

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRESENCIO DOBLE, ET AL., DEFENDANTS, CRESENCIO DOBLE,
SIMEON DOBLE AND ANTONIO ROMAQUIN,
DEFENDANTS-APPELLANTS.**

G.R. No. L-30028. May 31, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This case refers to a bank robbery committed in band, with multiple homicide, multiple frustrated homicide and assault upon agents of persons in authority, on June 14, 1966, in Navotas, Rizal. Only five of ten accused were brought to trial, the other five named only as "John Does" in the information having remained at large. Two of the five accused who stood trial, Mateo Raga and Celso Aquino were acquitted, while the trial court, the Court of First Instance of Rizal, imposed the death penalty on the appellants herein, Cresencio Doble, Simeon Doble and Antonio Romaquin. The decision of the trial court is now before Us for review for having imposed the death penalty.

Both the de officio counsel for appellants and the then Solicitor General, Hon. Felix Q. Antonio, a retired Justice of this Court, agree that as so narrated in the appealed decision, and as quoted in appellants' brief, the relevant and material facts accurately reflect the evidence presented, except only as to the fact that there were eight malefactors, with respect to which appellants are not in full conformity (p. 2, Appellants' Brief).

As stated in the decision under review, the crime was committed as follows:

"Late in the night of June 13, 1966, ten (10) men, almost all of them heavily armed with pistols, carbines and thompsons, left the shores of Manila in a motor banca and proceeded to Navotas, Rizal. Their mission: to rob the Navotas Branch of the Prudential Bank and Trust Company. Once in Navotas and taking advantage of the darkness of the night, eight (8) men disembarked from the banca and proceeded to the beach in the direction of the branch bank. Within a few minutes, shots were heard throwing the people around in panic. As confusion reigned, the people ran in different directions scampering for safety. As time went on, the shots grew in intensity. As the commotion died down, the eight men returned to their banca, still fully armed and some of them carrying what looked like " bayongs". They boarded the waiting motor banca and sped away. As a result of the shooting, many people got killed and some injured. Among those who were killed were agents of the law, like Sgt. Alejandro Alcala of the Philippine Constabulary, Sgt. Eugenio Aguilos and Cpl. Teofilo Evangelista of the Navotas Police Department. Dominador Estrella, a market collector, was also killed. Those who were injured were Pat. Armando Ocampo, Exequiel Manalus, Jose Fabian, Rosalina Fuerten and Pedro de la Cruz.

"The Prudential Bank and Trust Company branch office located at the North Bay Boulevard, Navotas, Rizal, the object of the bloody mission, has an unusual banking hours. It opens at midnight and closes at 8:00 in the morning. The bank has ten employees, more or less, including a security guard. It has two cages or compartments for tellers. One cage was under the care of Melvin Domingo and the other one under the care of

Alejandro San Juan. At around 12:30 a.m. of June 14, 1966, Cesar Reyes, assistant cashier of the bank, was near the cage of Domingo when two men entered the bank asking that their money be changed. Domingo refused, saying that they had no small denominations. Suddenly, three men armed with long guns barged in and fired at the ceiling and the walls of the bank. They ordered the employees to lie down, face downward and then demanded the key to the vault. When Reyes answered that they do not have the key, the armed men aimed their guns at the vault and fired upon it until its doors were opened. They entered the vault and found that they could not get anything as the compartments inside the said vault were locked. Not being able to get anything from the vault, the armed men went to the two teller cages and took whatever they could lay their hands on. Not long afterwards, the men left, carrying with them the sum of P10,439.95.

