

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FIDEL GATMEN, ET AL., DEFENDANTS, FIDEL GATMEN, BENJAMIN
GUZMAN, JUANITO BOBILES, AGRAPINO BOBILES AND ARSENIO
TOLENTI...**

G.R. No. L-25368. August 18, 1972

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PER CURIAM:

In an amended information filed with the Court of First Instance of Abra eight (8) persons, namely: Fidel Gatmen, Benjamin Guzman, Arsenio Tolentino, Juanito, Ireneo and Agripino, all surnamed Bobiles, Sauro Dumalanta and Julio Castro, were charged with the crime of robbery in band with triple homicide[1] allegedly committed as follows:

"* * * * *

That on or about the 28th day of August, 1963, in the Municipality of Pilar, Province of Abra, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, one armed with an unlicensed Infield Rifle, caliber .30, bearing serial no. 519526, another one armed with an unlicensed Homemade (Paltik) Revolver, caliber .22, and all the others armed with bolos, conspiring, confederating, assisting and mutually helping one another, with intent to kill, with treachery and evident premeditation and taking advantage of their superior strength and the darkness of the night, did then and there willfully, unlawfully and feloniously assault, attack, hack and shoot the persons of Angel Domingo, Venancia Domingo and Rodolfo Domingo, inflicting upon them incised and gun-shot wounds on different parts of their body which caused their instantaneous death; and on the same occasion, the above-named accused, conspiring, confederating and mutually helping one another, with the intent to gain committed robbery by forcibly opening the door of an aparador which was locked and without the consent of the owner, take and carry away the following properties, to wit:

1. Cash money in Philippine Currency P804.00
2. One (1) pair earrings valued at 50.00
3. Three (3) finger rings valued 45.00
4. One (1) wrist watch valued at 53.00
- Total P952.00

or an aggregated value of NINE HUNDRED FIFTY-TWO (P952.00) PESOS, Philippine Currency, to the damage and prejudice of the said victims in the aforestated amount.

CONTRARY TO LAW."

Two (2) of the accused, namely, Sauro Dumalanta and Julio Castro, were subsequently discharged from the information and utilized as state witnesses; the rest of the defendants who had pleaded not guilty when arraigned stood trial. In a decision dated October 20, 1965 the trial court found Fidel Gatmen, Benjamin Guzman, Juanito Bobiles and Agripino Bobiles guilty as charged while Arsenio Tolentino was held liable only for murder.[2] The case as against Arsenio Tolentino, who was sentenced to suffer the penalty of reclusion perpetua, is before this Court on ordinary appeal. The case as against the remaining four (4) convicted defendants came up for automatic review in view of the death penalty imposed upon them by the trial court.

Sometime between ten and eleven in the night of August 28, 1963, in the remote barrio of Nanangduan, municipality of Pilar, province of Abra, the stillness was shattered by gunshot explosions. Barrio lieutenant Fermin Busto, awakened by the noise, immediately stepped out to investigate, and just a few steps outside his house came upon barrio-mate Agripino Bobiles – later to be charged and convicted as co-defendant in the instant case – who claimed having heard the gun reports too. Together they proceeded to the house of the barrio policeman, at which place, as had been previously agreed upon by the barrio people, a horn was to be blown as a signal for them to gather whenever an emergency should arise. In response to the signal the barrio residents trooped to the barrio policeman's house. A cursory head-count conducted by the barrio lieutenant revealed that the spouses Angel and Venancia Domingo and their son Rodolfo, all residing at the southern part of the barrio some 100 meters away from the assembly point, were absent. With lighted lamps – it was about 2:00 o'clock a.m. of August 29, 1963 by then – the assembled group decided to find out the reason for the Domingo family's non-appearance.

The sight that greeted the group was gruesome. By the front door of the ground floor of the two-storey Domingo residence lay Rodolfo Domingo, bloodied and lifeless. Further search yielded the equally bloodied and lifeless bodies of the spouses Angel and Venancia Domingo: Angel under a papag, a locally-made wooden bed, located in a sleeping room on the first floor, and Venancia on a path or alley of the house. The three were evidently victims of foul play. Barrio lieutenant Busto forthwith sent barrio policeman Pedro Perlas, with two other companions, to the poblacion of Pilar to notify the municipal authorities of the incident.

