

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISPULO DE LOS REYES, PERFECTO GULO, CRESENCIO SINGUE AND FAUSTINO DE LOS REYES, ACCUSED, CRISPULO DE LOS REYES AND PERFECTO ...

G.R. No. L-44112. October 22, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ACCUSED-APPELLANTS do not deny their participation in the Robbery with Homicide. However, they seek exculpation from criminal liability by interposing irresistible force as an exempting circumstance.

Meanwhile, a third accused bewails his reinclusion in the Information; he was previously discharged to become a witness for the state.

On 16 July 1969, at about 8:00 o'clock in the evening, Faustino de los Reyes, Cresencio Singue, Crispulo de los Reyes and Perfecto Gulo, armed with revolvers and a hunting knife, arrived at the house of Kapi Baotao in Timbuligue, Margosatubig, Zamboanga del Sur.[1] There were six (6) occupants in the house: Kapi, his wife Sandiali, his daughter Rosa, his sons Tibulao and Sumpian, and a granddaughter.[2] Crispulo and Perfecto positioned themselves behind the bushes, while Faustino and Cresencio walked towards the stairs.[3] Then one of them shouted, "Nay, Nay." Kapi, who thought that it was a son-in-law shouting, told Tibulao to open the door.[4]

As the door was opened, Faustino and Cresencio barged in Cresencio immediately grabbed Tibulao and struck him on the head with a revolver, causing the latter to slump on the floor. Alarmed by the ensuing commotion, Sumpian, who was in another room, rushed at Cresencio and tried to push him; Sumpian got hacked instead.[5] Kapi and Rosa also tried to help but Faustino shot Kapi several times and pistol-whipped Rosa in the mouth, rendering her unconscious. Sandiali grabbed her granddaughter and jumped through the window for safety.

The wounded Sumpian managed to escape and sought cover downstairs. Rosa, now conscious, followed suit. While hiding, Sumpian saw another person stationed below the window reaching for the loot being lowered from their house.[6]

Meanwhile, inside the house, Tibulao got hold of a bolo and hacked Cresencio. Wounded, Cresencio scurried out of the house and ran away.

As the robbers fled, Sumpian entered the house and saw the prostrate figure of his father. He called for the other members of the household. Then they discovered that P10,000.00 in paper bills kept by their father inside a suitcase was missing. The money which the victim had saved from the harvest of his 24-hectare coconut plantation was intended for the construction of a new house.[7]

That same night, the incident was reported to the authorities. In the early morning of 17 July 1969, a combined PC-police team went to the crime scene to investigate. They found the lifeless body of Kapi. While combing the

area for evidence, some members of the team noticed a trail of blood leading to the fields and promptly tracked it. There, they found Cresencio sitting in the bushes, wounded. During the Interrogation, he claimed that Faustino shot him four (4) times after he blamed the latter for their misadventure. He then named his other companions, Faustino, Crispulo and a third party who turned out to be Perfecto.[8]

Thereafter, Crispulo was arrested in his house, where the police found one of the revolvers used in the crime as well as P40.15 in coins. In their sworn statements, Cresencio and Crispulo admitted being with the group that robbed and killed Kapi. In addition, Crispulo implicated Perfecto as the fourth member. Upon his arrest, Perfecto gave a sworn statement corroborating the information given earlier by Cresencio and Crispulo.

On 16 March 1970, an Information charging Crispulo de los Reyes, Perfecto Gulo, Cresencio Singue and Faustino de los Reyes with robbery in band with homicide and multiple physical injuries was filed before the then Court of First Instance of Zamboanga del Sur. With the exception of Faustino, who remains at large, all the accused were arraigned. They pleaded not guilty.

On 14 July 1970, the then Acting Provincial Fiscal of Zamboanga del Sur filed a motion for the discharge of accused Cresencio Singue to be a state witness. The motion was granted.

