

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ELICERIO TAN ALIAS LICERIO TAN, ET AL., DEFENDANTS. ELICERIO
TAN, ALIAS LICERIO TAN, LEON TINAMOR, LUIS NAKUA, AND MOR...**

G. R. No. L-3766. July 31, 1951

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal by Elicerio Tan alias Licerio Tan, Leon Tinamor, Luis Nakua and Moro Sama-Sattari from a decision of the Court of First Instance of Zamboanga, finding them guilty of robbery with homicide and sentencing each of them to reclusion perpetua, to jointly and severally indemnify the heirs of Rosendo Perez in the amount of P2,000, and to pay proportionate costs.

There is no dispute as to the following facts. On September 23, 1948, at a little past midnight, thereby making it September 24th, the copra warehouse of the Bunge Far East Agencies, Inc., located in the poblacion of Isabela, City of Basilan, was broken into by several persons. Once inside the intruders forcibly entered the office of the manager inside said bodega by destroying the Yale lock of the door and then took and carried away the steel safe kept therein, containing paper bills and coins amounting to P27,306.80, including other articles such as rounds of ammunition and magazines for guns.

An inspection of the bodega and its premises made by the police showed that the robbers had entered it thru a small window high up near the ceiling by cutting the wire screen that covered it. Beneath said window on the ground outside was found a bolo (Exh. C) which presumably was used to cut the wire screen. Under the same window but inside the bodega, was found a buri hat (Exh. G) which appellant Luis Nakua later admitted to be his. Inside the office of the manager from where the steel safe had been taken away, was found a claw hammer and some rope. The window of the office appeared to have been forcibly opened from inside. Outside said window on the ground was found a crowbar. All indications point to the safe having been carried away thru said window. After three days this same safe was found in the coconut plantation of Antonio Pardo in the outskirts of the city about a kilometer away, hidden in the bushes and covered with dry coconut leaves. From the appearance of the safe it could be seen that efforts, tho futile, had been made to open it. The combination knobs and handle had already been removed by force. Even the official of the warehouse company in charge of the safe was unable to open it and so the bottom of the safe had to be forced open. Because it appeared that during the several days that the safe was hidden in the bushes in the coconut plantation, water or moisture had seeped in or entered it, rendering its contents damp, if not wet, the manager of the warehouse company asked for and obtained permission from the court to remove the contents of the safe and take charge of them subject of course to the orders of the court. With the help of the police and in the presence of city officials he made an inventory of the contents and signed the corresponding receipt (Exhs. O and O-l).

In the course of the commission of the robbery, 68year old Rosendo Perez, a night watchman who at the time was on guard outside the bodega was attacked with a wooden club and killed. His body bore about fourteen contused

and lacerated wounds, most of them on the head and face, causing his death almost instantaneously. The City Health Officer who examined his body, certified that death was due to "cerebral hemorrhage traumatism, Head (Homicidal)."

Shortly after the commission of the robbery, that is to say, at the early hours of September 24, 1948, Juan Tan went to the police station at Isabela and reported the loss of his father's truck which was kept in his father's garage. He said that after midnight he was awakened by the roar of the engine of a truck and recognizing the sound as that of his father's 6x6 truck, he hurried down the house, and finding the truck no longer in the garage, in pursuit he drove his bus, going in the direction where he heard the truck was driven away; that he finally located the missing truck parked in front of the Basilan Lunch (Restaurant) with its engine still running; that upon approaching he saw a man escape from inside the truck and when he (Juan) stopped his bus near said truck, he saw Elicerio Tan, one of the appellants seated in the truck driver's seat in front of the steering wheel; and that because Tan could not give him a satisfactory explanation of why he was inside the truck, he (Juan Tan) reported the incident to the police station. This incident was duly noted down in the "Record of Daily Events, Book No. 2 of the Police Department, Isabela, City of Basilan." Acting on this report, a patrolman was dispatched to the truck and finding Elicerio Tan still inside the truck, he took him to the station for investigation. After some questioning and Elicerio Tan having apparently convinced the police authorities with his story that he had gone up the truck merely to sleep off the effects of some intoxicating drinks he had taken at the Lolita Bar, he was released. However, at 6:00 that same morning the police station was notified of the finding of the dead body of Rosendo Perez within the premises of the warehouse. The police viewed the body, and finding that the warehouse had been broken into and the safe stolen, concluded that a robbery had been committed and linked it with the taking away of the truck already mentioned including the finding of Elicerio Tan inside said truck. Elicerio was arrested and questioned at the police station.

