

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL MARQUEZ, TOMAS NAVASCA, ANDRES ALCONTIN,
ROGELIO ALCONTIN AND FLORENCIO GERALDEZ,
DEFENDANTS-APPELLANTS.**

G.R. Nos. L-24373-74. November 28, 1969

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PER CURIAM:

Criminal cases 7050 (L-24373) and 7054 (L-24374) of the Davao Court of First Instance involve separate and distinct offenses imputed to the same five defendants-appellants, namely Manuel Marquez, Tomas Navasca, Andres Alcontin, Rogelio Alcontin and Florencio Geraldez. The first is a prosecution for "robbery in band with homicide" committed on May 14, 1961, in the municipality of Matanao, Davao. The second is for the crime of "robbery in band with multiple rape" committed about a month earlier, April 15, 1961 to be precise, in Bansalan, another municipality of the same province.

In a single decision rendered by the Davao court, after a simultaneous trial, all of the defendants were found guilty on all counts and accordingly sentenced, thus:

"WHEREFORE, in Crim. Case No. 7050, the Court hereby sentences each and everyone of the accused to life imprisonment (reclusion perpetua); to indemnify jointly and severally the heir of the deceased in the sum of P6,000.00; and Regina Butay, in the sum of P1,000.00, the value of the properties robbed; without, however, subsidiary imprisonment in case of insolvency; and to pay the costs.

"In Crim. Case No. 7054, the Court hereby sentences each and everyone of the accused Manuel Marquez, Rogelio Alcontin, Andres Alcontin and Florencio Geraldez, to suffer an indeterminate imprisonment of not less than TEN (10) YEARS AND ONE (1) DAY of prison mayor as minimum and not more than TWENTY (20) YEARS of reclusion temporal as maximum; to indemnify jointly and severally Laureano Bandala in the sum of P599.50, the value of the properties robbed, without, however, subsidiary imprisonment in case of insolvency; and to pay the costs.

"Crediting in his favor the mitigating circumstance of voluntary plea of guilty, the Court hereby sentences the accused Tomas Navasca to suffer an indeterminate imprisonment of not less than EIGHT (8) YEARS AND ONE (1) DAY of prison mayor as minimum and not more than FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of reclusion temporal as maximum; to indemnify jointly and severally with his co-accused Laureano Bandala in the sum of P599.50 without, however, subsidiary imprisonment in case of insolvency; and to pay the proportionate costs.

"Pursuant to Art. 70 of the Revised Penal Code the maximum period of penalty of each and everyone of the accused in these two cases shall not exceed forty (40) years."

The appeal in both cases, taken by all the defendants directly to the Court of Appeals, perforce thrust upon the said tribunal a novel and intriguing problem. Whereas in criminal case 7050, the sentence imposed was life imprisonment, in the other, criminal case 7054, it was reclusion temporal. The first case is indisputably within the

exclusive appellate jurisdiction of this Court, while the second, where questions of law and fact are raised and the penalties meted out are lower than life imprisonment, is reviewable initially by the Court of Appeals.[1]

While the Court of Appeals admits that the two cases involve distinct offenses committed in two different municipalities with an interval of one month in point of time, it nevertheless declined to recognize a case of split appellate jurisdiction and consequently refused to pass upon criminal case 7054, although it clearly had the duty and the power to do so.

It appears that the Court of Appeals, in abdicating its appellate jurisdiction, was persuaded by several factors. First, a single consolidated expediente has been accumulated from the hearings simultaneously conducted of the two offenses to the extent that the record cannot in any way be divided without impairing its comprehensiveness for either case. Second, a single body of proof intended to sustain defenses common to both offenses was offered by the defendants. And third, identical errors were assigned on appeal. The Court of Appeals would therefore have only one appellate court review the single decision in these two cases in order to avoid possible conflict in the final findings of two appellate tribunals on the common factual aspects. The step suggested would, it is urged, obliterate duplication of judicial review and facilitate disposal of related cases.

On the basis of the reasons so advanced, the Court of Appeals opted to certify the two cases to us for review, correctly recognizing that criminal case 7050 for robbery in band with homicide falls within the exclusive appellate jurisdiction of this Court.

While few can entertain a brief against the practical advantages of the single consolidated review suggested by the Court of Appeals, we cannot marshal any legal justification therefor without directly infringing upon the jurisdictional boundaries so clearly delineated by our statutes.

Inescapably can be seen that the penalty of reclusion perpetua meted out to the defendants in criminal case 7050 for robbery in band with homicide brought the case, on appeal, within the exclusive appellate jurisdiction of this Court. Section 17, par. (4), Judiciary Act of 1948, as amended, reads -

"The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts as here-in provided, in --

"(4) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately."