On 27 February 1973, Atty. Ernesto Q. Organo, counsel for accused-appellants Crispulo and Perfecto, orally moved for reconsideration of the order of discharge, contending that accused Cresencio appeared to be the most guilty. On same date, the trial court ordered the reinclusion of Cresencio in the Information.[9]

It was only after Cresencio's counsel de oficio, Atty. Emiliano R. Deleverio, had begun his cross-examination of the second prosecution witness that said counsel moved to quash the Information against Cresencio on the ground of double jeopardy. On 12 March 1974, the trial court denied the motion, ruling that "(t)he objection of the accused [Cresencio] in this instance is too late as he is deemed to have waived his right against double jeopardy." Furthermore, the trial court claimed that Cresencio "failed to comply with his commitment to act as state witness." [10] Cresencio's counsel de oficio then manifested that he believed that the issue on double jeopardy could be raised on appeal.[11]

On 24 May 1976, the trial court convicted the accused Cresencio, Crispulo and Perfecto of robbery with homicide and physical injuries. The court did not consider that robbery was committed in band, as an aggravating circumstance, as there was no evidence presented to prove that there were more than three (3) armed felons who perpetrated the crime. The dispositive portion of the decision reads:

"WHEREFORE, finding the herein accused Cresencio Singue, Crispulo de los Reyes and Perfecto Gulo guilty beyond reasonable doubt of the crime of Robbery with Homicide and Physical Injuries, the Court hereby sentences the said accused Cresencio Singue, Crispulo de los Reyes and Perfecto Gulo to RECLUSION PERPETUA to be served in the National Penitentiary at Muntinlupa, Rizal, with other accessory penalties under the law; to indemnify jointly and severally the heirs of Kapi Baotao the sum of P12,000.00, Philippine Currency, and to further pay the said heirs, jointly and severally, the sum of P10,000.00, Philippine Currency, representing the cash money taken during the robbery, without subsidiary imprisonment in case of insolvency; and each to pay proportionate costs x x x x"[12]

Of the three (3) convicted accused, only Crispulo de los Reyes and Perfecto Gulo filed a notice of appeal. Accused Cresencio Singue did not appeal.

Accused-appellants contend in this appeal that the court a quo erred in disregarding their defense that accused Faustino de los Reyes forced and intimidated them into joining him in the commission of the crime, and the mitigating circumstances of minority in favor of Perfecto Gulo, and being non-christians in their favor. Quite interestingly, counsel for accused-appellants, who previously moved for the reinclusion of accused Cresencio

Singue in the Information, now invokes double jeopardy in his behalf.

Crispulo and Perfecto testified that Faustino was the mastermind of the robbery, and that he threatened to kill them if they refused to join him in the perpetration of the crime. But the trial court found incredible their effort to exculpate themselves.

We agree with the factual presentation of the prosecution. On the other hand, We discredit the theory of the defense. Notably, accused-appellants, including accused Cresencio, differed in their testimonies as to who followed whom during the trek towards the house of their intended victim. Crispulo,[13] Perfecto,[14] and even Cresencio,[15] all claimed that as they walked single file, Faustino was directly behind them. In an effort to give credence to their declarations, each alleged that the other assisted Faustino in exerting force and intimidation upon his person. These diametrically opposed allegations, as correctly held by the trial court, are not only contrary to common sense but are "also not in accord with human behavior and the natural course of things." For, it would have been physically impossible for Faustino to commit the robbery and, at the same time, see to it that the others performed their specific assignments. As pointed out by the Solicitor General –

"x x x it is highly improbable, if not ridiculous, for Faustino de los Reyes to have been able to force and intimidate Perfecto Gulo and Crispulo de los Reyes into joining him to commit the crime charged. For, he was alone against three including the accused Cresencio Singue. Besides, what help can Faustino expect from the three by forcing them to join him if after all he cannot rely on their loyalty and cooperation? Moreover Gulo is a nephew of the victim Kapi Baotao x x x and unless he was a party to the plan to rob, Faustino would not have informed him about it, much less forced him to join the group. Otherwise, his presence would deter, rather than help, the accomplishment of their plan. In the case of Crispulo, he is a younger brother of Faustino x x x x"[16]

Moreover, to be exempt from criminal liability, a person invoking irresistible force or uncontrollable fear must show that the force exerted was such that it reduced him to a mere instrument who acted not only without will but against his will.[17] That compulsion must, thus, be of such character as to leave the accused no opportunity for self-defense in equal combat or for escape. Unfortunately, accused-appellants failed to convince Us that they were left no choice but to follow the order of Faustino. Before and during the robbery, they did not take advantage of the many opportunities available to them to escape from Faustino or at least avoid being involved with him in his criminal design.

