

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAURO VALLENTE, ACCUSED-APPELLANT.

G.R. NO. L-37937. September 30, 1986

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

Under an Information dated April 11, 1973, filed with the Circuit Criminal Court of Manila, the following accused, namely: Carlos Medina y de Guzman @ Carlos, Reynaldo Dantes y Laxamana, Alberto Gucvarra y Pascncia @ Boy Bungal, Leonardo Concepcion y Bunagan @ Bano, Conrado Bucno y Sincollagas @ Boy Kengkoy, Honorio Lirio y Punzalan @ Lingling, Mauro Vallente y Javier, and Rodolfo Balinas y Villena @ Rudy Puto, were charged with the crime of Robbery with Homicide. In said Information, docketed as CCC-VI-1461, it was therein alleged:

"That on or about the 7th day of April 1973, at nighttime purposely sought to better accomplish their criminal designs, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, four of whom were armed with guns and a knife, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force and intimidation upon person, to wit: by drawing their guns and a knife inside passenger jeepney with Plate No. PUJ-19-45 A (Manila '72) and stating it was a holdup, forcibly grabbing and snatching from one of the passengers, Natividad Pacheco, a bag containing P830.00 cash, lake, steal and carry away the said amount, belonging to Natividad Pacheco to the damage and prejudice of the said owner in the aforesaid sum of P830.00, Philippine Currency; that on the occasion of said robbery and for the purpose of enabling the said accused to take, steal and carry away the said amount in pursuance of their conspiracy and taking advantage of their number and superior strength, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon Vito Robles y Suarez a companion of Natividad Pacheco, by then and there hitting him on the head with a gun and then shooting him, thereby inflicting upon him a mortal gunshot wound at the back, which injury was the direct and immediate cause of his death." (Rollo, pp. 3-4)

After trial, a decision was then rendered on August 23, 1973 by the court below. Some of the accused were convicted while others were acquitted. In this regard, the dispositive portion of the said judgment reads as follows:

"WHEREFORE, accused Carlos Medina y de Guzman, Reynaldo Dantes y Laxamana, Mauro Vallente y Javier and Rodolfo Balinas y Villona arc hereby found guilty beyond reasonable doubt as principals of the crime of robbery with homicide and the Court sentences them as follows:

"1. Accused Reynaldo Dantes, Mauro Vallente and Rodolfo Balinas, there being proved the aggravating circumstances of craft, taking advantage of superior strength and also recidivism with respect to Rodolfo Balinas only, without any mitigating circumstance to offset the same, the Court sentences each of them lo DEATH;

"2. Accused Carlos Medina, there being no modifying circumstance to consider, the Court sentences him to LIFE IMPRISONMENT;

"3. Accused Dantes, Vallente, Salinas and Medina are hereby further ordered to jointly and severally indemnify the heirs of the deceased, Vito Robles, the sum of P12,000.00 for the death of the latter; the sum of P1 0,000.00 by way of exemplary damages, the victim Nalividad Pacheco the sum of P830.00 representing the amount taken from her and to proportionately pay the costs.

"ACQUITTING accused Leonardo Concepcion y Bunagan, Alberto Guevarra y Pasencia, Conrado Bueno y Sincollagas and Honorio Lirio y Punzalan of the crime charged for failure of the prosecution to prove their guilt beyond reasonable doubt, with costs de oficio. Their release is hereby ordered unless there are valid grounds for further detaining them."

"xxx xxx xxx

"SO ORDERED." (Decision, Rollo, pp. 50-51)

Because of the imposed penalties of death, said decision is now the subject of automatic review by this Court. This review is only with respect to appellant Mauro Vallente (Valiente) y Javier, who managed to escape from the custody of the New Bilibid Prison on June 16, 1974. This is indicated in the letter dated June 25, 1974 addressed to the Clerk of Court, by Julio M. Alcantara, Sr., Executive Assistant II & Acting Administrative Officer IV, Bureau of Prisons (Rollo, p. 107). According to the last information received, said appellant is still at large (Resolution of April 17, 1975, Rollo, p. 140).

