

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEE KIAT ALIAS UY SON TOK, PEDRO FLORES, VICTOR
SOMONDONG, ANASTASIO ARAOLA, ANASTASIO MAKILING, CARLOS
MECHOR, PASTOR...**

G. R. No. L-3409. June 29, 1951

Ponente: JUGO, J.

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JUGO, J.:

In criminal case No. 325 of the Court of First Instance of Davao, Lee Kiat alias Uy Son Tok, Pedro Flores alias Pedro, Victor Somondong alias Tor, Anastasio Araola alias Tasio, Anastasio Makiling alias Tasio, Carlos Mechor alias Alo, Pastor Malake alias Baro, Juan Pahang alias Juan, Crismundo C. Nakin alias Ramon Castro, Benito Dogos alias Net, and Lucio Pana alias Lucio, were accused of robbery with homicide. In criminal case No. 334 of the same court, Lim Kuan Chiu alias Chi Wa and Cirilo Velasco alias Carlos Burgos, were accused of the same crime. On motion of the Fiscal and with the conformity of counsel for the defense, both cases were tried jointly.

Upon petition of the fiscal, Crismundo C. Nakin alias Ramon Castro was excluded from the information to be used as a witness for the Government.

After trial, in criminal case No. 325, Lee Kiat, Pedro Flores, Victor Somondong, Anastasio Araola, Anastasio Makiling, Carlos Mechor, Pastor Malake, Benito Dogos, and Lucio Pana were found guilty and sentenced to reclusion perpetua, with the accessory penalties of the law, to indemnify jointly and severally the heirs of the deceased in the sum of P2,000 and the additional sum of P4,815.50, which was the value of the stolen goods not recovered, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. Juan Pahang was also found guilty, but being below eighteen but over sixteen, he was sentenced to suffer the penalty of from ten (10) years and one (1) day of prision mayor to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal, with the accessory penalties of the law, to indemnify jointly and severally with his co-accused the heirs of the deceased in the sum of P2,000 and the additional sum of P4,815.50, which represents the value of the stolen goods not recovered, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. In criminal case No. 334, Lim Kuan Chiu alias Chi Wa and Cirilo Velasco alias Carlos Burgos were acquitted, with costs de oficio.

Lee Kiat alias Uy Son Tok, Pedro Flores, Victor Somondong, Anastasio Araola, Anastasio Makiling, Carlos Mechor, Pastor Malake, Benito Dogos, Lucio Pana, and Juan Pahang appealed.

From the evidence of record, the following facts have been established:

On October 24, 1947, and for some time before, the deceased Te Te Soy, his wife Idot (Bagoba) and his three children were residing in Sibulan, municipality of Santa Cruz, Davao, occupying a building, the first floor of which was used as a bodega and store and the upper floor as a dormitory. The couple dealt in textiles and other articles at retail, and in abaca at wholesale.

Another Chinaman, Sotero de los Reyes, owned two stores in Baracatan, municipality of Santa Cruz, Davao, which also dealt in textiles, abaca, and other articles. One of the stores which was managed by Lee Kiat alias Uy Son Tok as industrial partner was situated about three kilometers from that of Te Te Soy. The other, managed by the son-in-law of Sotero de los Reyes, was located about one and one-half kilometers from the store of the deceased. As the business of Te Te Soy prospered and that managed by Lee Kiat was failing, Lee Kiat as well as Lim Kuan Chiu planned to open another store near the place where Te Te Soy had his. Knowing of this plan, Te Te Soy conferred with both of them at the store of Lee Kiat, where the deceased apparently expressed his disapproval of the idea. After the conference, Lee Kiat became more determined to put up a store near that of Te Te Soy at all costs.