They did not attempt to escape while walking towards the scene of the crime, despite the fact that the footpath was surrounded by tall grasses. As Faustino and Cresencio entered the house, Crispulo and Perfecto stayed behind. They could have simply run away but they did not. Instead, Perfecto helped in carting away the stolen goods lowered from the house.[18] Crispulo, in turn, took hold of part of the loot before finally going home.[19] These actuations belie the claim that the participation of Crispulo, Cresencio and Perfecto was involuntary. Their failure to deter the commission of the crime, or to report it at least; militates against their pretensions.

As regards Crispulo, while he may indeed be the least guilty among the malefactors, he failed to alert the combined PC-Police team that his brother Faustino had just left his house when the arresting team arrived. Such omission enabled Faustino to elude capture. Besides, when the conspiracy was first broached to Crispulo, he himself admitted, as shown in his sworn statement, that it was he who suggested that Perfecto be included in the group.[20] The only evidence adduced by Crispulo that would buttress his contention that he refused to join the conspiracy are his own self-serving statements, which may not be given much weight.

Assuming arguendo that Crispulo was indeed the least guilty, still it is of no consequence. Once conspiracy or action in concert to achieve a criminal design is shown, the act of one is the act of all the other conspirators, and the precise extent or modality of participation of each of them becomes secondary.[21]

To extricate himself from criminal liability, the conspirator must have performed an overt act to dissociate or detach himself from the unlawful plan to commit the felony.[22] While Crispulo did leave the scene of the crime while it was in progress, such abandonment came too late. In legal contemplation, there was no longer a conspiracy to be repudiated since it had already materialized.

With respect to Perfecto, he never left the scene of the crime during the robbery. As a matter of fact, he admitted having received the goods from one of his companions upstairs. Thereafter, he helped carry the wounded Cresencio to safer grounds.[23] He also brought some of the spoils to the house of Crispulo where they were later found by the police. He was therefore an active and willing participant.

Perfecto assails the trial court for its failure to consider his minority in imposing upon him a prison term of reclusion perpetua. He argues that under P.D. 603, otherwise known as the "Child and Youth Welfare Code", he was still a youthful offender when the crime was committed, being then only 19 years old, so that the implementation of his sentence should have been suspended.

This is untenable. To benefit from P.D. 603, the accused must be a youthful offender not only at the time of commission of the crime but also at the time of trial. In the instant case, Perfecto was already 26 years old when he was convicted. Under the Code, where an accused is no longer a youthful offender at the time of sentencing, he cannot anymore avail of the benefit of suspension of his sentence.[24] Neither can his minority at the time of commission of the crime be appreciated as a mitigating factor.

The original version of Art. 189 of P.D. No. 603, which was the law then applicable at the time the accused were sentenced by the trial court, provides that "[a] youthful offender is one who is over nine years but under twenty-one years of age at the time of the commission of the offense x x x x The provisions of Article 80 of the Revised Penal Code shall be deemed modified by the provisions of this chapter" (underscoring ours). Incidentally, what Art. 189 of P.D. 603 modifies is Art. 80 of the Revised Penal Code, on suspension of sentence, and not par. 2, Art. 13, of the same Code, which treats of minority as a mitigating circumstance. Paragraph 2 states "[t]hat the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Article 80" (underscoring ours).

Thus, for minority to be considered a mitigating circumstance, the offender must be under eighteen years of age at the time the crime was committed. In the case at bar, Perfecto was already nineteen years old when he committed the crime. He did not therefore qualify as a minor. Be that as it may, P.D. 1179 amended P.D. 603 by reverting the maximum age of a youthful offender from twenty-one years to eighteen years.

