

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. ISMAEL LAMPITOC, ET AL., DEFENDANTS. ISMAEL LAMPITOC, DEFENDANT AND APPELLANT.*G. R. No. L-16176. July 31, 1962*

Ponente: LABRADOR, J.

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This is an appeal from a decision of the Court of First Instance of Isabela, Honorable Manuel Arranz, presiding, finding Ismael Lampitoc, Bernardino Jimenez, Serapio Jimenez, David Pacho, and Nemesio Gozum, guilty of the complex crime of robbery in band with double homicide, and sentencing each of them to suffer the penalty of reclusion perpetua, etc. All of the accused except Ismael Lampitoc withdrew their appeals; hence the present decision concerns appellant Ismael Lampitoc alone.

The evidence submitted at the trial shows that at about one o'clock in the early morning of June 18, 1957, a group of men with firearms appeared at the front door of the house of the spouses Aurelio tagata and Brigida Baingan in the barrio of Gayong-gayong, municipality of Ilagan, Isabela. They tried to break the door open but because of the door was locked, they could not do so. So they got an ax and tried to break the door open. Besides they fired shots at the place where the shutter was, causing holes to be made in the door. However, the door could not be opened. The husband, Aurelio Tagata, went to the door and asked what the malefactors wanted and the latter demanded from him that he bring out the money that he realized from the sale of his leaf tobacco and pigs. Aurelio asked his wife to bring out the money that they had and the wife did so, bringing out of their wardrobe the sum of P2,000 in paper bills, which she gave to her husband. The latter gave the money to the male factors through the hole in the door.

After he had given them the money Aurelio asked them to leave some twenty pesos to them for his children who were sick, but the malefactors did not heed his request; instead they demanded an additional P1,000 alleged to have been the price of the pigs. But as the inmates did not do as demanded, they forcibly opened the door, breaking it open by the use of the ax with which they were provided.

The door having been broken open, some four of the malefactors entered, each of them provided with firearms. The malefactors ordered them to lie down. Aurelio Tagata was asked if he had any firearm and he answered them that he did not. The malefactors ordered them to lie down effectively with firearms. Aurelio Tagata tried to grab the firearm of one of the intruders and as he did so, another fired at him and Aurelio fell on the floor, wounded. A son of his by the name of Petronilo tried to grab the gun of one of the malefactors but the assailant fired his pistol at him, and Petronilo also fell down dead on the floor. Cesar Pacho who was the one who shot Petronilo looked around and as he did so he saw that another son of Aurelio was coming over to him with a drawn bolo. Before he could shoot he hacked Cesar on the forehead. Upon receiving the blow Cesar Pacho ran to the "batalan" and fled, his companions following him.

The barrio lieutenant, having been notified, went to the house of Aurelio Tagata and begun to find out if the

inmates had recognized the malefactors. Aurelio Tagata declared that he did and so he took down Aurelio's statement, Exhibit "I-Lampitoc and Jimenez", in which Aurelio pointed out to Francisco Aquino and Regino Manuel as two of those who had assaulted them early that morning. The constabulary was also notified and a captain by the name of Arsenio M. Cada, and a constabulary sergeant by the name of Fermino C. Santos, went to the house to conduct inquiries. They found that the assistant barrio lieutenant was already in the house. They questioned the inmates of the house, namely: Honorato Tagata, Anastacia Tagata, and the wife of Aurelio Tagata, and the assistant barrio lieutenant. They examined the house and they found many bloodstains on the floor. The door of the house was broken and they were presented by the occupants with an ax, a bolo, a maong hat, and a buri hat. They found empty rifle shells. The dead body of Petronilo Tagata was lying on the floor inside the house, whereas that of Aurelio Tagata had been brought to the hospital for medical treatment.

In the afternoon of that same day at about five o'clock when the constabulary sergeant was about to take the statements of the inmates of the house in writing, one of the accused, Nemesio Gozum, appeared at the barracks voluntarily, bringing with him a pistol, caliber 380. Gozum declared that he and his companions were the ones who committed the assault on the house of Aurelio Tagata, and that his companions were Eulalio Angangan, David Pacho, Cesar Pacho, Serapio Jimenez, Bernardino Jimenez and Ismael Lampitoc. He did not mention as his companions the names of Francisco Aquino and Regino Manuel.

He further questioned Brigida Baingan, the wife of Aurelio Tagata, who said that at first she gave P1,000 and the second time she gave another P1,000. He also questioned Honorato Tagata, who said that he was the one who hacked one of the malefactors. Upon being asked if he could identify the persons who assaulted the house that evening, Honorato stated that he would be able to identify them, so he was brought to the barracks where Bernardino Jimenez, Ismael Lampitoc and Serapio Jimenez were detained, and Honorato declared that he was the one who hacked Cesar Pacho, and he was able to identify Serapio Jimenez and Ismael Lampitoc. (t. s. n., p. 208) Sergeant Santos took down the statement of Nemesio Gozum and this was presented at the trial as Exhibit "D". He also took down the statement of David Pacho which was introduced also as Exhibit "A". Still another who made a statement which was submitted at the trial as Exhibit "E" was Bernardino Jimenez. In all of these three confessions, the malefactors mentioned as having participated in the commission of the crime were Cesar Pacho, David Pacho, Mely Lampitoc, Serapio Jimenez, Bernardino Jimenez and Eulalio Angangan.