Regarding the other accused who were convicted, it should be mentioned that in a letter dated January 15, 1975, addressed to the Clerk of Court by Rufo G. Ponsones, Acting Administrative Officer IV, Bureau of Prisons, it is stated therein that prisoners Reynaldo Dantes, No. 88179-P and Rodolfo Balinas, No. 60983-P whose death sentences in Criminal Case No. CCC-VI-1461 (G.R. No. L-37937) are under review by this Court, died of gunshot wounds on December 10, 1974 while on court appearance in the Court of First Instance of Rizal (Rollo, p. 122). Thus, on March 18, 1975, the Court resolved to dismiss the cases against accused Appellants Reynaldo Dantes and Rodolfo Balinas but only as to their criminal liability (Rollo, p. 133).

Accused Carlos Medina who was sentenced to life imprisonment did not appeal and the judgment rendered against him became final and executory.

Notwithstanding appellant Mauro Vallente's escape, the Court is constrained to continue with the review of his case and to determine the propriety of the death penalty imposed against him. As stated in the case of *People vs. Saliling*, L-27974, February 27, 1976, 69 SCRA 427, although the accused is at large, "this court is not precluded from reviewing his death sentence. The review is mandatory."

In the appellant's Brief filed by counsel for Mauro Vallente, it is alleged that the trial court erred in:

- " 1. Holding that the crime committed was consummated robbery with homicide;
- "2. Finding that herein appellant Vallente participated as a principal in the crime of robbery with homicide;
- "3. Appreciating the aggravating circumstances of craft and taking advantage of superior strength against herein appellant;
- "4. Imposing the supreme penalty of death on herein appellant while sentencing one of the co-accused to life imprisonment and acquitting the other co-accused." (Brief for Appellant Mauro Vallente, p. 6)

Before discussing and resolving the alleged errors imputed to the trial court, there is need to consider the facts of this case which have been summarized in the Appellee's Brief submitted by the Solicitor General which the herein appellant does not appear to challenge or controvert. The said facts are the following:

"At about 9:00 o'clock in the morning of April 6, 1973, the accused Rodolfo Balinas alias Rudy Pulo, Carlos

Medina, Reynaldo Dantes alias Rene, Honorio Lirio alias Lingling, Conrado Bueno alias Boy Kenkoy, Mauro Vallente alias Moring (herein remaining appellant) and Alberto Gucvarra alias Boy met at the house of Carlos Medina at Balut, Tondo, Manila. Before they started to talk, Rodolfo Balinas told his brother-in law Alberto Guevarra whom he had accidentally met along the way and brought along) to leave the place because he (Guevarra) might be implicated (madamay). Guevarra left the place. Thereafter, those who remained in the said house started to talk on the details of their plan, which was hatched four days earlier, to rob the Caltex gasoline station located at the corner of Rodriguez and Honorio Lopez Streets, Balut, Tondo, Manila. They agreed to stage the robbery in question the following day, April 7, 1973, xxx

"At about 8:00 o'clock that same evening of April 7, 1973, Miss Natividad Pacheco, proprietor of the Caltex gasoline station, accompanied by her driver, Vito Robles, stepped out the said gasoline station and waited for a passenger jeepney to go home at 416 Morga Street, Tondo, Manila. She brought with her the cash sales for the day in the amount of P830.00, which she placed inside a paper bag, xxx Soon thereafter, a passenger jeepney (Plate No. 19-45-A Manila '75), owned by a certain G. Ignacio and driven by Jesus Chavez came by and the driver stopped his jeepney to pick them up. Miss Pacheco and Vito Robles then boarded the jeepney xxx Almost simultaneously, Reynaldo Dantes, Mauro Vallente and Rodolfo Balinas, who had noticed their quarry come out from the said gasoline station bringing a paper bag, boarded the jeepney. Carlos Medina then signalled at Honorio Lirio that Vallente, Balinas and Dantes had boarded the said jeepney xxx

"Inside the said jeepney, Miss Pacheco sat at the rear section of the left side seat, while Robles sat on the same seat on her left side. The three hokluppers spread themselves inside the said jeepney; Balinas sat on the front seat beside the driver Chavez; Vallente sat at the rear section on the right side seat, in front of Miss Pacheco; and Dantes sat beside Vallente xxx The jeepney proceeded on its way and, after picking up four more passengers xxx and negotiating a bridge near T. Harnshaw and Hide! Streets in Balut, Tondo, Manila, Balinas suddenly told driver Jesus Chavez to stop his jeepney, who complied as instructed. Immediately, Balinas and Dantes told the other passengers: 'Huwag kayong makialam,' and then 'announced: 'Hold-up ito One of the hold-uppers, Mauro Vallente, grabbed the paper bag containing the money, which was on the lap of Miss Pacheco, but was unsuccessful xxx The other hold-uppers drew their guns. At this point, Vito Robles wrestled with Vallente for the possession of the latter's gun xxx Balinas who was seated in front beside the driver, alighted and helped Vallente ward off Robles. The grappling for the possession of the gun continued even as they were already outside the jeepney. Dantes hit Robles on the face with his firearm x x x At the height of the commotion, one of the two hold-uppers seated in front of Miss Pacheco grabbed the paper bag containing the money x x x At that time, the place where the jeepney stopped was lighted by a lamp post nearby. The jeepney's light was also on x x x Vallente was then carrying a nickel-plated .22 caliber revolver; Dantes was armed with a snub-nosed type revolver, Astra, with SN 86495; and Balinas was armed with a .38 caliber Smith & Wesson revolver xxx