Similarly, the fact that Crispulo and Perfecto are non--christians cannot be appreciated as a mitigating circumstance in their favor. The appreciation of this circumstance lies within the sound discretion of the trial court considering all facets of the case that would best serve the interest of justice. Both appellants admitted having received formal education: Crispulo reached first year high school, while Perfecto finished sixth grade. Even if their education be ignored, such attenuating circumstance is nonetheless unavailing. In *People v. Salip Manla*,[25] We held:

"Counsel de oficio submits that the defendants belong to the cultural minorities and that this should be considered as a mitigating circumstance in their favor. This fact cannot conceivably reduce, from the subjective point of view, the defendants' awareness of the gravity of their offense, for robbery and killing are by their very nature just as wrong to the ignorant as they are to the enlightened" (underscoring ours).

With regard to the aggravating circumstance of dwelling, this should have been taken into account in the imposition of the proper penalty because robbery with homicide can be committed without necessarily transgressing the sanctity of the home.[26]

Attention should be focused particularly on the case of Cresencio Singue who after arraignment was, on motion of the Acting Provincial Fiscal, discharged to be a state witness but who, after two and a half (2 1/2) years, was reincluded in the Information on motion of his two (2) co-accused on the ground that he appeared to be the most guilty. Their contention was anchored on the sworn statement of Cresencio where he admitted his participation in the robbery. Strangely, after his discharge and subsequent reinclusion, and after his counsel de oficio had cross-examined the first witness for the prosecution and having started with the second, his counsel moved for the quashal of the Information on the ground of double jeopardy. But the court, upon objection of counsel for his co-accused, denied the motion as the accused allegedly did not appear on the date he was to testify. However, the accused countered that he did not receive the notice for his appearance. A check with the records fails to show that Cresencio was notified of the hearing on 27 February 1973 when he was supposed to testify as his name was not even among those listed in the subpoena.[27] Nonetheless, the court denied his motion, thus, prompting his counsel to manifest that he would elevate the matter on certiorari to the Court of Appeals. But he failed to do so, informing the court instead that he would just raise the issue of double jeopardy on appeal. Again, he failed as he did not even file a notice of appeal.

After trial, the court convicted all three (3) accused. As previously adverted to, accused Faustino de los Reyes was not even arraigned as he became a fugitive from justice. While accused Crispulo de los Reyes and Perfecto Gulo appealed, Cresencio Singue did not, although counsel for the two accused-appellants, who earlier sought the recall of his discharge, included Cresencio in their brief.

The gross negligence of Cresencio's counsel de oficio in the performance of his professional duties, resulting in his client's languishing in jail for the past seventeen (17) years without regard for his constitutional right to due process, constrains Us therefore to include Cresencio in the resolution of the present appeal. The unfortunate mishandling of his defense by his assigned counsel should not leave Cresencio without recourse from this Court.

The reasons advanced for the discharge of Cresencio were that (a) the prosecution did not have direct evidence with which to convict all the accused; (b) there was an absolute necessity for the testimony of Cresencio Singue which could be corroborated in its material points; and, (c) the said accused did not appear to be the most guilty.

It may be observed that the trial court initially found these grounds to be well-taken and, consequently, granted the discharge of Cresencio.[28] On the other hand, his reinclusion in the Information made two and a half (2 1/2) years after his discharge was based solely on the oral motion of the defense that he was the most guilty considering that he had a written confession where he admitted that he and Faustino (who is still at large) were the ones who entered the house they robbed, while their co-accused were left downstairs. Specifically, the Order of 27 February 1973 recalling his discharge states –

"When this case was called for trial today, x x x counsel of the accused Perfecto Gulo, moved for the reconsideration of the Order of this Court, discharging Cresencio Singue as one of the accused in this case on ground that said accused appeared as one of the most guilty considering that he had a written confession x x x wherein he had admitted that he and Faustino de los Reyes, one of the accused who is still at large, were the ones who entered the house they robbed, while the other co-accused were left downstairs. x x x"[29]

However, in denying the motion to quash, the court a quo considered another ground, i.e., that Cresencio "failed to comply with his commitment to act as state witness" which, as the records will show, is not correct. For, the truth of the matter is that no notice was given him for his appearance in court.