"Just beside the bank was a police outpost. On the night in question, Pat. Nicolas Antonio was in the outpost, together with Sgt. Aguilos, Pats. Pangan, Burgos, Rosal, Ocampo and Cpl. Evangelista. They were on duty watching the fish landing. Suddenly, Antonio said, at around 1:30 a.m., he heard a burst which he believed came from a thompson. He said he saw a man pointing a thompson upwards while he was in front of the bank. Afterwards, Antonio said, he heard another burst coming from the same direction. Antonio and his companions then went to the middle of the road and again they heard shots, and this time they were successive, coming from their left. Antonio could not see who was firing the shots. Suddenly, he said, he saw one of his companions Cpl. Evangelista topple down. He saw also Dominador Estrella sitting down folding his stomach. They were both felled by the shots coming from the left side of the bank. Antonio told Ocampo to go beside the outpost and held Sgt. Aguilos by the arm. Sgt. Aguilos, however, collapsed and fell down. He was hit. Later on, Antonio said, he went to the outpost and told Pat. Ocampo to go too. He said that from the outpost he heard some more shots. Then he saw Ocampo hit in the thigh. After the firing ceased, Antonio saw his wounded companions placed in a vehicle, together with Evangelista and Aguilos who were already dead. Later on, he said he saw Sgt. Alcala, a member of the PC, lying prostrate in the ground already dead." (pp. 83-85, Rollo).

It is noteworthy that from the above narration as to how the robbery and the killing that followed in its wake were actually committed, the three appellants had no participation. It is not surprising that the Solicitor General has recommended the acquittal of one of the appellants, Simeon Doble. With this recommendation, it might be well to take up the case of this appellant ahead of the other two, appellants Antonio Romaquin and Cresencio Doble.

In recommending Simeon Doble's acquittal, the Solicitor General made the following observation:

"As to appellant Simeon, the evidence shows only that the malefactors met in his house to discuss the plan to rob the Prudential Bank. This circumstance, standing alone, does not conclude his guilt beyond reasonable doubt. The facts do not show that he performed any act tending to the perpetration of the robbery, nor that he took a direct part therein or induced other persons to commit, or that he cooperated in its consummation by some act without which it would not have been committed. It could be that Simeon was present at the meeting held in his house and entered no opposition to the nefarious scheme but, aside from this, he did not cooperate in the commission of the robbery perpetrated by the others. At most, his act amounted to joining in a conspiracy which is not punishable. Mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose (15 CJS 1062).

"We are, therefore, unable to agree with the finding of the lower court that Simeon was a principal both by agreement and encouragement, despite his non-participation in the commission of the crime. Nor was it clearly proved that Simeon received a part of the looted money as to make him an accessory. Romaquin's testimony that the day after the robbery he gave P2.00 to Simeon who had asked for cigarettes (p. 5, t.s.n., May 25, 1967) could hardly be considered as the latter's share of the loot. It is significant that in his statement he claimed he had not yet received his share." (pp. 10-11, Appellee's Brief; p. 146, Rollo).

A review of the evidence of record shows the foregoing observation of the Solicitor General to be with convincing rationality. It is only that portion in which is cited Simeon's statement made before the Navotas Police Department (Exh. I pp. 28-29, Folder of Exhibits) that "he has not yet received his share" that detracts from the solidity of the Solicitor General's recommendation, for it gives the impression that Simeon had given material or moral support or encouragement to the malefactors (referring to those still at large as the principal culprits) as to entitle him to a share in the loot. However, a reading of his whole extra-judicial statement would erase that impression, and reveals the true import of that statement as intended only to show that Simeon had nothing to do with the commission of the crime and therefore did not receive any share of the fruits thereof. Thus, to quote pertinent portions of his statement on custodial investigation:

"3. T --- Ano ang dahilan at ikaw ay naririto?

S --- Dahil po sa aking pagkakasangkot sa holdapan dito sa isang Bangko sa Navotas, Rizal at ako ay hinuli ng mga tauhan ng M.P.D.

"4. T --- Kailan ka hinuli?

S --- Noon pong Miyerkoles ng madaling araw, hindi ko alam ang petsa pero nito pong buwan na ito.

"5. T --- Mayroon ka bang nalalaman tungkol sa pagkakaholdap ng isang bangko dito sa Navotas?

S --- Ang nalalaman ko po ay doon nagpulong sa aming bahay ang mga taong nangholdap dito sa Navotas.

"6. T --- Sino- sino o ilang tao ang mga nagpulong sa inyong bahay?