Late in the afternoon of October 24, 1947, Lee Kiat gathered all the other defendants in his store and broached to them the idea of robbing the store of Te Te Soy. Queried on the matter, Lee Kiat replied that he would establish a store near that of the intended victim and promised to give each member P200, further assuring them that he would take care of the defense and the services of a lawyer, should anything happen. When the group agreed to the proposition, Lee Kiat, after the conference, furnished Victor Somondong with a Garand rifle, Anastasio Makiling with a rifle, Ramon Castro with a flashlight, and armed himself with a bayonet. At about seven o'clock in the evening, the group left the store of Lee Kiat for that of Te Te Soy, passing through an abaca plantation. About twenty meters from the house of the victim, they stopped and Lee Kiat gave the instructions. Victor Somondong was told to stand guard near the kitchen, Pastor Malake near the water tank, and Anastasio Araola and Lucio Pana in front of the house. The rest were to go with Lee Kiat. As the principal door of the house was closed, Juan Pahang was ordered to pass through the hole over said door and open it, after which they entered. Because the door leading to the store was also closed, Lee Kiat, with two pieces of wood, broke it open and, with the exception of those standing guard outside, the group started to loot the store. Shots were heard and Lee Kiat groped his way to the room of Te Te Soy who noticing the presence of strangers in his room, jumped out of the window landing near the kitchen. Shots were again heard coming from near the kitchen, and a little later another shot coming from west of the house was heard, apparently fired by Victor Somondong, which killed Te Te Soy. After several shots from in front of the house had been heard, the wife of Te Te Soy came down from the upper floor to go to the store, but she was seized by Ramon Castro and taken to the bodega, where she was maltreated by Benito Dogos. Then Lee Kiat came down from the upper floor, bringing with him a box.

Thereafter the marauders left the premises, taking with them three sacks of stolen goods worth about P1,000 and cash amounting to more than P4,000. They passed by the store of Lim Kuan Chiu where they left two sacks, containing some of the articles, and brought the third sack to the store of Lee Kiat.

The following day, October 25, 1947, Jose Aguinaldo, sergeant of police of Santa Cruz, repaired to the scene of the crime, finding four .30 caliber empty shells, one of which was found behind the house near the tank, a spare part of a Garand rifle, and one broken door hasp. About eighty meters from the house of the victim, the body of Te Te Soy was found by the authorities, with a wound on the left side of the neck and on the right side of the back.

In the afternoon of October 28, 1947, a group of Constabulary soldiers led by Sergeant Escandor arrested Lee Kiat in his store together with Pedro Flores, Victor Somondong, Anastacio Araola, Anastasio Makiling, Carlos Mechor, Pastor Malake, Juan Pahang, Benito Dogos and Lucio Pana, and confiscated seven pieces of cloth (Exhibits J, J-1 to J-6) and thirteen pieces of undershirts (Exhibits K, K-1 to K-12) which were part of the loot, taking also with them the bayonet (Exhibit G) and flashlight (Exhibit H). The soldiers then proceeded to the store of Lim Kuan Chiu, who was away then, but it was opened by Lee Kiat. With the consent of Lee Kiat, the soldiers confiscated several pieces of cloth (Exhibits L, L-1 to L-8) and undershirts (Exhibits M, M-1 to M-8), which were

also part of the loot.

On October 30, 1947, Sergeants Escandor and Zacarias of the Philippine Constabulary went to the store of Lee Kiat in Baracatan, and with the help of Marcelo de la Pena, then in charge of the store, the officers confiscated one overcoat (Exhibit Q), one brown woolen blanket (Exhibit R), cartons of Piedmont cigarettes (Exhibits S, S-1 to S-2), cartons of Chelsea cigarettes (Exhibits T, T-1 to T-5), boxes of matches (Exhibits U, U-1 to U-6) and matches (Exhibits V, V-1 to V-77) which were part of the stolen goods.

The defense interposed by the appellants consists in an alibi, denial, and an attack on the credibility of the witnesses for the prosecution. Although the defendants assign fourteen errors, their defenses are practically the same and based on the following points:

- (1) That Lee Kiat alias Uy Son Tok, on October 24, 1947, never offered money to his co-accused in order to rob and kill Te Te Soy nor did said appellants go to the house of the deceased;
- (2) That Ramon Castro, witness for the prosecution, was not in the house of Lee Kiat in the afternoon of October 24, 1947, nor Marcelo de la Pena, another prosecution witness, for although this latter witness was admittedly staying in the house of Lee Kiat, he left for Toril one day prior to the day in question, returning only on October 25, 1947;
- (3) That when the defendants were brought before Idot, widow of the deceased, after their arrest, only Ramon Castro was pointed to as one of the malefactors by the widow, and that she disclaimed ownership of the stolen goods that were shown to her;
- (4) That the appellants spent the night in the house of Lee Kiat on October 24, 1947, without leaving it, so that they could not have been in the premises of Te Te Soy's residence; and
- (5) That the witnesses for the defense deserved more credence than those of the prosecution, attacking severely the credibility of Ramon Castro.