It bears stressing that under Sec. 10 of Rule 119, the only instance where the trial court may validly recall its order discharging an accused to become a state witness is when he subsequently fails to testify against his co-accused. That, certainly, is a violation of the condition for his discharge. But, once his discharge from the Information is

effected, the legal consequence of acquittal follows and persists unless the accused so discharged fails or refuses to testify pursuant to his commitment. The fact that not all the requisites for his discharge are present is not a ground to recall the discharge order. Unless and until it is shown that the discharged accused failed or refused to testify against his co-defendants, subsequent proof showing that any or all of the conditions listed in Sec. 9 of Rule 119 were not fulfilled would not wipe away the resulting acquittal.[30] Besides, Cresencio does not appear to be the most guilty but Faustino, who remains at large.

As the records clearly disclose, despite his reinclusion in the Information and the denial of his motion to quash, Cresencio proceeded to testify, not in his own behalf but as a state witness against his co-accused, with the tacit conformity of the prosecution and the express approval of the court. Thus –

"Atty. Deleverio –

"In view of these Exhibits 1 [motion for the discharge of Cresencio as state witness] and 2 [order of discharge], this witness is being presented in order to comply with the said order of the court utilizing him as state witness. So he will now testify as to what happened, as state witness.

"Court – Proceed ."[31]

Consequently, even if the order of discharge was recalled, although We seriously doubt the validity of such recall considering the reason therefor, the express approval by the court of the presentation of Cresencio to be a state witness amounts to the nullification of its recall order and the consequent reinstatement of the order for his discharge.

Under the facts of this case, We have no alternative but to decree the exoneration of accused Cresencio Singue and reiterate the rule that the discharge order amounted to his acquittal and effectively barred future prosecution for the same offense.

A word more. Without having breached the condition for his discharge, as in fact he did testify as state witness, his discharge amounted to an acquittal. As such, his reinclusion in the Information was illegal, improper, infirm, and his subsequent conviction rendered sans authority, without jurisdiction. Consequently, all proceedings against him thereafter are a complete nullity, hence, can incriminate him no longer. Any adverse ruling on his case cannot attain finality, otherwise, We would be adopting and confirming a serious transgression of his fundamental right to due process. With this conclusion, it is no longer valid issue that he did not even file a notice of appeal. The ineptitude, if not incompetence, of his counsel de oficio should not deprive Cresencio Singue of his earned liberty for turning ally of the state.

Atty. Emiliano R. Deleverio, by his lackadaisical attitude, indifference, abandonment and neglect in espousing Cresencio's defense has violated the Code of Professional Responsibility, particularly Canon 18 which mandates every lawyer "to serve his client with competence and diligence", as well as Canon 19 which demands that "a lawyer shall represent his client with zeal within the bounds of the law." By failing to file a notice of appeal in his client's behalf despite being aware that the question on double jeopardy was a genuine constitutional issue that could have set his client free and averted his unwarranted incarceration for seventeen (17) years, Atty. Deleverio should be severely censured with a reminder that if he desires to remain a member of good standing of the Bar, he should observe his professional responsibilities to his clients with fealty, fervor and fidelity. He should be warned that a repetition of the same or similar unprofessional conduct will warrant a more drastic sanction from this Court.