"After mauling Robles and succeeding in grabbing the paper bag containing the money, the three hold-uppers fled, but upon noticing that Robles was chasing them, turned around and faced Robles, who backed out. Miss Pacheco shouted at Robles to return. Just when Robles turned around to return to the jeepney, Reynaldo Dantes fired his gun at him, hitting him at the back. The hold-uppers then ran towards their get-away jeep which was parked at the corner of Rodriguez Street where Conrado Bueno was waiting for them xxx Driven by Conrado Bueno, the getaway jeep sped away with the three hold-uppers and proceeded towards Sofis Street where Balinas and Dantes disembarked near the railroad tracks, while the rest continued to their respective hang-outs x x x

"Vito Robles who was wounded and bloodied managed to return to the jeepney driven by Chavez. Chavez, together with the rest of the passengers, brought Robles to the Mary Johnston Hospital where Dr. M. Mateo, who attended to Robles, pronounced the victim dead upon arrival xxx (Appellee's Brief, pp. 5-6).

After Carlos Medina was tracked down and apprehended by the police authorities on April 8, 1973, he acknowledged his participation in the robbery incident which ultimately brought about the death of Vito Robles.

His disclosures as to his companions and conspirators led to the arrests of his other co-accused. Mauro Vallente and Reynaldo Dantes were placed in a police line-up and they were identified by Natividad Pacheco and Jesus Chavez as two of the three hold-uppers. Mis identification of Mauro Vallente as one of the hold-uppers was also confirmed by Orbel Broce who was one of the passengers of the jeepney at the time of the robbery (TSN, June 28,1973, pp. 13, 30,37; TSN, June 29,1973, pp. 9-10, 28).

Regarding his first assigned error, appellant contends that the crime committed was merely an attempted robbery with homicide. Me argues that of the six (6) witnesses presented by the prosecution, only complainant Natividad Pachcco testified on the alleged robbery, while all the rest did not even make any mention of the same; that the testimony of Natividad Pachcco cannot be relied upon to establish the crime of robbery with homicide because her declarations arc vague and inconclusive; that the admitted state of shock, confusion, and nervousness of said witness during the time the crime was being committed must have dulled her perception and understanding of what really happened.

Appellant's contentions are untenable.

In the first place, the testimony of complainant Natividad Pacheco which was quoted by accused-appellant and pointed to as not reliable, is in fact, fully sufficient to sustain the charge in the Information. It is neither vague nor inconclusive. Taken together with the statements of accused Reynaldo Dantes (Exhibit K) which were introduced by the prosecution, the entirety of these evidence, singly or collectively considered, clearly prove that a consummated robbery with homicide was the crime committed by the several accused, in furtherance of a common conspiracy, and not merely an attempted robbery.

Natividad Pacheco testified on direct examination:

Q-

After the jeep stopped what happened?

A -

He said it was a holdup. "This is a hold-up."

Q -

Did you see the person who said 'hold up ito'?

A -

No, sir.

Q -

From what direction did that voice come?

A -

In front.

Q -

What happened?

A -

Then somebody grabbed the paper bag I was holding on my lap.

Q -

Can you point to that person who grabbed that money from your lap?

A -

Yes, sir.

Q -

Who of the two accused who are here grabbed that money from your lap?

A -

Yes, sir.

Q -

Who of the two accused who are here grabbed the money?

A -

I cannot remember anymore, I was shocked.

Q -

Did you know if Vito Robles did anything when somebody grabbed that bag?

A -

The first attempt the bag was not taken, the second trial I saw somebody in of me draw his gun from his front waste (sic).

Q -

Who is that man who drew the gun?

A-

I cannot remember very well.

