

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REALINO ZEA ALIAS BOY AND SEVERINO ELEGIO, DEFENDANTS-APPELLANTS.

G.R. No. L-23109. June 29, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Automatic review of the decision of the Court of First Instance of Davao in Criminal Cases Nos. 6683 and 6896, imposing the supreme penalty of death upon Realino Zea alias Boy, Severino Elegio and Ricardo Awitin for the crime of robbery with homicide. The decretal portion of the decision reads as follows:

"WHEREFORE, the court finds:

(1) That the guilt of the accused Gualberto Boleche alias Ambing and Gregorio AMADORE alias Gorio has not been proved beyond reasonable doubt and therefore acquits them, and

(2) That the accused Realino Zea alias Boy, Severino Elegio and Ricardo Awitin alias Cardo are guilty beyond reasonable doubt as principals of the crime of robbery with homicide, defined and penalized under article 294 of the Revised Penal Code, with the aggravating circumstances of (1) use of motor vehicle, (2) use of craft and (3) abuse of confidence with respect to Realino Zea and Severino Elegio and the aggravating circumstances of (1) use of motor vehicle and (2) use of craft as regards Ricardo Awitin, without any mitigating circumstance, and hereby sentences all of them to Death, with the accessories of the law, to indemnify jointly and severally the heirs of Tan Diong Ong alias Ho Sing Ong in the sum of Six Thousand Pesos (P6,000.00) and Go Su Lian in the amount of One Thousand Nine Hundred Fifty Pesos (P1,950.00) representing the amount robbed and to pay the costs proportionately."

Tan Diong Ong was the business associate and jefe de viaje of one Go Su Lian, a Chinese merchant engaged in buying and selling rice and corn in Davao City. As jefe de viaje, Tan Diong Ong made frequent trips to the outlying towns of Davao to buy grains. In these trips, he brought with him substantial amount of cash.

Among the employees of the Chinamen were Realino Zea, alias Boy, the driver of their Ford cargo truck; Severino Elegio, part-time driver of said truck; and Gualberto Boleche and Gregorio Amadore, both cargadores. At the time material to this case, Zea was residing in a house at T. Claudio St., Davao City, and staying with him in said house were his friends, Severino Elegio; the latter's half-brother, Edilberto Gutierrez; and Ricardo Awitin.

On August 15, 1960, Tan Diong Ong was scheduled to make a trip to Bansalan to buy corn. For this purpose, he was given by Go Su Lian the amount of P2,000.00. When Severino Elegio reported for work that morning, he informed his employers that the regular driver, Boy Zea, could not drive as he was suffering from severe stomach ache and that the latter had requested him to drive the truck that day.

At about 7:30 in the morning, the cargo truck left the compound of the Chinamen with Elegio at the wheel. Ong was seated beside him, while the cargadores, Boleche and Amadore, stayed at the cargo compartment. However, instead of proceeding to their destination, Elegio drove to the house of Boy Zea. At said house, Ong asked Boy about his ailment and the latter replied that he was already well and fit to drive. Whereupon, Boy and his two

companions, Edil-berto Gutierrez and Ricardo Awitin, boarded the truck. Boy took the driver's seat and the vehicle departed for Bansalan.

The truck made a brief stop at Cogon where Ong inquired from one Tan Seng, a Chinese merchant, if he had corn for sale; and after the latter told him that he had none, the trip was resumed.