Upon the other hand, criminal case 7054 for robbery in band with multiple rape, the maximum penalty therein imposed being reclusion temporal, perforce falls within the exclusive appellate jurisdiction of the Court of Appeals, as so directed by section 29 of the Act mentioned.

It would have been an entirely different situation had the offense subject-matter of criminal case 7054 arisen out of the same occurrence or been committed on the same occasion, as that which gave rise to the offense subject-matter of criminal case 7050. Were it so, then this Court would be bound to take cognizance of both cases. But the stark undenied and undeniable fact is that the two felonies are widely disparate in point of time as well as locality.

We are not prepared to infuse, as the Court of Appeals did, a new meaning to the provisions of the Judiciary Act because its mandates and terms are specific and unmistakable. We cannot widen the scope of our appellate

jurisdiction on the basis of the fact that an inferior court heard, wisely or not, two distinct and separate cases simultaneously. Such procedure adopted by the trial court cannot and did not result in the merger of the two crimes. Rightly so, each case was separately determined by the trial court, as each should be separately reviewed on appeal. Appellate competence is circumscribed by statute, and is not flux and ferment to be settled by the exigencies of trial proceedings, much less by the physical composition of the expeditious.

This Court therefore limits its review to criminal case 7050 for robbery in band with homicide. Criminal case 7054 will be remanded to the Court of Appeals for adjudication.

The information for robbery in band with homicide (criminal case 7050) was read to the accused Manuel Marquez, Tomas Navasca, Andres Alcontin, Rogelio Alcontin and Florencio Geraldez at their arraignment on January 17, 1962; they pleaded not guilty to the offense charged, except Navasca who, to the discomfiture of his counsels, admitted his guilt in open court.

Disturbed by this turn of events, the defendants' common counsels (Marquez was separately represented) moved for a re-consideration of the plea because, according to them, Navasca had previously agreed with counsels not to plead guilty to the charge. So, at the same hearing, the lower court directed the re-arraignment of Navasca; the latter unequivocally reiterated his confession of guilt.

Defense counsels did not, however, relent, nor did they abandon their motion to have Navasca's plea of guilty reconsidered. They asked the court to have Navasca examined by a competent psychiatrist to verify the charge of his co-defendants and cellmates that he had become mentally deranged while in prison. This request was granted.

In the course of the proceedings, Dr. Manuel Celis of the psychiatric ward of the Davao General Hospital was presented by the defendants to buttress their contention that Navasca was indeed suffering from mental aberration at the time he entered his plea. The lower court was, however, unconvinced. It maintained the belief that Navasca correctly understood the significance of the proceedings taken against him and adequately appreciated the consequences of his plea. The lower court thereafter rejected defense counsels' insistent demand that Navasca's plea be changed from guilty to one of not guilty.

This denial is here assigned as error, to support the contention that Navasca was convicted without benefit of trial.

Before delving into the merits, we shall first dispose of this assigned error.

If Navasca were indeed insane, as his counsels represented him to be, the proper remedy was one of annulment of his plea and suspension of his arraignment, and not a change of his plea from guilty to one of not guilty. An insane accused cannot comprehend the full import of either a plea of guilty or one of not guilty. His commitment to a mental asylum, until he recovers normalcy, is imperative.

As ordered by the lower court, Navasca was examined by a competent psychiatrist. Dr. Manuel Celis of the Davao General Hospital found him to be suffering from "simple and hebephrenic schizophrenia" - schizophrenic reaction of a mixed type. The doctor noted in his report that -

"MENTAL CONDITION: Patient was first presented to the clinic last March 2, 1962. On examination, he was dirty and unconcerned about his personal grooming. Nevertheless, his responses were spontaneous in a coherent and relevant manner. Dulling of the affect was quite evident. Inside the jail, he saw a strange vision of a girl several times, and called her by the name of 'Muntinglupa'. Initial and succeeding examinations showed patient reiterating his innocence about the crime attributed to him. Likewise, in all examinations, he was consistently hallucinated in the visual sphere. Impairment of insight was also noted.

* * *

"PSYCHIATRIC EVALUATION: Basing my finding on the foregoing examination, I believe that the accused, TOMAS NAVASCA, is suffering from mental disorder called SCHIZOPHRENIC REACTION."

On the witness stand, the psychiatrist confirmed, on direct examination, that Navasca was not of sound mind.

The threshold question is therefore whether Navasca's mental state was of such character as to legally incapacitate him from entering an efficacious negative or affirmative plea to the indictment when read to him.