It was not until the early afternoon of August 29, 1963 when the municipal mayor arrived, accompanied by the municipal judge, the chief of police, a doctor and 4 policemen. They were at once informed that three persons had already owned responsibility for the killing of the Domingos and had in fact surrendered to the barrio lieutenant. With this information the municipal officials proceeded to the barrio lieutenant's house. There they found Sauro Dumalanta, Julio Castro and Arsenio Tolentino who, earlier that day, had given themselves up to the barrio lieutenant. When asked by the mayor whether they were indeed responsible for the death of the Domingos, the three meekly answered in the affirmative. The barrio lieutenant turned them over to the chief of police, together with 3 bolos and a couple of firearms – a .22 caliber paltik and an Enfield .30 caliber rifle – which the surrenderees claimed were the weapons used in the triple killing.

The suspects thus in custody, the municipal officials proceeded to the scene of the occurrence. The policemen made sketches of the relative positions where the bodies of the victims had been found. The rural health officer of Pilar, Dr. Demetrio Beroña, performed an autopsy examination, which revealed that Venancia Domingo sustained 24 stab and incised wounds of varying sizes; Angel Domingo, 30 stab, incised and gunshot wounds; and Rodolfo Domingo, about 20 stab and incised wounds. According to the medico-legal necropsy report later filed by Dr. Beroña the cause of death in each instance was profound shock and profuse hemorrhage secondary to the multiple wounds.

Subsequently brought to the poblacion for a more formal investigation, Sauro Dumlanta, Julio Castro and Arsenio Tolentino separately executed sworn statements describing the individual roles they played in the triple killing. The three of them, they related, were all non-residents of bo. Nanangduan. Sauro was from bo. Lubing, Burgos, Ilocos Sur and happened to be in bo. Nanangduan on August 28, 1963 merely to visit a sister who was married to one Laureto Guzman, a local resident. Julio and Arsenio were both from the nearby barrio of Pang-ot, Pilar, but they came to bo. Nanangduan for different reasons: Julio to visit a first-degree cousin; Laureto's son Domingo Guzman; and Arsenio simply to while away the time.

Late that night, while Sauro and Julio were engaged in some light talk with some common acquaintances in Laureto Guzman's house, they heard their names being called from outside. By the stairs were Benjamin Guzman, Juanito Bobiles and Fidel Gatmen. They wanted to invite Sauro and Julio for some drinks. The invitation was accepted, and on the way, near a ricemill, the group met Arsenio,[3] whom Juanito invited to come along. However, to the surprise of Sauro, Julio and Arsenio the group did not stop by the gin vendor's store, but instead, led by Juanito, Fidel and Benjamin, proceeded towards a caimito tree inside the yard of the Domingos. And from beneath a thick shrub growing under the caimito tree Juanito took out several bolos and a couple of firearms. Three of the bolos, each shaped differently, were given to Arsenio, Sauro and Julio respectively. Juanito handed a .22 caliber paltik to Benjamin and kept for himself a .30 caliber Enfield rifle. With a threatening gesture he then signaled his companions to enter the Domingo residence. Afraid for their own safety, so they said, Sauro, Julio and Arsenio did as they were told.

Arsenio pushed the slightly open door of the house and entered together with Sauro and Julio. Arsenio positioned himself under the stairs leading to the second storey, Julio hid behind the door and Sauro went straight ahead to the kitchen. Juanito, Fidel and Benjamin followed them. After a while Venancia Domingo, 55, came out with a lighted lamp obviously to investigate. Benjamin pressed the trigger of his .22 caliber paltik but it misfired. When he fired anew Venancia ran back to the room where she had come from, jumped out of the window and fled into the yard yelling for help. Benjamin, Fidel and Juanito[4] quickly gave pursuit. Hearing Venancia's cry, Sauro, spotted her in time to see the three hacking her with bolos. Unable to stand the sight, Sauro left and rejoined Julio at the yard of the house.

