

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AGAPITO LINGAD Y SANTOS, LEOCADIO CARREON Y CELSO,
AMADO MAMUCOD Y CORTES AND CONRADO GRAHAM Y ALEGRIA,
DEFENDANTS AND...**

G.R. No. L-6989. November 29, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

Between 9:00 and 9:30 in the evening of July 18, 1952, two persons appeared in the store of Vicente Go at Sulucan Street, Sampaloc, Manila, in order to purchase coca cola and cigarettes. Soon after they had gone away one of them appeared again with two others. Two went directly to the counter facing the Sulucan Street, while the third went to the alley beside the store, where the store owner Vicente Go was standing, waiting for a garbage truck. There were two attendants in the store at the time, namely, Carlos Go and Amparo Go, son and daughter, respectively, of the owner. One of those that appeared before the counter had a .45 caliber automatic pistol, which he directed at the two occupants; the third at the alley also had a .45-caliber pistol. As he pointed his pistol at the two storekeepers, the gunwielder also went over the counter and opened the drawer thereof and took all the money therein and put it on the counter before his companion, who immediately grabbed it. At the same moment, the Chinaman in the alley was pushed and shot. The bullet entered the victim's back coming out of the front chest. The three robbers thereupon immediately ran away to a taxi which had parked far away ahead of the store.

The Police learned that the taxi used by the robbers was a Villacorta taxicab bearing number 6 and that the driver who drove the car on the occasion of the robbery was Amado Mamucod. He was investigated by the police and he took no time in admitting having driven the car and in identifying the ones who had used the taxi on the night in question. With this information, the police proceeded to investigate the persons pointed out and secured confessions from the driver Amado Mamucod, Leocadio Carreon, Conrado Graham and Agapito Lingad, all accused in the case. Upon securing the above confessions, the Fiscal filed the information for robbery with homicide against them and against Estanislao Real who is still at large. The accused were informed of the charge and tried and found guilty of the crime of robbery with homicide, and sentenced to suffer the penalty of reclusion perpetua to indemnify the heirs of Vicente Go in the sum of P10,000 and the sum of P110, the value of the stolen money, and each to pay one-fourth of the costs.

The keepers of the store on the night in question namely, Carlos Go and Amparo Go, identified the accused appellant Leocadio Carreon as the person who first came with another to purchase coca cola and cigarettes, and as the one who later came together with accused-appellants Conrado Graham and Agapito Lingad. They also identified him as the one who pointed the automatic pistol at them, opened the drawer of the counter, and took out the money therein. The accused-appellant Conrado Graham was pointed out as the companion of Leocadio Carreon and who was the one who took away the money. They further testified that the money amounted to around P110.

They also pointed out to the accused Agapito Lingad as the one who pointed his automatic pistol at their father Vicente Go and later fired at the latter killing him. Together with the above testimonies, the prosecution also introduced the confession of the four accused, which the police testified to as having been executed by the latter freely and voluntarily.

The accused denied having participated in the commission of the crime and alleged the defense of alibi. They further claimed that their confessions were secured from them by force, the police delivering blows at their bodies before they agreed to make the declarations. The trial court, however, refused to believe these exculpatory statements in the face of the positive identification of them by Carlos Go and Amparo Go, the facility with which alibis are fabricated, and the improbability of their claim that their confessions have been secured by violence. We have carefully read the evidence and we find that the findings of the trial court are amply supported thereby. It may be added that the details given by each of the accused in his confession, as to the part played by each and every one of them from the time the crime was decided upon to its final consummation, fit into those given by the others so well as to refute or negate the probability of their having been forced upon the accused-appellants.