Elaborating on his written report, Dr. Celis declared in court that Navasca had the behavior of the withdrawn, was quiet in his movements, retarded in his responses and somewhat pre-occupied. Given, however, simple arithmetic tests, Navasca responded correctly although sluggishly. He is normal in a certain way, Dr. Celis said. His responses to questions were spontaneous, coherent and relevant. The doctor further stated that the effect of schizophrenic reaction on the capacity of a person to comprehend what is asked him is merely superficial. He can and would understand the meaning of every inquiry made and properly appreciate proceedings taken against him.

We concur in the trial court's conclusion that Navasca was legally sane and had the mental capacity required in law to enter his plea at his arraignment. The over-all testimony of Dr. Celis sustains this position

And that is not all. The rest of the defendants even utilized Navasca as their own witness, and his testimony turned out to be intelligent and responsive. This was the trial judge's own conclusion as he watched Navasca's physical expressions, heard him talk, and evaluated his behavior.[2]

In sum, we find no compelling reason to modify the findings of the court a quo on this point.

We now address ourselves to the merits of the case.

From the prosecution's evidence, more particularly the aggregate testimony of Regina But-ay and Crisanta But-ay, emerge the grisly events of that hapless afternoon.

On May 14, 1961, at about 6 o'clock in the afternoon, in New Visayas, municipality of Matanao, province of Davao, a band of robbers, five all told, each wielding a firearm (although the shape, make and caliber thereof are not ascertainable from the relevant sketchy testimony on record), swooped down on the house of Diosdado But-ay. Four of these men barged in through the front door, and forthwith warned the occupants inside not to resist or shout, on pain of physical harm. Regina But-ay, the wife of Diosdado, nevertheless seized her four-year old son and ran for the kitchen door but was there blocked by the fifth armed robber.

Crisanta But-ay, another occupant of the house, was hauled up to the second floor by a lean man whom she later identified as the defendant Rogelio Alcontin. Arriving there, Crisanta was ordered to lie on the floor, face down, but even as she did, she noted that another member of the band, whom she described as having wide facial features and later identified as the defendant Andres Alcontin, was already ransacking a trunk owned by her aunt Regina. While Crisanta lay on the floor, the defendant Rogelio Alcontin flicked on the radio to loud volume.

In the meantime, Regina was ordered upstairs by the same member of the band who had earlier accosted her at the kitchen door. This member, then wearing maong attire, was recognized by Crisanta as the defendant Florencio Geraldez who went up to the second floor with her aunt.

At this juncture, successive shots were heard by the witnesses coming from the direction of the kitchen. Shortly thereafter another member of the band appeared on the second floor demanding a fresh supply of bullets from his companions as he had spent his on one occupant of the house who had resisted him.

This member was identified by Regina and Crisanta as the defendant Manuel Marquez.

After seizing a large clothbag containing coins of various denominations from one of the trunks in the house, the defendant Andres Alcontin queried Regina for more but the latter had only her wallet to show, then containing a measly one-peso paper bill. Marquez who had meanwhile arrived at the second floor of the house pressed Regina for the rest of her money. The latter then pointed to a bodega outside the house.

Andres Alcontin joined Marquez in escorting Regina to the bodega, and they went scurrying down the stairs. Getting to the kitchen door, Regina saw Nicolas Amaba, one of her compa-nions in the house, dead on the floor. According to the doctor who conducted the autopsy, Amaba sustained several gunshot wounds which resulted in massive internal hemorrhage leading to shock and ultimately to death.

At this juncture, Marquez ordered Andres Alcontin to turn up the body of Nicolas, as this was lying face down, remarking that he had killed him.

Arriving at the bodega, Marquez asked Regina where her husband was. The latter answered that he had probably fled. And seeing that there was no money to be had in the bodega, Marquez grabbed a stool from somewhere and hit Regina with it. With child in arms, she jumped from the bodega and scampered away. None of the defendants, however, pursued her.

All the robbers left together at about 7 o'clock in the eve-ning, taking with them money and valuables, including some pie-ces of jewelry, all of a total value assessed at P856.

Quite obvious from the foregoing disquisition is the ab-sence of any mention of evidence to inculcate Tomas Navasca. By way of explanation, it must be stated that Navasca's plea of guilty, which the court unqualifiedly accepted after a thorough-going inquiry into his mental state, was apparently taken by the prosecution and by the court as conclusive of his inculpatory par-ticipation in the commission of the offense. It might indeed have been much more desirable that the integrated picture depicted by the prosecution included details of Navasca's participation, but we are of the view that this omission does not at all detract from the intrinsic worth of the narration of the occurrences made by the State witnesses

After a painstaking analysis and perceptive scrutiny of the record in its entirety, we find and so declare that the identi-fication made by Crisanta But-ay and Regina But-ay of the ac-cused Manuel Marquez, Andres Alcontin, Rogelio Alcontin and Florencio Geraldez, and their cumulative positive testimony to the effect that all these four defendants were present at the scene of the crime imputed to them, do not suffer from any factual or legal infirmity. No bias of any form, shape or substance is im-puted to any of these two eye-witnesses.