Presumably on the basis of what he told the police during his questioning his co-appellants Moro Sama-Sattari, Luis Nakua and Leon Tinamor and seven other co-defendants Simeon Rosales, Emilio Bucoy Jr. alias "Jun", Eduardo Guzman alias "Boy", Moro Rizal Lim, Pedro Romero, Pablo Romero, and Elpidio Anojada were arrested and investigated. During their confinement and in the course of the investigation by the police, Elicerio Tan subscribed an affidavit (Exh. R) on September 25, 1948, although said statement was prepared on September 24th. Moro Sama-Sattari and Leon Tinamor each subscribed an affidavit (Exhs. S and H) respectively, on September 25th while Luis Nakua subscribed his affidavit (Exh. T) on September 26th. On September 27th, Elicerio Tan who had previously subscribed an affidavit (Exh. R) on September 25th, asked the permission of the Chief of Police to be allowed to confer with the City Attorney. Upon the granting of his request, he was taken to the office of the City Attorney where he made statements which were reduced to writing, marked as Exhibit "J" and later subscribed by him on the same day. All these five affidavits were subscribed and sworn to before Judge Doroteo de Guzman of the municipal court of the City of Basilan.

The eleven persons detained were accused of robbery in band with homicide. The trial commenced on December 3, 1948. After the prosecution had rested its case, the defense proceeded to introduce or present several witnesses. However, on February 3, 1949, because the court session in Basilan City was about to close, and the trial was to be postponed indefinitely inasmuch as the trial Judge was to proceed to Jolo to hold court sessions there, the attorneys for the accused Simeon Rosales, Eduardo Guzman alias "Boy", Emilio Bucoy Jr. alias "Jun", Pedro Romero, Pablo Romero, Moro Rizal Lim and Elpidio Anojada verbally asked for the dismissal of the case against their clients on the ground that the prosecution had failed to establish their participation in the crime charged against them. The court reserved its resolution on the verbal motion. Then on March 21, 1949, the trial court acting upon said motion and finding it to be well-founded, granted it and dismissed the case against the seven accused just mentioned, continuing the trial as regards the four remaining accused (now appellants) on August 16,

1949.

In the course of the trial the attention of the trial court was called to an affidavit made by one Gregorio Flores, to the effect that it was he with some companions who committed the robbery, thereby exculpating the appellants herein. Thereafter, said Gregorio Flores who was serving in Muntinglupa an indeterminate sentence of from eight years to fourteen years, eight months and one day imprisonment, and a definite sentence of four years, two months and one day of imprisonment, for the crimes of robbery and qualified theft, respectively, was taken to Basilan City and was presented as a witness for the defense. He testified that it was he and his five companions, and not the herein defendants-appellants, who committed the crime of robbery with homicide, and that his companions lugged and carried away the safe and hid it in the place where it was later found. The trial court, however, did not believe his story, as may be gathered from the decision convicting said appellants.

From the evidence, including the affidavits which should be considered only against their respective affiants we are satisfied that the four appellants, possibly with some or even with all their co-defendants, confederated and agreed to rob the warehouse of the Bunge Far East Agencies, Inc.; that in pursuance of said conspiracy, two of them, possibly Elicerio Tan and Leon Tinamor, stole the truck of the father of Juan Tan and they all rode in it to the warehouse; that to prevent any resistance or the raising of any alarm, two or more of the confederates, possibly Moro Sama-Sattari and Simeon Rosales attacked and killed the night watchman Rosendo Perez; and that the conspirators broke into the warehouse, took the safe from it, loaded it on the truck and transported it to the coconut plantation at Sumagdan and hid it there.

