

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME SALDUA, ANGEL SALDUA AND LORETA SALDUA, DEFENDANTS, JAIME SALDUA AND ANGEL SALDUA, DEFENDANTS-APPELLANTS.

G.R. No. L-40008. December 08, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case of robbery with homicide. The case for the prosecution was anchored on the testimonies of two witnesses, Donato Singson and Sing Siang Lu. The guilt of the accused depends on the sufficiency of those testimonies and on the validity of appellant Jaime Saldua's second confession.

Singson, 49, was a laborer in the Uy Matiao bodega of the Federal Marketing Corporation. The bodega was located near the corner of Sta. Catalina and San Juan Streets, Dumaguete City. Singson testified that at about midnight of Sunday, July 13, 1969, he and Francisco Quijano, the assistant warehouseman, were sitting inside the L-shaped bodega near the door. They heard the sound caused by the crashing on the concrete floor of a box of canned goods.

Quijano switched on the lights. Singson saw at the end of the bodega, about fifteen or twenty meters away, a boy and a woman, later identified as Jaime Saldua, 15, and his sister Loreta Saldua, 26. Singson also saw a rope tied to a beam of the ceiling near a one meter by one-half meter rectangular opening in the roof, above the eaves or media agua. The other end of the rope was tied to a sack on the floor. The sack contained a carton of corned beef.

The two intruders sensed immediately that they had been discovered. Loreta climbed the rope and exited out of the bodega through the opening in the roof. Jaime pulled out his bolo. Singson ran outside and summoned the two security guards, Romeo Jabel, 26, and Epifanio Quimin. When Singson reentered the bodega, Jaime was no longer there. Presumably, he had also climbed the rope and made his getaway (116 tsn July 23, 1971).

When Singson went out of the bodega, he allegedly saw four persons standing on the roof ten to twelve feet above the ground. They were Jaime and Loreta, their brother Gaudioso Saldua, 28, and their father Angel Saldua, 60. Singson allegedly saw also on the roof another sack which contained a carton of corned beef.

The four persons jumped to the ground (67 tsn September 7, 1971). Later, Singson allegedly "heard sounds of struggle as if persons are trying to strike each other" and he heard somebody "groaning" but he did not see those persons. He heard those sounds outside the bodega near the banana plants.

Because of the darkness, Singson did not witness any persons fighting near the bodega. He subsequently discovered that Jabel was already dead lying on his back. Nearby, amidst the banana plants, he saw Gaudioso Saldua mortally wounded. He was groaning.

At nine o'clock on that same morning, Singson was brought by the police to the City Hall where he identified Angel, Jaime and Loreta as the persons whom he saw at the bodega. However, the police did not require Singson to make a written statement.

It is noteworthy, and it should be stressed, that Singson never testified that Angel Saldua and Jaime Saldua killed Jabel. The prosecution did not present any witness to testify on how Jabel was killed and how Gaudioso Saldua was mortally wounded. The only question propounded to Singson on recross-examination was whether the bolo (Exh. C) found beside the body of Jabel was the same bolo which was unsheathed in the bodega by Gaudioso Saldua (whom Singson thought was the male intruder although he was really Jaime Saldua). Singson said that that was the same bolo (69-70 tsn September 7, 1971). And that answer implied that Gaudioso (not Angel Saldua) killed Jabel.

The autopsy on Jabel's body revealed that he sustained seven stab wounds, among which were a penetrating stab wound in the epigastric region which exposed his transverse colon and a stab wound in the neck. He also suffered three incised wounds and an abrasion. He died because of those wounds. The examining physician testified that the wounds could have been caused by the bolo, Exhibit C. He conducted the examination at two-quarter in the morning of July 14, 1969. He declared that death could have taken place two hours before the examination or at about midnight of July 13.