Q -

Was the one who drew his gun the person also (he one who grabbed the paper bag?)

A -

Yes, sir.

Q -

What happened after that man drew the gun?

A -

There was commotion after that and they succeeded in getting the money at the height of the commotion.

Q -

Would you be able to say who in particular was able to get the money? The one with the gun or his companion?

A -

I think it was the companion of the one who had a gun because I was shocked already.

Q -

During the time that the paper bag was being taken from the lap do you know what Vito Robles did?

A -

It seems lie was defending me. When the paper bag was grabbed from me Robles defended me by holding the hand with a gun and I saw even the gun pointed upwards." (TSN., pp. 10-11, Pacheco, June 28, 1973). [Brief for Appellant Mauro Valiente y Javier, pp. 7-8, italics supplied].

Natividad Pacheco was very positive that the bag of money she was holding was taken away from her:

"Q -

Miss Pacheco, you stated that the person who got the money was actually the same person who drew his gun. Is that correct?

A -

No, sir. :"

Q-

Which is the truth?

A -

I don't know who took the money but it was taken by force from me." (Ibid, p. 18) [Brief Appellant Vallente (Vallente) y Javier, p. 8],

The inability of Natividad Pacheco to categorically state then as to who of the two culprits actually took the bag of money from her — whether it was the one who drew his gun or the one who first grabbed the money — the fact remains that the paper bag with money that she was holding and on her lap was forcibly taken from her by one of

the two accused.

The identity of the culprit who ultimately managed to snatch the bag of money from the offended party was later revealed by appellant's co-accused, Reynaldo Dantes, in his written statements (Exh. "K")» dated April 9, 1973, submitted and accepted as evidence for the prosecution. The trial court, in its decision, summarized these declarations of Reynaldo Dantes, as follows:

"Accused Dantes admitted in detail in his statement (Exhibit "K"), among other things, that he, together with Vallente and Balinas boarded the jeep where Natividad Pacheco boarded and he sat at the rear; that after the jeep had been stopped by Balinas, Vallente said that it is hold-up and immediately grabbed the paper bag of money but there was a man who grappled with Vallente so, what he did was to hit the face of that man twice with a gun forcing the latter to release hold of the paper bag of money; that the man jumped out of the jeep while he and his companions ran away; and that he shot that man because the latter chased him." (Rollo, P-41)

It is, therefore, sufficiently established that it was no less appellant Mauro Vallente who succeeded in taking the bag of money from Natividad Pacheco. It was also he who grappled with Vito Robles, the driver of Natividad Pacheco. His active participation in the robbery is unmistakable.

The inaccuracies and discrepancies in the testimony of the offended party which appellant refers to in his Brief do not relate to substantial matters. It is understandable that it would be difficult for the offended party to remember even small details of a robbery incident that had occurred suddenly and swiftly ended. Because of the traumatic experience suffered by the victim of a robbery holdup it may not also be expected that she can faithfully remember and testify on all minor details of the robbery and shooting incidents.

Appellant's submission that the crime committed was merely attempted robbery is devoid of merit. The speculations of appellant that during the ensuing commotion the paper bag containing the money fell on the floor; was picked up by one of the passengers after the incident, or was left behind in the jeep; or was thrown to the seat of a passenger; or that the bag was thrown outside the jeep and somebody got it, are mere conjectures that cannot affect the nature of the offense as a consummated one which is the crime of robbery with homicide as so charged in the Information.

From the moment the offender gained possession of the thing, even if the culprit had no opportunity to dispose of the same, the unlawful taking is complete. The fact that the defendant in his flight had thrown away the property stolen or that it fell without his knowledge does not affect the nature of the crime as a consummated offense (The Revised Penal Code by Luis B. Reyes, Book H, 12th edition, p. 594).

Appellant's contention that he should not be punished as a co-principal in the crime of Robbery with Homicide because the shooting of the deceased Vito Robles by hold-upper Reynaldo Dantes, was the latter's "instant personal decision of which herein appellant (Mauro Vallente) has no inkling whatsoever and which he had from the start no chance to prevent" (Appellant's Brief, pp. 15-16), is clearly untenable and without any legal and factual basis.