At about 9:30 that morning, Jose Yanez, a cochero, was driving his tartanilla along the high-way, headed for the poblacion of Digos. Yanez testified that while passing sitio Tres de Mayo, he came upon a cargo truck parked about 15 meters away from the bridge. Its hood was opened and a man was looking into the engine. After his tartanilla had crossed the bridge, he heard a gunshot coming from where the truck was parked and this was followed by another shot. Shortly after, he saw five men running from the truck towards him. They boarded his tartanilla and instructed him to take them to Digos. On the way thereto, one of the passengers, whom he identified as Ricardo Awitin, removed the blood-stained shirt he was wearing^[1] and threw it away. When they reached the road junction at Kiagot, two of his passengers, identified at the trial as Edilberto Gutierrez and Ricardo Awitin, jumped out of the tartanilla and ran to the woods. Elegio warned Boleche and Amadore not to tell anyone of the participation of Gutierrez and Awitin in the commission of the crime. Since that day, Gutierrez had succeeded in avoiding arrest, while Awitin was apprehended by the police in Balengwan, Misamis Oriental on January 10, 1961.

Upon arrival of the tartanilla at Digos, Boy Zea reported to Pat. Jumao-as of the Digos Police that he and his companions were held-up at sitio Tres de Mayo by armed unidentified men and that their jefe de viaje, Mr. Ong, was shot by the robbers.

Forthwith, the policemen brought Boy Zea and his companions to the scene of the crime. On their way thereto, Corporal Cuevas picked up at the road- side a white shirt splattered with blood.^[2] The shirt was identified at the trial as the same one worn by Awitin during the incident.

The police found Mr. Ong lying at the road-side, his head smeared with blood. Of the amount of P2,000.00 he had brought with him, only a P50.00 bill was retrieved from his pocket. He was immediately taken to the Caños Hospital and later transferred to San Pedro Hospital in Davao City where he died at 12:45 pm that day, August 15, 1960. Dr. Alex Panunciaman, who examined the victim, described the latter's injuries as follows:

"Two gunshot wounds on the head. Point of entry at the right infraorbital, and at the left temple. X-ray revealed two foreign bodies of metallic density, the size and shape of which approximates the description of a .38 Cal. Bullet, lodged deep within the substance of the brain. The patient died from intracerebral hemorrhage, massive, and laceration of the brain caused by the bullets. x x x ."

At the scene of the crime, Boy Zea informed the police officers that the hood of the truck had been opened because the engine had faltered and that he and Elegio were fixing it when Mr. Ong was shot.

Tranquilino dela Cruz, municipal councilor and an experienced mechanic, later went to the scene of the incident. He checked the engine and tested the vehicle, and found the same to be in perfect running condition.

This information, coming as it did from an experienced mechanic, aroused the suspicion of the Digos police on the story foisted off by Boy Zea that the crime was perpetrated by unidentified robbers. The following day, August 16, 1960, Boy Zea, Elegio Boleche and Amadore were summoned to the police station, and in the ensuing investigation of Elegio and Boy Zea, the police discovered that the crime was committed in pursuance of a sinister plot to rob and kill the Chinaman. The names of the conspirators, and the time and the place it was planned were revealed by Elegio in the extrajudicial statement he executed on August 16, 1960.^[3] Thus,

"Q Who planned to kill Mr. Ong?

A Realino Zea, alias Boy, sir.

Q How did you come to know of his plan to kill Mr. Ong?

A He told me in their house, sir, as I am staying with him.

Q Did Realino Zea, alias Boy tell you his reason for wanting to kill Ong?

A He resented the employment of Mr. Ong as jefe de viaje, as previously he was the one being trusted with the money to buy corn. He was able to tell me that Mr. Ong was just a newcomer, as the latter was only employed as jefe de viaje about 2 weeks ago by Mr. Go. He also told me that it would be a nice idea to rob Mr. Ong of the cash being entrusted to him and he was trying to invite me to participate in his plan but I told him I was afraid.

Q When did Realino Zea, alias Boy, tell you of this plan to kill Mr. Ong?

A I cannot remember the date, but it was a few days after Mr. Ong had already started to work as jefe de viaje of Mr. Go.

Q Before you left for the house of Mr. Go from the house of Realino Zea alias Boy in Davao City, were you told of the plan that they will kill Mr. Ong on that day of August 15, 1960?

