

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS. PEDRO BALDERA, MIGUEL BLAY, JOSE DE LA CRUZ, AND FOUR OTHERS, DEFENDANTS. PEDRO BALDERA, DEFENDANT-APPELLANT.

G.R. No. L-2390. April 24, 1950

Ponente: REYES, J.

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REYES, J.:

We are called upon to review the sentence of death passed upon the appellant Pedro Baldera, who was found guilty of robbery in band with homicide and serious and less serious physical injuries by the Court of First Instance of Batangas.

The evidence shows that at about 4a. m. on December 23, 1947, a Casa Manila bus loaded with passengers left Batangas, Batangas, bound for Manila. On the highway in barrio Calansayan, municipality of San Jose, same province, it was held up by a group of five or six armed men. One of these, later identified as the herein appellant Pedro Baldera, who was then armed with a .45 caliber pistol, fired a shot, and this was followed by a hail of bullets coming from different directions. As a result, several passengers, among them Jose Cabrera, Jose Pastor and Francisco Mendoza, were wounded. After the firing had ceased, appellant got on the bus and, threatening the passengers with his gun, took P90 from Jose Pastor and P34 from Ponciana Villena. Another passenger named Francisco Mendoza was also relieved of his P3. Appellant then alighted and ordered the bus to proceed, whereupon the driver headed for the municipal building of San Jose and there reported the incident to the authorities. The wounded were taken to the hospital, where Jose Cabrera died from his wounds on the following day. Jose Pastor, who was wounded in the left leg, was cured in two months, while Francisco Mendoza's gunshot wound in the right shoulder healed in 15 days.

For the above crime four persons were prosecuted and tried under an information charging "robo en cuadrilla con homicidio y lesiones graves y lesiones merios graves." The case was dismissed as to two of the accused due to insufficiency of evidence. But the other two, Pedro Baldera and Miguel Blay, were, after trial, found guilty as charged and sentenced, the first to capital punishment, and the second to life imprisonment, both to pay the corresponding indemnity and proportionate costs.

Only the case against Pedro Baldera is now before us.

There is no dispute as to the perpetration of the crime. The only question is as to the identification of this appellant as one of the authors thereof. On this point the evidence for the prosecution shows that shortly after the commission of this crime, appellant was arrested in the municipality of Batangas in connection with the theft of a radio, and as his features tallied with the personal description of one of the highway men given to the chief of police by some of the passengers of the held-up bus, he was also investigated in connection with the hold-up, and he then made a confession, which was reduced to writing and later subscribed by him before the justice of the peace, admitting his participation in the crime as the one who, armed with a pistol, boarded the bus and through intimidation relieved Ponciana Villena of her money.

At the trial, Ponciana also identified appellant as the one who relieved her of her money at gunpoint, saying that she had a good look at his face for she was watching him closely for fear that he might fire at her. She also declared that when she was sent for by the chief of police to identify appellant, the latter approached her as she came into the office of said officer and asked her forgiveness. Two other passengers of the bus declared at the trial that appellant resembles the one who stopped the bus and robbed its passengers.

Testifying in his own defense, appellant denies participation in the crime charged, declaring that he passed the night in question in a house of prostitution in Batangas, where he was employed by the prostitutes for drawing water. But this alibi is without corroboration and can not stand up against the clear and positive testimony of Ponciana Villena, who has not been shown to have any motive for falsely testifying against him.

Counsel de officio impugns the admissibility of appellant's confession on the ground that the same was made on a promise to render him protection from his co-accused and also to utilize him as a government witness. But appellant himself denied that such a promise was ever made and the record shows that, when the confession was offered in evidence, it was objected to on the sole ground that "it was taken through force and intimidation," which, however, was not proved. Moreover, this Court has already held that "were one of several co-defendants turns state's evidence on a promise of immunity * * * but later retracts and fails to keep his part of the agreement, his confession made under such promise may then be used against him." (People vs. Panaligan et al., 43 Phil., 131). In any event, even without the said confession, we find that appellant's participation in the crime herein charged has been clearly and satisfactorily proved.

Counsel also contends that the lower court erred in holding that the crime committed is robbery in band, alleging that there was no sufficient proof that the perpetrators thereof numbered more than three armed men. The fact, however, that there were more than three armed men in the group that held up the bus appears in appellant's own confession and is also established by the uncontradicted testimony of one of the government witnesses. And the point is really not material because in the crime of robbery with homicide it is not essential that the robbery be in band, although that circumstance may be taken into account as an aggravation in the imposition of the penalty. And even if it be not taken into account as such in this case, there would still remain the other aggravating circumstance that the robbery was perpetrated by attacking a vehicle (Arto 295, R. P. C.), which is not offset by any mitigating circumstance.

The lower court did, however, err in appreciating against the accused the circumstance of recidivism by reason of his previous conviction for theft, it appearing that that crime was committed on or about December 30, 1947 (Exhibit E) while the offense now charged took place seven days before that date.

In conclusion, we find appellant guilty of the crime of robbery with homicide and serious and less serious physical injuries with two aggravating circumstances. But there being no sufficient vote to impose the extreme penalty, appellant can be sentenced to life imprisonment only.

Wherefore, reducing appellant's sentence to life imprisonment but increasing the indemnity to be paid by him to the heirs of the deceased Jose Cabrera to P6,000, the judgment below as so modified is affirmed, with costs against the appellant.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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