

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CONRADO EVANGELISTA ET AL., DEFENDANTS. CONRADO
EVANGELISTA AND ALEJANDRO SALAZAR, APPELLANTS.**

G.R. No. L-2489. April 12, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an appeal from a judgment of the Court of First Instance of Manila finding Conrado Evangelista and Alejandro Salazar guilty of the crime of robbery with homicide under Article 294, section 1, of the Revised Penal Code (as amended by Republic Act No. 18), and sentencing each of them to suffer the penalty of reclusion perpetua with all the accessory penalties thereof; to indemnify jointly and severally the heirs of the deceased Patrolman Jose R. Antonio in the sum of P2,000, complainant Uy Sang in the sum of P3,000, and complainant Braulio Bulaong in the sum of P1,000; and to pay their proportionate part of the costs.

On the night of February 14, 1947, Conrado Evangelista, Ruperto Roque, Lazaro Manlulu, Alejandro Salazar and Bino "Doe" agreed to rob on the following morning any Chinese store which they might find open. At about four o'clock of the following morning, February 15, 1947, as they walked down Quiricada street, they saw that the store of Uy Sang at No. 1601 corner of Oroquieta and Quiricada streets, had just opened and Uy Sang was alone inside counting pieces of bread. Whereupon, the five armed men entered the store brandishing their firearms and ordered Uy Sang to stay quiet. Ruperto Roque was left outside as the look-out. After ransacking the sleeping quarters of Uy Sang, the armed men took P1,000. from a wardrobe which they forced open and P2,000 which they found inside a pillow. Then they went up to the second floor of the house where they were met by Braulio Bolaong, landlord of Uy Sang, whom they threatened with their revolvers and from whom they took a diamond ring valued at P1,000.

At this moment, Patrolman Jose R. Antonio arrived at the store. An exchange of shots ensued and the policeman fell dead while one of the armed men, Ruperto Roque, was wounded in the abdomen. When a squad of detectives arrived to investigate, they found the lifeless body of Patrolman Antonio on the floor of the store. Upon being informed that the armed men had fled towards Palomar Extension, the detectives gave chase. There they came upon a shack where they found Ruperto Roque badly wounded and they arrested Conrado Evangelista whom they saw leaving the premises.

Conrado Evangelista was brought to the police station where, upon investigation, he gave a signed statement; (Exhibit F). Ruperto Roque, who was brought to the North General Hospital for medical care and confined therein, gave a signed statement on February 19, 1947 (Exhibit G) and died three days later, on February 22. Alejandro Salazar, who was able to escape on the day of the crime, was arrested by the Military Police in Angeles, Pampanga, on May 5, 1947, and was turned over to the Manila Police to whom he also gave a signed statement (Exhibit E). Lazaro Manlulu and Bino "Doe" who also escaped after the robbery, are still at large.

These facts are fully supported by evidence and are not in dispute in this appeal. The question at bar, as conceded

by both parties, is the criminal responsibility of appellants. Appellants allege that there was conspiracy only to commit robbery, not homicide, hence they must be held responsible only for the robbery. Appellee contends that appellants and their co-defendants conspired together in the perpetration of the robbery in question, and that on the occasion thereof, Patrolman Jose R. Antonio was shot dead, hence, appellants are guilty of the crime of robbery with homicide.

In accordance with the provisions of law pertinent to this case (Articles 294 to 296 of the Revised Penal Code) and established jurisprudence, when an armed band commits robbery and on the occasion of such robbery a homicide is committed, the crime is robbery with homicide. And the second paragraph of Article 296 provides 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."

In the instant case, the conspiracy to commit robbery in band, and the occurrence of a homicide on the occasion of such robbery have been proven and even admitted, although there is no showing that appellants and their companions recognized Patrolman Antonio as a policeman when he arrived at the scene of the robbery. However, the evidence clearly shows, over the mere denial of their counsel, that appellants were present when the homicide occurred. On the other hand, there is nothing in the records which tend to show that the appellants attempted to prevent the homicide. This Court, therefore, finds appellants guilty of the crime of robbery with homicide under Article 294, section I, of the Revised Penal Code. The aggravating circumstances of "nighttime" and "dwelling" have also been proven, and there being no mitigating circumstances to offset the same, the penalty specified by law must be imposed in its maximum which, in this case, would be death. However, since the required number of votes for the imposition of the death penalty cannot be had, the penalty of reclusion perpetua must be applied.

For all the foregoing, the judgment of the lower court is hereby modified to the extent that the indemnity to the heirs of Patrolman Jose R. Antonio should be raised to P6,000, and affirmed in all other respects. It is so ordered.

Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Paras, Feria and Torres, JJ., no part.

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