Three of those who staged the robbery were armed with firearms Appellant Mauro Vallente was armed with a nickel-plated 22 caliber revolver. His co-accused Reynaldo Dantes and Rodolfo Balinas were armed with an Astra 22 caliber revolver and a .38 Smith and Wesson revolver, respectively (Exhs. "H", "L", "UM", "O", and "X'1). All three malefactors drew their guns and announced to the passengers that they were staging a hold-up. When a fight ensued because Vito Robles wanted to prevent these crooks from taking away the paper bag containing the money from Natividad Pacheco, these three persons armed with firearms, moved in on Vito Robles and mauled him. Their concerted actions clearly display a determination to carry out their criminal plan and even use their guns to overcome any active opposition. When a group of malefactors conspire to commit robbery and arm themselves

for that purpose, no member of the group may disclaim responsibility for any action of violence that is perpetrated by reason of or on the occasion of the robbery. Undoubtedly, the instruments were intended to facilitate the robbery, and if their use resulted in homicide, the liability therefor attaches to the entire group (*People vs. Espejo*, 37 SCRA 400).

When the three armed hold-uppers, among whom was Mauro Vallente, turned and faced Robles after noticing that they were being chased by the deceased and then drew their guns while approaching Robles, this is indicative that they shared a common determination to stop Vito Robles at any cost. There is no showing that at this particular moment, accused-appellant Mauro Vallente ever attempted to prevent anyone of his companions from harming Vito Robles. Their concerted action reflects that they want to harm Vito Robles. Ironically, even after Robles had turned back to return because of the shouts of Natividad Pacheco, nevertheless, he was still fired at by Reynaldo Dantes and upon being hit at the back, his death resulted.

The responsibility for the tragic killing of Vito Robles extends to the accused-appellant Maura Vallente. As stated by the Court in the case of *People vs. Pujimo, etal*, L-21690, April 29, 1969, 27 SCRA 1185 —

"Even assuming that appellant testified in the court that it was another person who killed the victim, it would not justify a finding that he was guilty only of robbery for it is settled that one who participated in the commission of the crime of robbery in connection with which homicide was also committed - as in this case - will be equally guilty as principal of the crime of robbery with homicide, unless there is clear evidence that he tried to prevent the commission of the latter offense (*People vs. Morados*, 70 Phil. 558; *People vs. Carunungan*, L-13283, Sept. 30, 1960).

With the participation of the accused in the said crime of robbery with homicide being manifest and indubitable, the other errors attributed by him to the trial court relate only to the application of the aggravating circumstances of craft and that of abuse of superior strength in the commission of the crime charged and (he imposition on him of the death penalty.

The felony proved to have been committed being that of the special complex crime of robbery with homicide and not merely attempted robbery with homicide. It is indicated that same was executed by the hold-uppers who took advantage of their concerted strength, their number and by the use of their firearms. It will be apparent that all these circumstances afforded them superior and overwhelming strength in committing the robbery and in assaulting Vito Robles, who was then unarmed. The aggravating circumstance of the craft employed by these hold-uppers is evidently their pretense of being jeepney passengers which enabled them later to proceed with their planned robbery. If it were a simple robbery, the accused could have just barged into the gasoline station of the offended party and there rob the owner of her money at gun point. To avoid the risk that they would be seen doing so, these offenders devised a plan where they would pretend to be passengers of the jeepney which Natividad Pacheco and her companion, Vito Robles would and did board.

In his last assigned error, appellant bewails the fact that he was sentenced to suffer the death penalty while others who were also his co-accused were given the penalty of life imprisonment only, while others were even acquitted. He points to the fact that Carlos Medina who planned the robbery was only sentenced to life imprisonment. He also avers that in the case of his co-accused

Alberto Guevarra, Leonardo Concepcion, Conrado Bueno and Honorio Lirio, these persons were acquitted. Their acquittal cannot be used by herein appellant to erase his criminal liability nor escape the penalties provided for by law. The judgment against these persons even if erroneous is now beyond this Court to modify. In the case of Carlos Medina, said accused did not appeal from the judgment rendered against him and, therefore, his sentence became final and beyond review. Whether the acquittal of the other accused was a mistake because they should

have been convicted either as principals or accomplices is no longer a matter that this Court, likewise, can no longer correct.

WHEREFORE, the judgment of the court a quo is affirmed, being entirely in accord with the facts and the law. However, for lack of necessary votes, the sentence of death imposed on the accused-appellant Mauro Vallente, is reduced to reclusion perpetua but the indemnity to be paid to the heirs of the deceased Vito Robles, is hereby increased from P12,000.00 to P30,000.00. With the modifications above indicated, the decision underreview is affirmed in all other respects.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, and Paras, JJ., concur.
Feliciano, J., is on leave.

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