S --- Pirmero po ay walo (8), pagkatapos ay may dumating na dalawa pa at ang mga kilala ko lamang po ay sina Tony na may ari ng bangka, si Joe Rondina, Cresencio Doble at narinig kong may tinawag pang Erning. Iyon pong iba ay hindi ko alam ang pangalan pero makikilala ko pag aking nakiting muli.

"7. T --- Gaano katagal na nagpulong sa inyong bahay ang mga taong ito?

S --- Mahigit pong mga isang (1) oras, pero hatinggabi na nong Lunes ng gabi (June 13, 1966).

"8. T --- Ano ang mga bagay na pinagpulongan sa inyong bahay?

S --- Tungkol sa kanilang lakad na pagpunta sa isang bangko sa Navotas.

"9. T --- Sino ang nangunguna sa pulong na iyon?

S --- Iyan po (witness pointing to the picture of Rodolfo Dizon, after being shown five (5) other pictures).

"10. T --- Ano-ano ang mga narinig mong pinagpulongan?

S --- Tungkol po doon sa gagawing pagnanakaw sa isang Bangko sa Navotas, Rizal.

"11. T --- Samantalang sila ay nagpupulong, ano ang iyong ginagawa?

S --- Wala po, hindi ko sila sinasaway at hindi ako kumikibo bastat ako ay nakikinig lamang.

"12. T --- Bukod sa narinig mong magnanakaw sa bangko na usapan, ano pa ang iba mong mga narinig?

S --- Sinabi nito (witness pointing to the picture of Rodolfo Dizon) at ni Joe Rondina na "MALAKING KUARTA TO, PERO MASYADONG MAPANGANIB, AT KAILANGAN AY HANDA TAYO."

"13. T --- Ano pa ang sumunod?

S --- Nagbubulong-bulongan ang iba tungkol doon sa gagawing paglaban.

“14. T --- Ano pa ang nangyari?

S --- Maya- maya po ay lumakad na sila, hindi ako sumama.

“15. T --- Pagkatapos?

S --- Makaraan po ang mahigit na isang (1) oras ay nagbalik silang lahat.

“16. T --- Ano ang nangyari ng magbalik na sila?

S --- Matapos po silang bumaba doon sa malapit sa aming bahay ay nagmamadali na silang umalis dahil sa may tama ang isa sa kanila. At noon pong umaga ng araw na iyon ay nagpunta ako kay Tony (Antonio Romaquin) at kumuha ng dalawang piso (P2.00) dahil iyong aking parte ay hindi pa naibibigay sa akin. Pagkatapos po ay umuwi na ako sa amin.

“17. T --- Ano pa ang iyong masasabi kaugnay ng pangyayaring ito. Ikaw ba ay mayroong nais na alisin o dili kaya ay baguhin sa salaysay mong ito?

S --- Mayroon pa po akong ibig na sabihin.

“18. T --- Ano pa ang ibig mong sabihin?

S --- Bago po tuluyang umalis sila sa aking bahay ay nag- usap-usap silang lahat at ako ay sumama sa kanilang pag-uusap at nakapagbigay pa ako ng mungkahi na ako na lamang ang maghihintay sa kanila dahil sa ako ay may pinsala sa paa at maaaring hindi ako makatakbo at mahuli lamang.

“19. T --- Iyan bang pinsala mo sa kaliwang paa ay matagal na?

S --- Opo, mga limang (5) taon na.

“20. T --- Samantalang nag- uusap sa loob ng bahay mo, nasaan ka?

S --- Kasama po sa loob ng aking bahay.

“21. T --- Ano pa ang masasabi mo?

S --- Wala na po.”

The only link between Simeon and the crime is his house having been used as the meeting place of the malefactors for their final conference before proceeding to Navotas to rob the Prudential Bank branch thereat. He did not join them because of a 5-year old foot injury which would make him only a liability, not one who can help in the devilish venture. To the malefactors he was most unwanted to join them. If they met at his house it was only because it was near the landing place of the banca, and so he invited them to his house while waiting for the banca to arrive. His mere presence in his house where the conspirators met, and for merely telling them that he could not join them because of his foot injury, and will just wait for them, evidently as a mere gesture of politeness in not being able to join them in their criminal purpose, for he could not be of any help in the attainment thereof, and also to avoid being suspected that he was against their vicious plan for which they may harm him, Simeon is by no means a co-conspirator, not having even taken active part in the talks among the malefactors in his house.