Benjamin, Fidel and Juanito left Venancia mortally wounded and rejoined Julio and Sauro. Juanito suggested that they go and look for her son Rodolfo. But this time Arsenio Tolentino was no longer with the group, having separated himself on the way to Laureto Guzman's house, where Rodolfo was believed to be staying that night.

Benjamin handed the .30 caliber rifle to Julio while Juanito gave Sauro a length of rope. They found Rodolfo lying in the middle of the sala. At Juanito's order Julio aimed the rifle at Rodolfo, who instinctively stood up, parried the gun barrel aside and asked why they were acting so. Juanito simply growled in reply and at the same time stabbed Rodolfo with his bolo. Rodolfo tried to flee outside, but Fidel grabbed him by the hair and with the help of Benjamin, hacked and stabbed the victim until he fell lifeless. The killers wiped the blood splattered in the sala and then carried Rodolfo's body to his parents' house, where they dumped it by the door. They looked for Angel Domingo and found him cowering under a wooden bed in one of the groundfloor rooms. Benjamin shot him two times, and Sauro did the same after the gun was handed to him. Then, with Juanito's and Fidel's help, they hacked Angel with bolos even after he was dead.

With all of the Domingos wiped out, Juanito ordered his companions to go up the second floor of the house to ransack an aparador he had opened, scatter the clothes it contained, and look specifically for poison and witchcraft paraphernalia, which he claimed had caused his younger brother's death a week earlier, for which Venancia Domingo, who was reputed to be a witch, was responsible. None of the things they looked for was found. It was while Juanito was going down the stairs on his way to leave the scene of the killing that Sauro and Julio saw him

holding a big wallet, the contents of which, however, they did not see. The following morning, in the barrio lieutenant's house, the group met anew and agreed that Sauro, Julio and Arsenio would surrender with the weapons used the night before and own sole responsibility for the triple killing, without implicating either Fidel, Juanito or Benjamin.

The foregoing is the story given by Sauro, Julio and Arsenio in their sworn statements during the investigation and which story, Sauro and Julio, as witnesses for the prosecution, were to repeat later on at the trial. Meanwhile, as if anticipating that these three would implicate them, Fidel Gatmen, Benjamin Guzman and the Bobiles brothers (Juanito, Ireneo and Agripino) meekly went along with the police authorities when separately invited to go to the poblacion to shed light on their possible involvement. Benjamin Guzman and Fidel Gatmen readily gave written statements when investigated, but not the Bobiles brothers.

Benjamin Guzman's statement, executed before the chief of police of Pilar on September 3, 1963 and sworn to before Municipal Judge Fidel T. Baldos that same day,[5] contains the following narration: He was a resident of the neighboring bo. Pang-ot, but was in bo. Nanangduan in the early afternoon of August 29, 1963 on a casual and leisurely walk. With him was Fidel Gatmen, also from bo. Pang-ot. They whiled away the time at the Nanangduan reading center, where they met some mutual acquaintances. By nightfall the reading center was practically deserted: only Benjamin, Fidel and Juanito Bobiles remained. It was then that Juanito suggested that they go and kill the Domingos. The suggestion evidently met with approval. The trio fetched Sauro and Julio from Laureto Guzman's house and meeting Arsenio Tolentino a little later by the ricemill, invited him to join. Upon reaching the yard of the Domingos, Juanito provided Sauro, Julio, Arsenio and Fidel with a bolo each, armed himself with a .30 caliber rifle and handed a .22 caliber paltik to Benjamin. All these weapons were taken by Juanito from a shrub growing under a caimito tree in the yard. Then the group systematically proceeded to slay Venancia, Rodolfo and Angel Domingo in that order and in the manner described by Sauro, Julio and Arsenio.

The other suspect, Fidel Gatmen, appeared to be more than cooperative. When separately investigated by the municipal judge, he did not confine himself to affirming his earlier sworn statement before the chief of police, but elaborated on the role he played in the triple killing. His version closely resembled that of Benjamin Guzman, although with certain further revelations, namely: that when Juanito Bobiles suggested the killing of the Domingos, Agripino Bobiles was present and in fact was the one who ordered Benjamin and Fidel to fetch Sauro and Julio as additional companions. Like Benjamin Guzman, Fidel claimed that he went with the group because he was afraid Juanito might shoot him if he should refuse. Although he admitted being present at every stage of the commission of the crimes, he maintained that he did not personally inflict any injury on Venancia; that with respect to the slaying of Rodolfo all he did was grab the victim by the hair to prevent him from fleeing; and that while he did not deny having stabbed Angel Domingo, he insisted that he did so only upon Juanito's order and only after the old man had been shot dead by Juanito and Benjamin.