A No, sir. I did not know that their plan was to kill Mr. Ong that day, although last Sunday August 14, 1960, I was told again that they will kill Mr. Ong and I was even told by Realino Zea that the moment he stopped the truck he will tell me to open the hood and pretend to work on the defect of the engine of the truck.

Q You mentioned the word 'they', who are the other persons aside from Realino Zea who planned to kill Mr. Ong?

A Ricardo (Awitin), and Edilberto Gutierrez, sir.

Q Where did Realino Zea, Ricardo and Edilberto tell you of their intention to kill Mr. Ong?

A In the house of Realino Zea at T. Claudio, Davao City.

Q Do you know where in Davao City Realino Zea, Edilberto Gutierrez live?

A They are living with Realino Zea, sir, in the house of the latter."

This conspiracy was likewise admitted by Realino Zea in his sworn statement[4] as follows:

"Q You mean to say that there was already a previous plan agreed among you about robbing Mr. Ong and killing him?

A Yes, sir.

Q Who conceived the plan to kill Mr. Ong and to rob him of his money?

A Edilberto, sir, alias Eddie.

Q Who presented the idea of stopping the truck after crossing the bridge at Tres de Mayo, Digos, Davao where a check-up on an alleged engine trouble was to be made?

A I was the one, sir.

Q When was this idea presented by you to your companions and who were your companions in conceiving the plan to kill Mr. Ong?

A It was only last Sunday night, August 14, 1960, when the plan was conceived by Edilberto as he said he

needed money as he will get married in Cagayan in this month of August, 1960.

Q Where was this plan discussed among you and who were those present?

A In our house at Tomas Claudio, Davao City and those present were Edilberto Gutierrez alias Eddie, Ricardo alias Kardo, Severino Elegio and myself.

Q What did you tell your companions about the plan being discussed in your house in the night of August 14, 1960?

A I just agreed with their plan.

Q At about what time did you discuss the plan to kill Mr. Ong?

A That was about 8:00 o'clock in the evening, sir."

The four conspirators found the opportune time to carry out their sinister plot on August 15, 1960 when Tan Diong Ong was scheduled to leave for Bansalan to buy corn.

As heretofore stated, the cargo truck left the Chinamen's house at about 7:30 in the morning, with Tan Diong Ong, Boy Zea, Elegio, Boleche and Amadore on board. Zea, Gutierrez, and Awitin also boarded the truck from their house at T. Claudio St. They made their first stop at Cogon where Ong went to the house of Tan Seng to inquire if the latter had corn for sale.

At Astorga, Zea again brought the truck to a stop, on the pretense that he was going to urinate. Boy Zea, Elegio, Gutierrez and Awitin then got down and went behind the truck. There, in whispers, they laid out the final details for the execution of the crime. They agreed that, on the pretext that the truck had run into engine trouble, Boy Zea would bring the vehicle to a dead stop at an isolated place near the bridge in sitio Tres de Mayo; and that while Elegio and Zea went through the motions of fixing the engine, Edilberto Gutierrez would shoot down the Chinaman with his cal. 380 pistol and divest him of his money. They would then proceed to the police station at Digos and report that the slaying of Mr. Ong was an incident of an alleged hold-up perpetrated by armed unidentified men. Having set up their plan, they returned to the truck and continued on their way.

They finally reached sitio Tres de Mayo. As pre-arranged, Boy Zea brought the truck to a full stop. What transpired thereafter was narrated by Boy Zea as follows:

"Q You said that upon stopping near the bridge which you had crossed at Tres de Mayo, Digos, Davao, you called upon Severino (Elegio) to check up your dynamo, what did Severino do?

A He went down and raised up the hood and pretended to work on the dynamo while I stepped on the accelerator and stopped or switched off the engine and joined Severino near the machine.

Q What happened after that?

A Eddie (Edilberto Gutierrez) opened the door at the left (when facing the truck) and loaded his gun and I saw him shoot Mr. Ong. Eddie entered the truck before firing at Mr. Ong.