With this view that we take of the testimonial evidence for the prosecution, it will serve no useful purpose in the disposition of this case to resolve the issue, squarely raised by the appel-lants Florencio Geraldez, Andres Alcontin and Manuel Marquez, of the involuntariness of their respective extrajudicial confessions wherein they admit their essential participation in the of-fense of robbery with homicide committed in the municipality of Matanao.

As to the proffer of alibi made solely by Rogelio Alcontin as his basic defense, by now it is almost trite to say that alibi is amongst the weakest of defenses. Easy to concoct, it may be pro-perly credited only if established by convincing and satisfactory proof. It must be clearly shown not only that the accused was at some other place but as well that it was physically impossible for him to be at the scene of the crime at the time of its commission. Vicenta Argao, who was presented by Rogelio Alcontin as a wit-ness in support of his alibi, testified merely that Rogelio stayed at her house in the mountain of Boob for a period of over a month. This unembellished declaration cannot serve to dent the testimo-ny of Crisanta But-ay who positively identified him as one of the invading armed robbers and definitively placed him at the situs of the crime.

The final error assigned by the appellants is the denial by the trial court, at the last hearing of the case, of their request for continuance. It appears from the appellants' brief that the reason why they insisted on a continuance was to gain sufficient time to enable them to present one Natividad Alcontin and a certain physician to corroborate the defendant Andres Alcontin's assertion that he was violently maltreated by the policemen of Bansa-lan into signing his extrajudicial confession. The names of the other witnesses which the appellants mention in their brief, were not brought up when they asked the court for continuance (inspite of the fact that the trial court demanded mention of the names of these witnesses and the time they would be available) and are obvious afterthoughts. As for the corroborative testimonies of Natividad Alcontin and the doctor on the alleged maltreatment of Andres, the same would now be superfluous inasmuch as this Court has, in a manner of speaking, already eschewed the pertinent confessions admitted in evidence. The question of whether the trial court abused its discretion in denying the defendants' motion for continuance may now therefore be regarded as purely academic.

In *People vs. Apduhan, Jr.*,^[3] we observed that "with the present wording of article 295 [Revised Penal Code] there is no such crime as 'robbery with homicide in band.' If robbery with homicide is committed by a band the indictable offense would still be denominated 'robbery with homicide' under article 294(1), but the element of band ... would be appreciated as an ordinary aggravating circumstance.

The offense committed by the five appellants in the case at bar is that of robbery with homicide, punished by authority of paragraph 1 of article 294 of the Revised Penal Code with reclusion perpetua to death. The aggravating circumstance of the crime having been committed by a band (art. 14, par. 6, of the Revised Penal Code), was alleged in the information and proven at the trial. By virtue of article 63 of the same Code, which prescribes rules for the application of indivisible penalties, "when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied," and "when both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably apply them to offset one another in consideration of their number and importance." Thus the punishment that should be imposed on the appellants Manuel Marquez, Andres Alcontin, Rogelio Alcontin and Florencio Geraldez is the death penalty. In the case of Tomas Navasca, his plea of guilty is offset by the aggravating circumstance of band; the penalty of reclusion perpetua was therefore correctly imposed on him.

ACCORDINGLY, in criminal case 7050 for robbery with homicide committed by a band, this Court affirms the judgment a quo insofar as it imposes the penalty of life imprisonment (reclusion perpetua) on Tomas Navasca. With respect to the appellants Manuel Marquez, Andres Alcontin, Rogelio Alcontin and Florencio Geraldez, this Court hereby imposes on each and all of them the death penalty. The amount of the indemnity which all of the five appellants will pay jointly and severally to the heirs of the deceased Nicolas Amaba is hereby increased from P6,000 to P12,000.^[4] The indemnity to be paid by them, jointly and severally, to Crisanta But-ay and Regina But-ay for the money and properties carried away by them is hereby reduced from P1,000 to P856, which latter amount is the sum properly borne by the evidence of record. Proportionate costs are assessed against all the appellants.

Criminal case 7054 for robbery with multiple rape committed by a band is hereby ordered remanded to the Court of Appeals for its proper review, the same being within its exclusive appellate jurisdiction.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Tehankee, and Barredo, JJ., concur.

Sanchez, J., did not take part.

[1] Sec. 17, par. (4) and Sec. 29, Judiciary Act of 1948, as amended.

[2] See *People vs. Aspalin, et al.*, L-14623, December 29, 1960.

[3] L-19491, Aug. 30, 1968, 24 SCRA 807-808.

[4] *People vs. Pantoja*, L-18793, Oct. 11, 1968, 25 SCRA 468.

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