Counsel for appellants attribute four errors to the trial court. First, it is contended that said court erred in admitting the affidavits (Exhs. R, J, T, H, and S) on the ground that they were not voluntary, and besides, proof of conspiracy had not been established and so the admission of one accused in his affidavit did not bind his co-accused. We have carefully gone over the testimony of the appellants wherein they claim that they had been severely maltreated, even tortured by the police during detention, and that it was to avoid further corporal punishment that they made and signed their respective affidavits. We have also considered the circumstances surrounding the preparation of said affidavits, including the testimony of the police officers flatly denying the alleged maltreatment and torture imputed to them, and we are satisfied that the affidavits in question were given voluntarily, without the use of force or intimidation. If we are to believe the testimony of the appellants, particularly Elicerio Tan and Luis Nakua describing the supposed ill-treatment to which they have been subjected, ranging from punches with the naked fist or with metal knuckles, blows with a wooden mallet or with the butt of a carbine, to burning the body, particularly the private parts (glans penis) with the lighted end of a cigarette, the punishment must have been brutal and so severe that it should not only have disabled the appellants but would have left traces of the manhandling and torture; and yet only Elicerio Tan could show to the court during the trial said alleged traces on his private parts, supported by a medical certificate (Exh. "4") issued by Dr. Sta. Elena who had examined him on September 29, 1948, as well as the doctor's testimony. This exhibit described the injury thus:

"(1) Abrasions, glans penis;

(2) Contusions and abrasions, supra orbital region, left; duration of treatment—two to four days from time of examination."

Dr. Sta. Elena, however, in his testimony said that the contusions and abrasions could have been caused by a blunt or sharp instrument, equally admitting the possibility that they may have been caused by a lighted cigarette. But it is well known that burning the body directly with fire like the lighted end of a cigarette, especially a delicate part such as the glans penis will necessarily cause a serious injury such as blisters which would take time to heal, thus leaving a clear trace of the burning. That would have been a poor choice by the police in inflicting injuries on

prisoners if they did not wish to leave a tell tale trace. We are inclined to agree with the trial court that the injury found on the private parts of Elicerio Tan was self-inflicted. In this connection, we find that at least in one respect the claim of this appellant regarding torture has been found to be false. He told the court that on the morning of September 24th when he was first arrested, he was taken to the Isabela Theatre belonging to Tomas Pardo, and behind closed doors, was tortured not only by the police but by Tomas Pardo himself. It was proven however, that on September 24th construction of the Isabela Theatre had not yet been finished and that there were as then no doors to it and consequently, Tan could not possibly have been investigated behind closed doors as he claims. Moreover, according to Tomas Pardo he had no interest whatsoever in the investigation, much less in extracting a confession from Tan and resorting to torture to obtain the same because he was only a theatre owner with no relation or interest in the business of the Bunge Far East Agencies, Inc. Furthermore, it will be noticed that in the first affidavit of Tan, Exh. R, made on September 24th, after the supposed maltreatment practiced upon him, he did not admit any participation whatsoever in the commission of the crime. He merely pointed to some of the defendants as having told him that they were going to commit the robbery; that he even threatened to denounce them if they did, but that they promised to give him a part of the loot. This is not the kind of confession that investigators are satisfied to obtain from prisoners whom they tortured and intimidated and rendered completely helpless and subject to their will. It is only in Exh. "J" given three days later that Tan admits any semblance of guilt, and even then, he took care to limit his participation to being used only as a guard, but that he did not enter the warehouse much less killed the watchman.

With respect to Elicerio Tan, it is not only the affidavits, Exhs. R and J that link him to the commission of the crime. Shortly after the commission of the robbery and presumably after the safe had been transported in the truck to its hiding place in Sumagdan, Tan was found inside the same truck parked in front of the Basilan Lunch (Restaurant) with the engine of the truck still running and he (Tan) right behind the steering wheel.

As to Luis Nakua, besides his affidavit admitting his participation in the commission of the robbery, we have the finding of his buri hat inside the bodega and just under the window which was broken open and through which the intruders had entered the warehouse. It is not unreasonable to suspect that he was one of those who entered the warehouse through said window and that while laboriously squeezing himself in thru said opening, his hat dropped from his head and in the excitement and in the darkness, he failed to recover it. Of course, he claims that that buri hat was used by him only while working as cargador, and that after working hours he used to keep it in the bodega on top of a brace supporting the beam of the roofing. But the spot or place indicated by him was quite far from the spot beneath the window where it was found the morning when the police inspected the warehouse. He also claims that for four days he was tortured by the police and was not given any food. If this were true, he must have been a physical wreck, famished and near collapse when he was taken before Justice of the Peace De Guzman on September 26th for the ratification of his affidavit, and yet this judicial officer apparently failed to note anything abnormal or irregular, much less, traces of torture on the person of Luis Nakua. Besides, he was arrested on September 24th. He made his affidavit, signed and swore to the same two days later. There was, consequently, no reason for the police to have further tortured him and to have deprived him of food for two days thereafter as claimed by him inasmuch as the police had already achieved their purpose, this assuming that he had previously been tortured and given no food.