The testimony of Ramon Castro and Marcelo de la Pena was positive as to the facts asserted and was in a way corroborated by the witnesses for the defense. No motive has been shown for these witnesses to testify falsely against the accused. The relationship of Marcelo de la Pena with Lee Kiat, being the latter's helper, would rather have induced the witness to testify for the defense, but he testified for the prosecution even against his personal interest.

It is further claimed by the defense that Ramon Castro's testimony is fantastic and absurd, with many contradictions. It should be noted that the alleged contradictions pointed out by the defense are not on material points and were satisfactorily explained by him. Ramon Castro and Marcelo de la Pena corroborated each other on essential points.

Some of the stolen articles were found in the store of Lee Kiat and Lim Kuan Chiu by the authorities, as indicated by Ramon Castro and Marcelo de la Pena. This point is well-nigh decisive.

The defense further claims that the woolen overcoat (Exhibit Q) and the shirt (Exhibit W) were not part of the loot. This is belied by the fact that the woolen coat had Chinese characters inside it which, when deciphered by Pedro Uy, a Government employee of the Bureau of Internal Revenue detailed in Davao, who knew the Chinese language, were found to represent the name of Te Te Soy. As regards the shirt, which Idot indicated as belonging to her husband when she saw Mechor wearing it, it was found to be too large for Mechor, with sleeves too long for him. Idot indicated the sewing she had made on one of the pockets.

The appellants lay much stress on the letter (Exhibit 3) written by Ramon Castro, in which he said, among other

things, that he and Lee Kiat had been maltreated to give confessions. Considering that Uy Cheong Leong had amply demonstrated his interest in the welfare and acquittal of his countryman Lee Kiat, it is believed that the lower court correctly made the observation that it was possible for said Chinese to have induced Castro to write said letter.

As regards the claim of the defense that the confession of Lee Kiat (Exhibit 0) was secured through force and intimidation, Artemio Cometa, Justice of the Peace of Santa Cruz, Davao, testified that the same was first interpreted and explained by Uy Cheong Leong to Lee Kiat who voluntarily swore to it before him. Sergeant Escandor denied that force or intimidation had been used against Lee Kiat to secure the confession.

The claim of the defense that Lucio Pana's testimony should have merited consideration as to his alibi that he could not have been with the group on the night in question is without merit. Said witness admitted that, although he was suffering from cough and fever, the same was not continuous, he was not bedridden, and he could walk around.

That Sotero de los Reyes testified for the defense is not surprising. Being the capitalist for the store of Lee Kiat as well as father-in-law of the accused Lim Kuan Chiu, it was natural for him to testify for the defendants and have personal interest in their acquittal.

The evidence has proved beyond reasonable doubt the guilt of each and all of the defendants of the crime charged. As to the mitigating and aggravating circumstances, resulting in the imposition of the penalty of reclusion perpetua, on the whole, we believe that the finding of the trial court should not be disturbed.

With regard to Juan Pahang it appears that he was born on October 20, 1932 and, consequently, he was only fifteen (15) years and four (4) days old on October 24, 1947, when the crime was committed. He is, therefore, entitled to the benefits of article 80 of the Revised Penal Code relative to minors.

In view of the foregoing, the judgment appealed from is hereby affirmed, with the modification that the indemnity to be paid to the heirs of the deceased Te Te Soy for the latter's death should be P6,000; and with reference to Juan Pahang, his sentence is hereby suspended and he is ordered placed under the care, custody, and supervision of the Director of Public Welfare, to be placed by said official in a suitable charitable institution until he reaches majority. It is so ordered.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Reyes, JJ., concur.

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