While We sustain the conviction of the accused Crispulo de los Reyes and Perfecto Gulo, We except to the designation of the offense charged. Instead of convicting the accused for "robbery with homicide and physical

injuries", "physical injuries" should be deleted therefrom, so that the offense should be denominated plainly as "robbery with homicide", regardless of the number of persons killed, maimed or injured. The term homicide found in par. 1, Art. 294, of the Revised Penal Code should be understood in its generic sense; it includes murder and physical injuries, whether serious or slight, committed during the robbery, which crimes are merged in robbery with homicide.[32]

Under par. 1, Art. 294, of the Revised Penal Code, when homicide is committed by reason or on the occasion of the robbery, the imposable penalty is reclusion perpetua to death. There being no mitigating circumstance but only the aggravating circumstance of dwelling, the proper penalty then was death and not reclusion perpetua as incorrectly imposed by the trial court.[33] However, with the abolition of the death penalty in the 1987 Constitution, the appellants should be sentenced just the same to reclusion perpetua.

With respect to the civil indemnity, conformably with recent jurisprudence, the amount of P12,000.00 should be increased to P50,000.00.

WHEREFORE, the judgment of the court a quo with respect to accused-appellants CRISPULO DE LOS REYES and PERFECTO GULO is AFFIRMED with the modification that the designation of the special complex crime committed by them should be robbery with homicide, and that the civil indemnity to the heirs of the deceased Kapi Baotao is increased from P12,000.00 to P50,000.00.

The reinclusion of accused CRESENCIO SINGUE in the Information is hereby NULLIFIED and his order of discharge therefrom is REINSTATED and AFFIRMED. Consequently, he is ordered immediately released from custody unless held for another cause.

ATTY. EMILIANO R. DELEVERIO is SEVERELY CENSURED for his professional misconduct with a STERN WARNING

that a repetition of the same or similar misbehavior will warrant a more drastic sanction from this Court.

Costs against accused-appellants Crispulo de los Reyes and Perfecto Gulo.

SO ORDERED.

Cruz, (Chairman), Padilla, Griño-Aquino, and Medialdea, JJ., concur.

[1] TSN, 14 October 1975, pp. 93-94.

[2] Records, p. 7.

[3] TSN, 14 October 1975, pp. 78-79.

[4] TSN, 16 July 1974, p. 209; 31 March 1975, p. 250.

[5] TSN, 16 July 1974, p. 215.

[6] Id., p. 216.

[7] TSN, 31 March 1975, p. 259.

[8] TSN, 4 September 1973, pp. 28, 30-31.

[9] Records, p. 77.

[10] Ibid., pp. 148-149.

- [11] TSN, 31 March 1975, p. 265.
- [12] Rollo, pp. 72-73.
- [13] TSN, 28 January 1976, p. 7.
- [14] TSN, 19 May 1976, p. 407.
- [15] TSN, 14 October 1975, p. 79.
- [16] Appellee's Brief, p. 14.
- [17] People v. Loreno, G.R. No. 54414, July 9, 1984; 130 SCRA 311.
- [18] Exh. "E-1", Records, p. 17.
- [19] Exh. "B-1", Records, p. 12.
- [20] Exh. "B", Records, p. 11.
- [21] People v. Degoma, G.R. Nos. 89404-05, 22 May 1992.
- [22] People v. Punzalan, G.R. No. 78853, 8 November 1991; 203 SCRA 364.
- [23] Exh. "E-1", Records, p. 17.
- [24] Villanueva v. Court of First Instance of Oriental Mindoro, No. L-45798, 15 December 1982, 119 SCRA 288; People v. Casiguran, No. L-45387, 7 November 1979, 94 SCRA 244.
- [25] No. L-21688, 28 November 1969; 30 SCRA 389, 397.
- [26] People v. Gapasin, G. R. No. 52017, 27 October 1986, 145 SCRA 178, 195; People v. Mercado, No. L-39511, 28 April 1980, 97 SCRA 232.
- [27] Records, pp. 73-74.
- [28] Records, p. 50.
- [29] Records, p. 77.
- [30] Bogo-Medellin Milling Co., Inc. v. Pedro Son, G.R. No. 80286, 27 May 1992.
- [31] TSN, 14 October 1975, pp. 68-69.
- [32] People v. Penillos, G.R. No. 65673, 30 January 1992; People v. Ga, No. L-49831, 27 June 1990, 186 SCRA 790.
- [33] This case was decided by the court a quo on 24 May 1976, or ten (10) years before the 1987 Constitution.

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