But while we are satisfied that the accused-appellants Leocadio Carreon and Conrado Graham were the ones who entered the store and grabbed the money from the drawer of the counter therein at the point of a gun, as testified to by Carlos Go and Amparo Go and disclosed in the confessions of the accused-appellants, we are not convinced that it was Agapito Lingad who had assaulted the deceased Vicente Go and fired the shot which killed him. Under the circumstances in which the assault was committed, with the victim in the alley, south of the store at a time when it was raining and therefore dark, and with pistol directed against the witnesses by the other two robbers, it was difficult for the former (witnesses) to have been able to recognize the person who made the assault and fired the gun. The assailant was not face to face with them, as he was facing towards their right side; he was not a person familiar to the witnesses, and perhaps their interest could not have been concentrated in him because they were eagerly and fearfully watching the movements of the other two robbers. Besides these circumstances we have facts contained in the confessions of the appellants Estanislao Real, not Agapito Lingad assaulted the deceased. All these create a reasonable doubt in an impartial mind as to the correctness of the identification made by the two witnesses for the prosecution. We are, therefore, unable to agree with the finding of the trial court that it was Agapito Lingad who assaulted Vicente Go and fired the shot that killed him.

The above circumstances do not, however, affect the responsibility of the accused Agapito Lingad. The confession submitted by the prosecution proves that on the evening in question, before 9:00 o'clock, Estanislao Real and Agapito Lingad had been conversing about perpetrating a hold-up and that upon hearing the same Conrado Graham offered to join them; that thereupon it was agreed that Graham contact Leocadio Carreon, who was going to get a taxi for them; that that evening, Leocadio Carreon saw the taxi driven by the accused Amado Mamucod on Tayabas and Ipil streets, where Conrado Graham came down with Agapito Lingad and Estanislao Real, and that all four embarked in the taxi driven by the said Amado Mamucod; that they went around in the taxi, passing in front of Aviles chapel, thru San Rafael Street, Governor Forbes Street and later Sulucan Street, where they saw the store in question; that as two persons were then in the store, they let the time pass by for said two persons to go away by going around and then coming back to the store; that the second time that they passed the store the two persons in the store had already gone away, and so they parked the taxi around two posts (electric) from the store to prevent suspicion; that Leocadio Carreon and another first came to the store to buy cigarettes and coca cola, to determine where the storekeepers kept the money; and that three of them went back, namely, Leocadio Carreon, Conrado Graham and a third, who is either Estanislao Real or Agapito Lingad. Under these circumstances, it is evident that all the three accused namely, Agapito Lingad, Leocadio Carreon and Conrado Graham, irrespective of their respective participations in the hold-up, are guilty of the offense committed; it is immaterial which of the two, Lingad or Real, shot the deceased Vicente Go, because the conspiracy is

conclusively, shown by their common concurrence and their coordinate acts. All of the accused, whether they have actually participated in the killing or not, are guilty of the complex crime of robbery with homicide.

In this connection, our attention has been called to the case of *People vs. Basisten*, 47 Phil. 493, wherein this Court has held that where only one of the defendants committed the homicide at the time of commission of the robbery, said homicide not having been the subject of the conspiracy, nor the others having had any intervention therein, only the one who actually committed it may be held responsible for the complex crime of robbery, with homicide, the others being responsible only for the robbery in band. This decision seems to be at variance with the first case on the point, decided in this jurisdiction, which is that of *U. S. vs. Macalalad*, 9 Phil. 1, wherein this Court stated:

"* * * The Supreme Court of Spain, interpreting the provisions of the Penal Code touching the complex crime of robo con homicidio, has frequently decided that, where the complex crime has been committed, all those who took part as principals in the commission of the robbery are guilty as principals in the commission of the crime of robo con homicidio, unless it appears that they endeavored to prevent the unlawful killing. (Decisions of the supreme court of Spain, April 30 and February 23, 1872, and June 19, 1890. See also Viada, Vol. S, pp. 347, 354, and 356.)"

The above decision was followed by us in the case of *People vs. De la Cruz, et al.*, G. R. No. L-4532, promulgated on May 26, 1952, in which we said:

" 'Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide.' (*People vs. Bautista*, 49 Phil., 389, 396, citing *U.S. vs. Macalalad*, 9 Phil., 1.)"

These two rulings are in accord with the decisions of the supreme court of Spain of February 23, 1872 and January 18, 1898. In the first, it was held:

"* * *—El Tribunal Supremo ha declarado que siendo ambos procesados autores del robo, lo son igualmente del homicidio que ocurrió en el mismo acto, al tiempo de ser perseguidos por el interfecto; porque este ultimo delito esta de tal manera enlazado con el de robo, que a no haber mediado este, ni los robados hubieran pedido auxilio, ni al prestárselo el tercero hubiese sido muerto como lo fue; y que por consiguiente, habiendo tomado parte directa en la ejecucion del robo ambos procesados, son autores uno y otro, segun el articulo 13 delCodigo Penal, y por lo mismo responsables los dos de todas las consecuencias de su accion. (S. de 30 de abril de 1872, Gaceta de 1. de julio.)"