The officer who accompanied sergeant Santos in conducting the investigation was Captain Cada with whom Corporal Santos made the inquiries in the assaulted house of the spouses Tagata. This witness declared that when he questioned Honorato Tagata, Honorato told him that he would be able to identify the assailants if he could see them, and that Honorato was able to identify David Pacho, Ismael Lampitoc, and Serapio Jimenez. He further declared that while he was investigating in the house of the assaulted persons he received news that one by the name of Cesar Pacho, who was living in the barrio of Cabannungan across the river, had received a wound in the forehead, so he went to the place where he was to investigate Cesar Pacho, but when he arrived there Cesar was already dead. He further declared that he was also able to investigate Nemesio Gozum who was brought to him by the chief of police to whom Gozum had surrendered, and that Gozum informed him that his companions were Cesar Pacho, Ismael Lampitoc, Bernardino Jimenez, Serapio Jimenez and Eulalio Angangan. When he learned the names of these persons from Nemesio Gozum he and some soldiers went to Cabannungan, the place of Pacho. When the persons indicated by Gozum as his companions were apprehended he investigated them. The questioning took place on June 19 and 20. He investigated Bernardino Jimenez, Ismael Lampitoc and Eulalio Angangan. Cada testified that Ismael Lampitoc confessed to him his participation in the assault but that when the testimony of Lampitoc was about to be taken down in writing the father-in-law of Lampitoc arrived and thereafter Lampitoc refused to make anymore statements.

It is to be noted that the accused who made confessions are David Pacho, Exhibit "A", Nemesio Gozum, Exhibit "D", and Bernardino Jimenez, Exhibit "E". At the time of the trial these three accused, with the exception of Gozum, rejected their confessions, but the Court below found that they were freely and voluntarily given. According to these affidavits, Cesar Pacho was armed with a .38 caliber revolver, Serapio Jimenez with a .38 caliber revolver, Nemesio Gozum without any firearm, Ismael Lampitoc with a .45 caliber pistol, Eulalio Angangan with a .380 caliber pistol, and David Pacho with a shot gun, 12 gauge. In arriving at the conclusion that the accused actually committed the crime the Court below said:

"* * * But be that as it may, even if the eyewitnesses have not been able to recognize the herein defendants, we believe that there is sufficient evidence of record such as (1) the interlocking confessions of some of the defendants; (2) that Cesar Pacho, their confederate was hacked with a bolo on the forehead by Honorato Tagata on the occasion of the robbery; (3) that the 38 caliber pistol used in the commission of the crime was found in the possession of Nemesio Gozum; (4) that the latter in open court had admitted the commission of the crime and pointed to his co-defendants as the perpetrators of the robbery and shooting. The combination of said facts and circumstances overwhelmingly show that the defendants, and no other else, were the authors of the complex crime of robbery with homicide and, that all of them are equally responsible as principal, although some did not actually take active part in the homicide (U.S. vs. Macalalad et al., 9 Phil. 1; People vs. Bautista, 49 Phil. 380; People vs. Morados et al. 70 Phil. 558). Further, the evidence shows that David Pacho, Cesar Pacho, Bernardino Jimenez, Eulalio Angangan and Nemesio Gozum carried firearms. Therefore, all of the defendants are equally responsible for the complex crime of robbery in band with homicide because none of the defendants attempted to prevent the homicide (People vs. Evangelista et al., 86 Phil., 112; 47 Off. Gaz., p. 5658)."

The following were found in the house that was assaulted: an ax, Exhibit "S"; parts of the door that was destroyed, Exhibit "T", "T-1" to "T-3"; shells and slugs, Exhibits "U", "U-1" to "U-5", "V-1" to "V-2". These shells and slugs were examined and they were found to have been fired from the .38Q caliber pistol surrendered by Nemesio Gozum.

As indicated above all the accused were convicted, three of the accused withdrew their appeals; so we are concerned in this decision only with the appeal of Ismael Lampitoc.

The gist of the argument of counsel for applicant is the alleged insufficiency of the evidence presented to convict him of the crime. There is no question that on the occasion of the assault two individuals died, namely Petronilo Tagata and Aurelio Tagata.

There is also no question that four individuals entered the house of Aurelio Tagata in the evening in question, all of whom were armed, and that others were down below guarding the house while their companions were inside the house. Therefore the crime was committed by a band or more than three armed men.

