, pursuant to subdivision (2) of the second paragraph of Article 63 of said Code, even in the absence of said mitigating circumstance, inasmuch as the punishment prescribed by law for the aforementioned offense consists of two (2) indivisible penalties. The amount of the indemnity due to the heirs of the deceased should, however, be increased to twelve thousand pesos (P12,000).²

With this modification, the decision appealed from should be, as it is hereby affirmed, therefore, in all other respects, with costs against the appellants.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur. Makasiar, J., did not take part.

¹ CFI Decision, pp. 2-3.

² CFI Decision, pp. 10-12.

2 T.s.n., p. 131.

1 Director of Prisons, et al. v. Teodoro, et al., 97 Phil. 391, 395-396.

2 People v. Pantoja, L-18793, October 11, 1968.

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