"El propio Tribunal Supremo ha resuelto: 'que si resulta probado la delincuencia del procesado en el hecho generador, que es el robo, con ocasion del que se cometio un homicidio, basta esto, en conformidad a lo dispuesto en el numero 1 del articulo 516, para considerarle tambien responsable del homicidio; resolution cuya justicia evidencia auri mas el parrafo segundo del 518, en el que se declara que los malhechores presentes a la ejecucion de un robo en despoblado y en cuadrilla son autores de cualquiera de los atentados que esta cometa si no constare que procuraron impedirlos (S. de 23 de febrero de 1872, Gaceta de 11 de mayo.)" (Viada, Codigo Penal Comentado, Volumen 6, paginas 126-127,)

In the second decision, it was also held:

"* * *—El Tribunal Supremo ha resuelto la afirmativa; 'Considerando tocante al recurso de Eusebio Perez, que, habiendose cometido el homicidio de Julian Mas con motivo u ocasion del robo realizado en su casa, todos los procesados, autores de este, cuyo caracter no niega al recurrente su defensa, son responsables de todas sus consecuencias, y por lo tanto del homicidio, que la ley pena como una mera resultancia del robo, sean o no

todos los procesados ejecutores de aquel, y aun cuando no lo fuese ninguno directamente, segun asi desprende del texto del numero 1, articulo 516 delCodigo Penal, y lo tiene declarado tambien este Tribunal Supremo en repetidas decisiones, etc' (S. de 18 enero de 1898, Gaceta de 11 de febrero.)" (Viada, supra, paginas 128-129.)

In accordance with the above authorities, we hold that as Agapito Lingad was in conspiracy with his other co-accused, he is also guilty as principal of the complex crime of robbery with homicide, whether he was the person who fired the shot that killed Vicente Go or not; and all the accused are also guilty of said complex crime irrespective of the fact that two of them had limited themselves to the actual act of robbery, and even if the third actually stayed inside the taxicab without having actually participated in the act of robbery or in the act of homicide.

One further point needs consideration, and that is the criminal responsibility of the accused-appellant Amado Mamucod, who drove the taxicab in which the other accused-appellants rode. From the confessions of the accused-appellants, we find that the conspiracy to make a hold-up or to commit the crime of robbery was decided upon between Agapito Lingad, Estanislao Real, Conrado Graham and Leocadio Carreon; that Leocadio Carreon was asked to look for a taxi in which they could ride to look for a victim; that Leocadio Carreon saw the taxicab driven by appellant Mamucod and that he rode in it and, thereafter, the other three accused-appellants also rode in it. Under these circumstances, it cannot be said that Amado Mamucod actually took part in the conspiracy to commit the crime of robbery. However, he was aware thereof, as he admitted that he knew that his co-accused were going to make a hold-up. The taxi driver by him was necessary to the commission of the crime because it was through its use that they could find a store that could be the object of their criminal design. As Mamucod did not take part in the original conspiracy to commit the crime of robbery, but only furnished the means through which the robbery could be perpetrated, with knowledge of the said criminal design, he is not guilty as principal of the crime of robbery with homicide, but is an accomplice therein (Article 18, Revised Penal Code; *People vs. Ubiña, et al.*, 97 Phil., 515.)

For the foregoing considerations, the judgment appealed from is hereby affirmed as to the accused-appellants Agapito Lingad, Leocadio Carreon and Conrado Graham, but modified as to the accused-appellant Amado Mamucod, who is hereby found guilty as an accomplice in the crime of robbery with homicide, and sentenced to a minimum of 8 years and 1 day of prision mayor and a maximum of 14 years, 8 months and 1 day of reclusion temporal. In all other respects, the judgment is affirmed. So ordered.

Paras, C. J., Bengzon, Padilla, Reyes, A., Jugo, Bautista, Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

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