Like the Solicitor General, We, therefore, find no culpable participation of Simeon Doble in the commission of the crime, for, indeed, by his physical condition alone, he could not in any way be of help to the malefactors in the pursuit of their criminal design, nor could he have been desired by the latter to be one of them.

Taking up next the case of appellants Antonio Romaquin and Cresencio Doble, their main contention is that their extra-judicial statements upon which their conviction was principally made to rest, are inadmissible for having

been allegedly obtained by force and intimidation, and in violation of basic constitutional rights to counsel and against self-incrimination. In support of this contention, appellants have only their own self-serving testimony to rely upon.

Thus, Cresencio Doble testified that while at the Navotas police department someone he could not name boxed him on the chest, while one Sgt. Lacson hit him on the left side with the butt of a gun causing him to lose consciousness; that he was made to lie on a narrow table and peppery liquid was poured over his face, his eyesight then becoming dim, and it was then that he was made to sign a piece of paper which he could not read because of his blurred eyesight.

Romaquin gave a similar story of torture and maltreatment in order to force him to admit culpable participation in the heist. The inquiry must, accordingly, be whether the claim of violence and involuntariness of their statements is true as to render said statements inadmissible in evidence.

Disputing the allegation of maltreatment in the execution of the custodial statements (Exhibits E, F, F-1, G, H-1), the Solicitor General argues that the same is negated by how the details as given by both appellants in their respective statements fit into each other, at least as to the part played by each from the time Cresencio went to Romaquin's place to procure the latter's banca up to their get-away from the scene of the crime. Thus, while Romaquin claimed in his statement that although he wanted to escape from the scene after his passengers have disembarked for their evil mission, he could not do so because Cresencio had a gun pointed at him to prevent his escape, as was the order given Cresencio by the rest of the gang. The latter denied this allegation when he testified that he returned the gun given him because he did not know how to use or manipulate it, although in his extra-judicial statement (Exhibit M, p. 35, Record of Exhibits), he stated that he accepted the gun.

The statement of Romaquin as just cited is an attempt to exculpate himself which is generally taken as an indication of lack of undue pressure exerted on one while giving his statement on custodial interrogation. (*People vs. Palencia*, 71 SCRA 679).

The Solicitor General also observed, in disputing the claim of violent maltreatment to which appellants were subjected to, that neither one of the appellants presented medical certificate to attest to the injuries allegedly inflicted (p. 3, Appellee's Brief) which disproves the claim (*People vs. Tuazon*, 6 SCRA 249; *People vs. Dela Cruz*, 88 Phil. 79). He also points to the fact that in his extra-judicial statement (Exhibit 1, p. 100, Record of Exhibits), Celso Aquino, one of the accused, made no admission of his participation in the bold bank robbery, and in his testimony in court, he admitted that no violence was applied to him when he gave his statement (p. 12, t.s.n., July 12, 1967; p. 4, Appellee's Brief). This is evidence enough that the appellants could not have been dealt with differently as their co-accused Aquino who was allowed to give his statement freely without the employment of force or intimidation upon him. The evidence also discloses a note (Exhibit E) of Cresencio addressed to Romaquin asking the latter not to reveal the names of their companions. This means that the names of the members of the band led by Joe Intsik must have been known to both appellants. That the identity of five of those charged in this case has remained only as "John Does" indicate the non-employment of any coercive means with which to force them into revealing the names of their companions in the robbery, again negating the claim of torture and violence.

It is, likewise, to be noted that appellants Romaquin and Cresencio virtually confirmed their extra-judicial statements when they testified in court. By all the proofs as cited, persuasive enough to show the voluntariness of their custodial statements plus the positive denial of Sgt. Lacson, the only one named among the alleged torturers, that any violence was practiced by the investigators, specifically, the alleged delivery of fist blows on Cresencio (pp. 3, 6, 7, 18, t.s.n., October 27, 1967) the alleged involuntariness of the extra-judicial statements is fully

discredited.