The identification of appellants Benjamin Guzman, Fidel Gatmen, Arsenio Tolentino and Juanito Bobiles as members of the group which perpetrated the triple killing is conclusive. During the trial these four appellants uniformly tried to pin the responsibility on the two state witnesses, Sauro Dumalanta and Julio Castro, whom they pictured as the masterminds, and themselves merely as unwilling pawns. Substantially corroborating each other's version, Benjamin, Fidel, Arsenio and Juanito would have the Court believe that they were forced to join by Sauro and Julio at gunpoint; and indeed were only passive witnesses to the killing.

The defense is hardly credible. It was illogical that the two alleged masterminds would coerce the appellants to join only to make them stand by as eyewitnesses to the crimes. If they joined out of fear because Sauro and Julio were armed, they had several opportunities, according to their own version, to escape from the scene and thus avoid implication. For instance, appellants say they were left in the yard of the Domingos when Sauro and Julio

pursued Venancia and boloed her to death. Thus left unguarded, appellants could have easily fled under cover of darkness. Again when Sauro and Julio were carrying the dead Rodolfo back to his house, the four appellants could have escaped, or even overpowered them, occupied as they were with their task. Instead they elected to go along and even managed, without lifting a finger, to witness the third slaying.

The appellants' credibility, insofar as their version of the incident as narrated by them during the trial is concerned, is of course utterly destroyed by the respective extrajudicial statements of three of them during the investigation. Benjamin, Fidel and Arsenio acknowledged direct participation in the slaying. Fidel Gatmen even found it proper to execute two sworn statements, one before the chief of police and the other before the municipal judge, the latter statement being practically a repetition of what was related in the former.

The appellants claim they were maltreated in connection with those sworn statements. Not only is there no evidence of such maltreatment except the declarants' naked assertions, but the municipal judge and the chief of police categorically belied the same and testified that said statements were executed voluntarily. Besides, it is significant that the other suspects then in custody, i.e. the Bobiles brothers, were able to decline making any statement at that time. There is no reason why the Bobiles brothers should be spared the same treatment as was allegedly meted out to the others.

The only appellant whose alleged participation in the crime charge was limited – by the prosecution's own theory of the case, – to his act of conspiring beforehand with the other accused is Agripino Bobiles. He, of course, denied involvement and branded as untrue the state witnesses' testimony to the effect that about two days before the slaying Agripino had sounded them out as to their availability in the contemplated slaying of the Domingos. It is noteworthy that aside from such testimony no other independent evidence linked Agripino to the killing. To be sure, Fidel Gatmen made mention in his extrajudicial statement of Agripino's presence that night of August 29, 1963, immediately before the group proceeded to execute their plan. But Fidel's assertion on this point is totally uncorroborated. In fact, other than Fidel none of the suspects then under investigation mentioned Agripino as a co-conspirator. Even state witnesses Sauro and Julio never referred to Agripino in their respective extrajudicial statements. It was only during the trial that they implicated him, although not in connection with the actual slaying. According to Sauro, about two days before the occurrence Agripino "told us that if we would be brave enough to kill the family of Angel Domingo, we would kill them but not inside the 'purok' or barrio." Julio Castro testified more or less to the same effect. There is no evidence, however, that Agripino had anything to do with the planning and execution of the triple killing. Under the circumstances he is entitled to an acquittal, at least on grounds of reasonable doubt as to his guilt.