In connection with the affidavits of these four appellants, Judge Guzman of the municipal court stated during the trial that before he took action on these affidavits in his office, he had the police officers who had accompanied the appellants excluded from the room; that he took care to have the contents of the affidavits translated and explained to the affiants in the dialect known to them and that he got their assurance that the statements were free and voluntary. It is also to be noted that the affiants in their respective affidavits have tried to minimize their participation in the commission of the crime limiting it to either having acted only as guards or to having merely

accompanied those who really perpetrated the crime, but never assumed participation in killing the watchman. Almost all of these appellants in their affidavits pointed to Simeon Rosales as the person who killed the night watchman, but strange to say, Rosales did not make any affidavit and so for lack of evidence the complaint was dismissed as against him. The same thing may be said of the other defendants as against whom the case was dismissed for lack of evidence. They were all implicated by the appellants in their affidavits and yet the police authorities of Basilan City, against whom all these charges of intimidation and severe torture are heaped, could not extract from said seven defendants a single admission of participation in the form of affidavit. All this in our opinion support the theory of the prosecution that the police did not resort to force and intimidation in obtaining the affidavits (Exhs. H, J, R, S, and T).

In appellants' next assignment of error, it is contended that the trial court erred in permitting the removal of the contents of the safe before the trial because the defense was deprived of the right to cross examine the manager who took charge of the said contents and who made the corresponding inventory and receipt. We find no merit in this contention. The minutes taken of the opening of the safe, Exh. "O", show that when it was opened and its contents inventoried, the Municipal Judge, the City Fiscal, the Chief of Police, the Manager and two employees of the company, were present. A detailed inventory of the contents was made and the corresponding receipt signed by the Manager. With such inventory before them, counsel for the defendants could have easily cross-examined him on such contents.

In their third assignment of error, appellants insist that the trial court erred in believing the story of the prosecution and in discrediting that of the defense. It is said that if the appellants really hid the safe in the coconut plantation at Sumagdan, it is strange that even with the help of one or two of the appellants, the police could not find the safe. It should be remembered, however, that the appellants were the ones who in their affidavits indicated where the safe was taken and hidden. Without said information, the police would not have known that it was hidden in the coconut plantation. It is possible that the appellants who were taken to accompany the police to Sumagdan, after some reflection, purposely misled the Government authorities as to the exact hiding place of the safe in order to be able later to find and dispose of it themselves. It is equally possible that said appellants made a bona fide search for the safe but could not locate it for the reason that it was hidden by them at night, in a strange place and with no marker to indicate the exact spot. Anyway, according to the sketch, Exh. "W", made when the safe was finally found, the point indicated by the appellants who accompanied the police was within twenty-five meters from the spot where the safe was finally found. It should also be recalled that the place was full of bushes and dry coconut leaves rendering search quite difficult, and that the first time that the police looked for the safe in the company of one of the appellants, it was at nighttime.

The fourth and last error assigned refers to the refusal of the trial court to believe the story of Gregorio Flores to the effect that he is the author of the robbery with homicide, and that the appellants herein took no part in it. We quote with approval the observations of the trial court and its reason for disbelieving the story of Gregorio Flores:

"The testimonies of Gregorio Flores, an inmate of Muntinlupa now serving terra in Criminal Case No. 940 for 'Robbery', and evidenced by Exhibits 'Z-2' and 'Z-3', were presented by the defense to the effect that he (Gregorio Flores) and five (5) other persons by the names of Pederico, Domingo, Plaridel Regida, Carlos Andres and another unknown persons were the ones who committed the crime in this case. This witness when questioned whether he knew the place before the commission of the crime answered that he did not know and it is but usual for a criminal not to be aware as to the place where the crime is to be committed or which he is planning or intending to go. This reasoning only shows that this witness is not worthy of faith and credence. This witness, being a convict and serving a long term (14 years, 8 months and 1 day of reclusion temporal; to return the articles stolen in the amount of P260)—is of the kind of those, who disregarding the weight and worth of the oath before the Court to tell the truth, the whole truth and nothing but the truth, would testify in favor of

any one who may ask him to do so. And, besides, his testimony is not corroborated by any of his supposed companions he had mentioned. The records of Criminal Case No. 940 against the witness show, specially the decision 'Z-3', that this witness has presented a false defense and he testified falsely before the Court inspite of the conclusive and convincing evidence presented against him in that case. He alleged in that case he admitted to have committed the crime (Exhibit 'D' in that case) because the policemen maltreated him and handcuff him to the bench. But now, before this Court he admitted to have committed that crime and he did not make an appeal on the decision of the Court in said case."

Gregorio Flores is a habitual criminal. Besides the two crimes of robbery and qualified theft whose sentences he is now serving in Muntinlupa, he admits that he had been convicted of another crime and that in 1941, he was serving sentence but that when the Japanese forces arrived, he escaped from jail. We do not know whether the authorities have taken any action on this admission of evasion of sentence so as to increase the period of his confinement in Muntinlupa. The fact is that this convict is in for a long stretch of imprisonment. Apparently, to his way of thinking, to face another charge of robbery like the present case with the prospect of prolonging his stay in jail does not make much difference to him. What consideration influenced him in owning up the crime chargeable to others who really committed it., we do not know. His story about his committing this crime did not appeal to us. As was stated by the Court of Appeals in a similar case of convicts testifying and admitting sole responsibility for a crime imputed to others under trial—

"* * *,—these stories simply do not ring true. They imply too many coincidences and improbabilities, such as two admittedly confirmed and confessed criminals, suddenly becoming soft-hearted, repentant, generous and altruistic, and with no reason or explanation for the unexpected and what one might term heavenly change. We are more inclined to believe with the trial court that Mendoza and Ortiz, already too much and too deeply indebted to the law and with the prospect of a long stay in prison for thier misdeeds, did not mind having a few morte months or years added to their terms, specially when by so doing they were giving vent to their mania and obsession of being pictured as notorious criminals who had staged daring and expectacular hold-ups in utter scorn and contempt of the law and of peace officers. Besides, the courts usually do not look with favor upon the affidavit or testimony of criminals who for one reason or another undertake to assume sole criminal responsibility for an offense and exculpate others against whom there exist strong¹ and positive evidence as being the perpetrators of the crime. (People vs. Chua Buan, 59 Phil. 107; U. S. vs. Quinto, 36 Phil. 740, 742." (People vs. Cuyos, et al. CA-G.R. No. 1109-R, May 13, 1948).

Moreover, we cannot believe the story of Flores that the safe was carried away by his supposed companions without the use of any vehicle. It was a physical impossibility. From the description and picture of the safe, it is made of steel, big and heavy. To have transported it on the backs or shoulders of even three or four men, a distance of about one kilometer to Sumagdan, was difficult, nay impossible. It is more reasonable to accept the story of the appellants appearing in their affidavits that the safe was carried away in the stolen truck of the father of Juan Tan, the same vehicle where appellant Elicerio Tan was found after the commission of the crime.

After a careful review of the case we are convinced and we find that the appellants are guilty of the crime of robbery with homicide punishable with reelusion perpetua to death. We agree with the Solicitor-General that the crime was committed with the aggravating circumstance of nighttime—a little after midnight, despite the holding of the trial court that because there was a street light near the bodega, the culprits could not have chosen the night to better accomplish their purpose. The Solicitor-General is also right in his contention that the aggravating circumstance of using a motor vehicle should be considered. The penalty should, consequently be imposed in its maximum degree, namely, death. However, for lack of the necessary votes to impose this extreme penalty, we affirm the penalty of reclusion perpetua, imposed by the lower court on each of the appellants. The indemnity to the heirs of the deceased is increased from P2,000 to P6,000. With these modifications, the decision appealed from is hereby affirmed with costs. So ordered.

Paras C. J., Ferio., Pablo, Bengzon, Padilla, Tuason, Reyes and Jugo, JJ., concur.

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