As to Gaudioso Saldua, who was found twenty-five to thirty-five feet away from Jabel, he sustained only one wound in his right buttock. That was a "deep hacked wound" or a big, deep gaping wound (tigbas). Gaudioso was brought to the hospital where he died about two hours after the incident.

The other prosecution witness, Sing Siang Lu, 54, the head warehouseman, testified that about midnight of July 13, 1969, the security guard, Epifanio Quimin, awakened him at the office of his employer which was about fifty meters away from the bodega. Sing Siang Lu had been sleeping in the office for about a week because of the recent robberies of canned goods in the bodega. Sing Siang Lu proceeded to the bodega and saw in the back part thereof a sack hanging from a rope tied to the ceiling where there was a hole big enough for a person to pass through. That hole or entrance had existed before July 13, 1969.

Sing Siang Lu inventoried the contents of the bodega and found that eight cases of corned beef, valued at P52 a case or a total of P416, were allegedly missing. However, Sing Siang Lu estimated the value of the eight cases at P500 and that was the figure used by the prosecution and the trial court. He confirmed that the sack tied with the rope contained one case of corned beef and that the other sack found on the roof contained another case.

It should be noted that these two cases were never removed by the robbers from the premises of the bodega. On cross-examination, Sing Siang Lu was asked how he came to know that the bodega was robbed of eight cases of corned beef. His vague answer was: "At the time of the incident, I knew the actual contents of the bodega but on account of the lapse of time, I have forgotten already the amount of corned beef stored" (53 tsn January 20, 1971).

The policemen, who investigated the case, did not take down the statement of Sing Siang Lu. They found in the premises of the bodega (aside from the bodies of Jabel and Gaudioso Saldua) three pairs of rubber sandals, the bolo (Exh. C) and the two sacks each containing a case of corned beef.

Less than ten hours after the incident, the policemen picked up for questioning Angel Saldua and his children, Jaime, Loreta, and Martin, 18, and also Aproniana Abagina, 25, the common-law wife of the deceased Gaudioso Saldua. Martin and Aproniana identified the sandals as those that were used by Jaime, Loreta and Gaudioso. Jaime in his statement said that one pair of sandals or shoes was used by Angel and not by himself.

The police obtained the confession of Jaime, an illiterate, on July 14, 1969 or about nine hours after the incident. In that confession, Jaime related how he and Loreta entered the bodega. He delineated the roles of Gaudioso and Angel in the robbery but he did not recount how Jabel and Gaudioso were killed.

To cure that grave deficiency, the police obtained a second confession from Jaime twenty-six days later, or on

August 9, 1969. That was after the information was filed in court. In that confession, Jaime stated that Jabel and Gaudioso Saldua fought, that his father, Angel Saldua, stabbed Jabel and Gaudioso, that Angel stabbed his son Gaudioso to prevent him from squealing about the robbery, and that Angel arrived home with bloodstained clothes.

On July 29, 1969 or sixteen days after the incident, the city fiscal filed in the Court of First Instance an information for robbery with double homicide against Jaime, Angel and Loreta, all surnamed Saldua. The trial was suspended as to Loreta because a psychiatrist found her to be a "mental retardate". She was committed to the Cebu branch of the Philippine Mental Hospital and later transferred to the Mandaluyong branch thereof.

At the trial, Jaime repudiated his confessions. He asserted that the contents of his confessions were never read to him, that he did not make the statements therein attributed to him, and that the investigator just held his right thumb and made him affix his thumbmarks thereon. He declared that at the time the incident occurred, he was in the family home at Luke Wright (Real) Street, Dumaguete City, with his mother, his sister Loreta and his nephews.

Angel Saldua interposed an alibi. He testified that at the time the incident occurred he was in Barrio Banilad and that he returned home on the following day, July 14, 1969, when he was arrested. He said that he was not investigated by the police.