On the nature of the crime committed, We disagree with the trial court that it was robbery with homicide. The evidence that robbery was committed is insufficient. While there is testimony that a day prior to the slaying the deceased couple received and kept in the ransacked aparador a relatively large amount of money, there is no convincing proof that the said money was taken by the appellants or any one of them. True, Sauro and Julio claimed having seen Juanito Bobiles leaving the scene of the crime with a wallet in his hand, but how the same wallet came into the possession of Sauro and Julio, who actually surrendered the same to the chief of police, has not been explained. The methodical manner in which the slayings were carried out, considered in the light of the probable motive, namely, the suspicion that Venancia Domingo employed witchcraft to bring about the death of a younger brother of Juanito Bobiles, indicated that to kill the victims was the overriding intention of the appellants. Immediately after killing Venancia, they could have committed the alleged robbery, but did not do so. Instead they left the place in order to kill Rodolfo, who was staying at another house some distance away, and then returned for the third victim. And when the aparador was opened after that and its contents scattered, the idea was not to look for valuables but for poison and witchcraft equipment.

The judgment of conviction for robbery with homicide is therefore erroneous.[6] The slaying of the spouses Angel and Venancia Domingo and their son Rodolfo must thus be considered as separate crimes of murder, qualified by treachery. Without any mitigating circumstances, except with respect to Arsenio Tolentino, who surrendered voluntarily, and aggravated by the circumstance of "dwelling" in the case of Angel and Venancia Domingo, together with the additional aggravating circumstances common to all three victims, namely, abuse of superior strength, band and evident premeditation, the proper penalty is death in each of the three killings. The fact that this case is before Us on automatic review and not by way of regular appeal with respect to Benjamin Guzman, Fidel Gatmen and Juanito Bobiles does not preclude the imposition of such multiple penalties, since the judgment of the trial court, where the capital punishment is imposed, does not become final until reviewed and affirmed by this Court.

With respect to appellant Arsenio Tolentino, it appears that after Venancia Domingo was killed, in which killing he actually took part, he separated from the group and therefore was not present when Rodolfo and Angel Domingo met the same fate. Although technically speaking, since conspiracy has been established, Arsenio may be held responsible for the death of all the victims, the fact is that he had a change of heart and desisted from taking part in the killing of two of them. For this reason, and in view of his voluntary surrender, the Court believes that the penalty of reclusion perpetua imposed by the trial court should be, as it is hereby, affirmed.

With respect to Juanito Bobiles, Benjamin Guzman and Fidel Gatmen, the judgment is modified in the sense that each of them is sentenced to suffer the penalty of death in connection with the murder of each of the three victims. They are, furthermore, sentenced to pay, jointly and severally, the sum of P12,000 to the heirs of each of said victims, with Arsenio Tolentino sharing this solidary liability with them for the death of Venancia Domingo.

Agripino Bobiles is acquitted and ordered discharged from custody on the ground that his guilt has not been proven beyond reasonable doubt.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Fernando and Barredo, JJ., took no part.

[1] The designation of the offense charged as robbery in band with triple homicide, is a misnomer. Even if robbery with homicide is committed by a band, the indictable offense would still be denominated as robbery with homicide under article 294(1) of the Revised Penal Code, but the element of band would be appreciated as an aggravating circumstance. (For a detailed discussion on this point, see *People vs. Apduhan*, L-19491, August 30, 1968, 24 SCRA 798).

[2] The case as against accused Ireneo Bobiles was dismissed for lack of evidence, with a proportionate part of the costs de oficio.

[3] Because Arsenio Tolentino was from nearby bo. Pang-ot, he was not a stranger to the group, especially to Julio Castro, who hailed from the same barrio.

[4] At this point there are some discrepancies in the statements separately given by the accused during the investigation regarding the identification of those who stabbed and hacked Venancia. Sauro Dimalanta pointed to Fidel, Benjamin and Juanito; Julio Castro fingered Fidel, Juanito and Arsenio, but did not mention Benjamin; Benjamin Guzman admitted participation with Fidel and Arsenio; and Fidel Gatmen pointed to Arsenio and Juanito. These discrepancies, however, do not materially affect the issue of guilt or innocence, there being conspiracy in the commission of the crimes.

[5] Later investigated by the municipal judge himself on September 5, 1963, Benjamin Guzman did not deem it necessary to discuss anew the matters he related to the chief of police; instead, he simply stated that he had " * * * nothing more to add * * * and nothing to discard * * *" from his earlier affidavit.

[6] People vs. Manobo, 18 SCRA 30, 41

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