Q Who was the companion of Eddie in going inside the truck where he shot Mr. Ong?

A Cardo (Ricardo Awitin), sir.

Q What did you do upon hearing the shot fired?

A I intended to run, but I met Cardo coming out from under the truck so that I returned back towards the engine.

Q Did you see what happened to Mr. Ong in your return to the engine?

A No, sir. What I noticed is that Eddie and Cardo were dragging Mr. Ong from the truck.

Q But you said you saw Cardo coming out from under the truck when you intended to run, how can you explain this?

A Cardo went back and entered the truck and helped Eddie in dragging Mr. Ong.

Q Where was Eddie when he fired at Mr. Ong with his Cal. 38 pistol?

A Inside the truck, sir, at the left (when facing the truck) side where he entered with Cardo.

Q When you said that Cardo entered the truck after meeting him coming out from under the truck to help Eddie in dragging Mr. Ong, what did they do with Mr. Ong?

A I no longer saw what they did to Mr. Ong because I ran away from the truck.

Q How many shots were fired?

A I only heard two shots fired.

Q Where were you when the second shot was fired?

A I was already at the bridge which is about 15 meters away from the truck.

Q Why did you run away from the scene?

A Because I want to avoid being hit as they may shoot me.

Q When you ran away from the truck, where were your companions?

A They followed me.

In his affidavit,[5] Elegio substantially confirmed the foregoing statements of Boy Zea.

There is no question that it was Edilberto Gutierrez who shot and killed the deceased Tan Diong Ong. All the accused, in their testimonies as well as in their sworn statements, are in unison that Gutierrez alone was the trigger man. This notwithstanding, the trial court held each and all the appellants guilty as principals on the basis of its findings of the existence of a conspiracy.

The records support the lower court's findings. With respect to Boy Zea and Elegio, the conclusion is easily reached that, as co-conspirators, they are equally guilty as the trigger man. As pointed out, said appellants executed their respective extrajudicial statements wherein they positively and directly acknowledged that in the night of August 14, 1960, in the secrecy of their house at T. Claudio St., they agreed to kill and rob the victim. It is significant to note that no attempt whatever was made by said accused to dispute either the voluntary execution of their respective sworn statements or the truth of the incriminating facts recited therein. As this Court said in *People vs. Garcia*[6] "There is no evidence of a higher quality than a confession. It represents the outward manifestation of a man. Unless, there-fore, the confession is nullified by evidence of duress x x x, the same is admissible as an evidence of guilt of a high quality."

In *US vs. Delos Santos*,[7] the same principle was stated in this wise: "If a confession be true and voluntary, the deliberate act of the accused with a full comprehension of its significance, there is no impediment to its admission as evidence and it then becomes evidence of a high order, since it is supported by the presumption, a very strong one, that no person of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime, especially if it be a serious crime, unless prompted by truth and conscience."

It would not be amiss to state that said confessions, having been made before the effectivity of the 1973 Constitution, are admissible in evidence.

But quite apart from the confessions of said accused, there is adequate evidence adduced at the trial to support the lower court's finding of the existence of a conspiracy. In open court, Boy Zea and Elegio admitted having performed certain overt acts in the furtherance of their common design. They testified that when the truck reached sitio Tres de Mayo, Boy Zea brought the truck to a full stop and that on the false pretense that the engine had failed, Elegio opened the hood and pretended to fix the engine. As pre-arranged, the vehicle was parked at that isolated and uninhabited place to enable them to consummate the crime undetected and unseen by any other person.

They further declared that upon their arrival at Digos they gave to the police the report that they were held up by unidentified men. That such report was pure concoction was confirmed by Zea in his affidavit, as follows:

"Q Was it included in your plan that after accomplishing your intention to rob and kill Mr. Ong, you and your companions will run away and pretend that what transpired was a hold-up?

A It is with the plan, sir.