The defendant-appellant Ismael Lampitoc alleged the defense of alibi and the issue, therefore, is whether there is sufficient evidence to identify him as one of those who entered the house or guarded it on the evening in question. On this issue the evidence adduced by the prosecution are as follows:

(1) On his direct examination Honorato Tagata, who was the one who hacked Cesar Pacho on the forehead and inflicted on him a wound as a result of which Cesar Pacho ran away, followed by his companions, testified as follows:

"Q.

Who were those persons whom you were able to recognize?

"A.

I only recognized two besides Cesar.

"Q.

Those persons whom you were able to recognize, do you know if they are now in the courtroom?

"A.

Yes, sir, they are inside.

"Q.

Will you please identify them to the court?

"A.

Those two, sir, witness indicating at one of the accused who gave his name as Ismael Lampitoc, and he also indicated at the other defendant who gave his name as Serapio Jimenez.

* * * * *

"Q.

How did you come to recognize them if you did not know them before?

"A.

I recognized them by their faces.

* * * * *

"Q.

And when you were investigated in the PC barracks, did they show to you some persons?

"A.

Yes, sir.

* * * * *

"Q.

And who were those persons that you indicated before the authorities?

"A.

Ismael Lampitoc and Serapio Jimenez." (Pp. 155, 156, t.s.n.)

(2) This same witness was able to identify the hat belonging to Lampitoc. At the trial he was shown three hats, one of maong identified as that of Cesar Pachon, another a buri hat, as belonging to Serapio Jimenez, and another buri hat, belonging to Ismael Lampitoc (t. s. n., p. 157.)

(3) Sergeant Fermino C. Santos, testifying for the government corroborated the identification of defendant-appellant Lampitoc by Honorato Tagata in the constabulary barracks in the following manner:

"* * * Now I brought this Honorato Tagata to the place where Bernardino Jimenez, Ismael Lampitoc and Serapio Jimenez were because they were then inside the stockade and showed him these persons and he pointed to me the persons of Ismael Lampitoc and Serapio Jimenez." (t.s.n., p. 208)

(4) Fermino C. Santos, further testifying for the prosecution, declared that he had obtained the confession of Ismael Lampitoc in writing but the latter refused to sign it. His testimony reads thus:

"A.

I took down the statements of Bernardino Jimenez and Ismael Lampitoc but the latter refused to sign his statement.

"Q.

Do you mean to say that Ismael Lampitoc had a statement before you?

"A.

Yes, sir, I took his statement.

"Q.

Where is that statement now?

"A.

I have.

"Q.

But he refused to sign?

"A.

Yes, sir, he refused to sign it.

"Q.

Can you produce that statement in court this afternoon?

"A.

I have the statement but he refused to sign it. I have it here. This is the statement, sir." (t.s.n., pp. 210-211)

(5) Captain Cada corroborates the making of the statement by Ismael Lampitoc and the fact that subsequently Ismael Lampitoc refused to sign the statement. His testimony reads as follows:

"Q. Did you also put in writing your investigation of Ismael Lampitoc?

"A. He confessed to me his participation but when I was about to take his testimony or statement, his father-in-law arrived and he did not want to give his statement anymore." (t.s.n., p. 257)

(6) One of the buri hats declared by Honorato Tagata to be the hat of Ismael Lampitoc was presented in court as one of the objects found in the house of Aurelio Tagata where the robbery took place.

(7) The judge of the court below who heard the witnesses testify considered all the above circumstances as having been proved, which means that the witnesses who testified did so in a manner worthy of credence, otherwise the judge would not have believed them. As to the truthfulness of the statement of Captain Cada that defendant-appellant Lampitoc admitted his participation in the offense, it is to be noted that at that time the other three accused, namely, David Pacho, Nemesio Gozum and Bernardino Jimenez, had made their own confessions and it is most likely that Ismael Lampitoc, following the course taken by his colleagues and believing that his protest of innocence would be of no avail, did follow their footsteps making his own confessions, although when

his father-in-law came he desisted and refused to sign his confession.

In the opinion of the Court, the above circumstances in the face of the defense of alibi testified to by relatives, are sufficient to prove beyond reasonable doubt that Ismael Lampitoc was one of the persons who participated in the robbery committed in the house of the deceased Aurelto Tagata, even without considering that he was implicated in the confessions of his co-accused.

The crime having been committed by a band or armed persons, and two persons having been killed as a result the crime, the penalty that should be imposed is the penalty of death. However, in view of the fact that the trial court had imposed only the penalty of reclusion temporal on the others, who had made their confessions, the imposition of the penalty of death is not concurred in by eight of the Justices, for which reason the penalty that should be imposed is that of reclusion perpetua, together with the accessory penalties and indemnities provided for in the decision appealed from. The decision of the lower court should, therefore, be affirmed in toto, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur

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