The trial court convicted Angel Saldua and his son Jaime of robbery with double homicide, sentenced each of them to reclusion perpetua, and ordered the two to pay solidarily (a) P500 to the Federal Marketing Corporation as the value of the articles taken, (b) P12,000 to the heirs of Romeo Jabel and (c) P12,000 to the heirs of Gaudioso Saldua (Criminal Case No. 8847).

The trial court based the judgment of conviction principally on Jaime's two confessions, particularly on the statement in the second confession that Angel Saldua stabbed Jabel and Gaudioso Saldua. The court found that Jaime should be held responsible for the killings because he failed to prevent his father from causing the victims' deaths. The accused appealed.

There is no question that robbery with homicide was committed in this case and that appellants Angel Saldua and his son Jaime were implicated in the robbery. But do they have any culpability as to the homicide? Is the prosecution's evidence sufficient to prove their involvement in the homicide or is the special complex offense of robbery with homicide imputable only to the deceased Gaudioso Saldua?

We hold that the trial court erred in convicting appellants Jaime Saldua and Angel Saldua of robbery with double homicide. As already noted, the prosecution did not present any eyewitness to prove that Angel Saldua killed Jabel and his (Angel's) son Gaudioso. It relied merely on Jaime's second confession.

Jaime Saldua had absolutely nothing to do with the killing of Jabel and Gaudioso Saldua. The fifteen year-old illiterate Jaime could not possibly have prevented the killing of the two victims. Even his confessions do not contain any admission that he had any participation in the killing of Jabel and Gaudioso Saldua.

The rule is that "any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same" (Art. 296, Revised Penal Code). In this case, a band did not commit the robbery. There is not a smidgen of evidence that Jaime conspired with anybody to commit homicide in addition to the robbery (See *People vs. Jaranilla*, L-28547, February 22, 1974, 55 SCRA 563, 577; *People vs. Abalos*, L-31726, May 31, 1974, 57 SCRA 330, 342).

The statement in Jaime's second confession (not found in the first confession) that Angel killed his son Gaudioso and the security guard, Jabel, is not binding on Angel because it is hearsay as to him (5 Moran's Comments on the Rules of Court, 1970 Ed., p. 277). Hence, that statement cannot be the basis for convicting Angel of robbery with homicide.

Moreover, the circumstances surrounding the taking of Jaime's second confession and the injection therein of the extraneous imputation that Angel killed Jabel and Gaudioso Saldua reveal that such statement is testimonially untrustworthy. Jaime's second confession was taken long after the incident occurred and after the filing of the information. It was extracted from him when he was in the custody of the police and without the assistance of his counsel and without advising him as to his constitutional rights to remain silent and not to incriminate himself.

It is obvious that the second confession was taken in order to fill up a hiatus in the prosecution's evidence which was the absence of any eyewitness to the killing of Jabel and Gaudioso Saldua. The confession is in English, a language not known to the unschooled confessant. In that confession, he imputed to his own father the grievous capital offense of having killed his (the father's) own son. It is not surprising that at the trial Jaime abjured that second confession as a fabrication which he was required to thumbmark. The defense counsel objected to the admissibility of the confession as being hearsay (pp. 155-156, Record).

It should be underscored that Jaime's second confession is a rehash of the first confession but with the interpolation of an amendment that Angel killed his own son Gaudioso and Jabel, the security guard. Without that imputation, the prosecution has no evidence as to how Jabel and Gaudioso were killed. The responsibility for the killings is not a matter of conjecture. Consequently, Angel and Jaime, father and son, cannot be held responsible for the deaths of Jabel and Gaudioso Saldua.

Indeed, there are loose ends in the case which the prosecution has not explained. There is no evidence as to whether Jabel, who was armed with a nightstick, had inflicted injuries on Gaudioso. What Quimin, the other security guard, was doing while Jabel and Gaudioso were fighting, had not been shown. There is the probability that Gaudioso Saldua killed Jabel but there is no proof that Gaudioso conspired with Angel and Jaime to kill Jabel.