Q Was it also included in your plan that to make it appear more con-vincing, you will report to the police authorities that you were victims of a hold-up?

A Yes, sir.

Q In running away from the scene of the crime, where were you intending to proceed?

A Our purpose is to report to the police force about a prepared and fabricated report of a hold-up."

The false report given to the police was obviously a scheme intended to conceal the identity of the real malefactors.

By the same token, the testimonies of Boy Zea and Elegio as well as those of Boleche and Amadore established not only Awitin's participation in the planning of the crime in the night of August 14, 1960, but also his role in the actual perpetration in the cold-blooded murder of Mr. Ong. He placed himself beside the victim immediately before the victim was shot in order to prevent his escape; and after the shooting, he and Gutierrez pulled out the Chinaman from the truck, dragged him to the roadside where they left him in the bushes.

The concerted action and the unity of purpose displayed by the appellants clearly indicate the existence of a conspiracy. It has been laid down as a rule that when the defendants by their acts aimed at the same object, one performing one part and another performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in conspiracy.[8] Accordingly, as co-conspirators, appellants are liable for the wrong-ful act and its consequences.

However, We set aside the holding of the trial court that the crime was aggravated by the circumstances of (1) use of motor vehicle (2) use of craft and (3) abuse of confidence.

The aggravating circumstance of use of motor vehicle is appreciated when it is shown that the vehicle was purposely sought to facilitate the com-mission of the offense or to insure its success or when it is manifested that without it the offense charged could not have been committed.[9]

In the case at bar, the use of the truck was not intentionally sought by appellants. The crime was committed in the

course of their regular employment and activity. The use of the truck was not necessary to facilitate the perpetration of the heinous crime. In fact, they could have con-summated their nefarious design by simply waiting in ambush at some point along the route of the truck.

Nor was the commission of the crime attended by aggravating circumstance of use of craft. The lower court found as basis for this aggravating circumstance the fact that Zea pretended to be sick in order that Elegio could secure Mr. Go's permission to drive the truck, thereby enabling Zea, Awitin and Gutierrez to board the vehicle when it passed by Zea's house.

Craft is chicanery resorted to by the accused to aid in the execution of his criminal design. It is employed as a scheme in the execution of the crime. In the instant case, it cannot be said that Zea's excuse proved to be a significant aid in the execution of the conspiracy. One way or the other, the appellants' criminal design could have been carried out without Zea's having feigned illness on the day in question.

With respect to abuse of confidence, the same can be appreciated only if the following requisites are present: (a) the offended party had trusted the offender; (b) the offender abused such trust; and (c) such abuse facilitated the commission of the crime.[10] In the present case, the above requisites have not been fully met. Elegio and Zea came to know Tan Diong Ong only about two weeks before the incident.

The penalty for robbery with homicide is reclusion perpetua to death. In the absence of any aggravating circumstance, the appropriate penalty is reclusion perpetua.

ACCORDINGLY, the death penalty imposed by the trial court is hereby modified as follows: each of the accused-appellants is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of Tan Diong Ong in the sum of Thirty Thousand (P30,000.00) Pesos and Go Su Lian in the amount of One Thousand Nine Hundred Fifty (P1,950.00) Pesos, representing the amount robbed, and to pay the costs proportionately.

SO ORDERED.

Fernando, C.J., Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, Plana, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Teehankee, J., no part.

Melencio-Herrera, J., on leave.

[1] Exhibit G.

[2] Exhibit G.

[3] Exhibit O.

[4] Exhibit R, executed on August 17, 1960.

[5] Exhibit O.

[6] 54 OG 652-656, 101 Phil. 615

[7] 54 Phil. 329, 358

[8] People v Carbonell, 48 Phil. 868; People v Geronimo, 58 SCRA 246.

[9] People v Jaranilla, 55 SCRA 563; People v Mil, 92 SCRA 89.

[10] People v Luchico, 49 Phil. 689.

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