Except for Jaime's second confession, the prosecution's evidence is utterly deficient as to who were the authors of the homicides. There is no explanation as to why Jaime was not able to state in his first confession that his father killed Jabel and Gaudioso Saldua. If his first confession was freely given and was understood by him (naka subit ako), there would be no reason why he could not have recounted therein the vital circumstance that Jabel was killed by Angel Saldua who thereafter killed his son Gaudioso, if that was the truth. The record does not show that that is the truth.

As has been fittingly said, throughout the web of criminal law, one golden thread is always to be seen, which is that it is the prosecution's duty to prove the prisoner's guilt beyond reasonable doubt. If that rigoristic standard is not satisfied, then the accused is entitled to an acquittal (People vs. Mirasol, 62 Phil. 120).

In the instant case, the doubt is engendered by the brazen manner in which the police took advantage of their untrammelled domination of the person of the immature Jaime Saldua who was in their custody. To suit their purpose, they made him thumbmark two confessions, the second of which was obtained after the case was already filed in court and while the confessant was awaiting arraignment.

What kind of robbery was perpetrated in this case? The prosecution proved that the appellants had already the material possession of the two cases of corned beef but they were not able to remove the same from the bodega because the watchmen discovered the robbery (nasakpan mi) (213 tsn October 9, 1973). The two cases of corned

beef in the two sacks were recovered. The sacks and the containers of the corned beef were presented in evidence.

The rule is that theft or robbery is consummated after the accused had taken material possession of the thing with intent to appropriate the same, although his act of making use of the thing was frustrated (U.S. vs. Adiao, 38 Phil. 754). Robberies with force upon things "se consuman en el momento en que el culpable se apodera de la cosa teniendola a su disposicion aun cuando solo es momentaneamente. No es preciso que la cosa llegue a ser aprovechada" (II Cuello Calon, Derecho Penal, 14th Ed., 1975, pp. 894-5).

Sing Siang Lu's testimony that eight cases of corned beef, valued at P500, were missing would not mean that those eight cases were taken by the appellants. The fact is that only two cases were found in the two sacks and that, as Sing Siang Lu testified, a case was valued at P52.

It was charged in the information that the accused committed the robbery by gaining entrance into a bodega but it was not alleged that the bodega was inhabited. Hence, the robbery herein falls under article 302(1) of the Revised Penal Code as robbery committed in an uninhabited place where entrance was effected through an opening not intended for the purpose. The penalty for that kind of robbery involving property the value of which does not exceed P250 is one degree lower than prision correccional medium and maximum or arresto mayor maximum to prision correccional minimum.

As no attending circumstances can be appreciated in the case of Angel Saldua, the penalty that should be imposed upon him is an indeterminate penalty of four months of arresto mayor medium to one year and three months of prision correccional minimum.

Jaime Saldua is entitled to the privileged mitigating circumstance of minority under article 68 of the Revised Penal Code. The penalty that should be imposed upon him is the penalty next lower to arresto mayor maximum to prision correccional minimum, which is arresto mayor minimum and medium. A penalty of three months of arresto mayor should be imposed upon him.

WHEREFORE, the trial court's judgment is set aside. Appellants Angel Saldua and Jaime Saldua are acquitted of robbery with double homicide and are convicted as co-principals of simple robbery with force upon things.

Angel Saldua is sentenced to an indeterminate penalty of four months of arresto mayor, as minimum, to one (1) year and three (3) months of prision correccional minimum, as maximum. Jaime Saldua is sentenced to a penalty of three months of arresto mayor medium. The appellants are not liable for any indemnity because the two cases of corned beef were recovered.

Inasmuch as the two appellants had already served preventive imprisonment of several years, the sentences imposed herein are deemed to have been fully served (People vs. Magonawal, L-35783, March 12, 1975, 63 SCRA 106, 113). Their immediate release is ordered unless they may be justifiably detained for other offenses. Costs de oficio.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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