It is hinted that the killing of suspect Rodolfo Dizon while allegedly attempting to escape could have instilled fear in the minds of the appellants which affected their freedom of will in giving their own statements (p. 12, Appellant's Brief). This is a far-fetched argument to prove involuntariness in the giving of the statements, the killing having taken place after their interrogation. In his supplemental statement dated July 5, 1966 (Exhibits F-2, p. 20, Record of Exhibits), Romaquin pointed to the person of Rodolfo Dizon. His death therefore, took place long after appellants have given their main statements, all in mid June, 1966. If counsel de oficio had only bothered to check the dates of the main statements of both appellants which were given not later than just past the middle of June, 1966, and that of the supplementary statement of Romaquin which is July 5, 1966, he would not have probably come forth with this argument.

Counsel de oficio, invoking a ruling in an American case, *Miranda vs. Arizona*, 16 L. Ed. 2nd. 694, harps on the inadmissibility of appellants' custodial statements, for their having been unaided by counsel, nor informed of their right thereto during the interrogation. There might be merit in this contention were the right to counsel during custodial interrogation one of constitutional grant as is provided in our 1973 Constitution, before which the right was given only to an accused, not to a mere suspect during in-custody police interrogation (*Magtoto vs. Manguera*, 63 SCRA 4; *People vs. Dumdum, Jr.* G.R. No. L-35279, July 30, 1979). At the time of their custodial interrogation in 1966, however, the requi-site of assistance of counsel was not yet made a matter of constitutional right, as it has been granted only by the new 1973 Constitution.

The right against self-incrimination, as invoked by appellants, can neither be appreciated to impair the admissibility of their extra-judicial statements. It is the voluntariness of an admission or confession that determines its admissibility, for no principle of law or constitutional precept should stand on the way of allowing voluntary admission of one's guilt, the only requisite justly demanded being that ample safeguards be taken against involuntary confessions. Once the element of voluntariness is convincingly established, which, incidentally, is even presumed, the admissibility of an extra-judicial confession, admission or statement becomes unquestionable.[1]

The extra-judicial statements of appellants, however, when evaluated with the testimony they gave in court, would convince Us that their liability is less than that of a co-principal by conspiracy or by actual participation, as was the holding of the trial court. The most damaging admission made in the extra-judicial statements of Cresencio is that he was asked by Joe Intsik, the gang leader, at 8:00 o'clock in the evening of June 13, 1966, if he could procure a banca for his use, and that Joe Intsik, on being asked by Cresencio, allegedly told him that the banca would be used for robbery. Cresencio gave an affirmative answer to Joe Intsik's query, having in mind Tony Romaquin who had a banca. Cresencio accompanied Joe Intsik to Romaquin at 12:00 in the evening. In Romaquin's statement (Exh. E, also Exh. I, Romaquin, p. 15, Record of Exhibits), Cresencio allegedly asked him to bring his friends in his banca, to board a launch for a trip to Palawan. The discrepancy between the statements of Cresencio and Romaquin as to the intended use of the banca is at once apparent, for while according to the former, it was for the commission of robbery, according to the latter, it was to bring Cresencio's friends to board a launch for a trip to Palawan. What is demonstrated thereby is the full freedom with which both appellants were allowed to give their respective statements while in custodial interrogation.

Cresencio's consenting to look for a banca, however, did not necessarily make him a co-conspirator. Neither would it appear that Joe Intsik wanted to draft Cresencio into his band of malefactors that would commit the robbery more than just asking his help to look for a banca. Joe Intsik had enough men all with arms and weapons to perpetrate the crime, the commission of which needed planning and men to execute the plan with full mutual confidence of each other, which is not shown with respect to appellants by the way they were asked to look and

provide for a banca just a few hours before the actual robbery.

Romaquin, for his part, appears not to be even known to the principal malefactors still at large, to be asked to join actively in the conspiracy. The amount received by Romaquin who alone was given money by the malefactors in the sum of P441.00, indicate that the latter did not consider appellant as their confederate in the same character as those constituting the band of robbers. The sum given to Romaquin could very well represent only the rental of his banca, and for the cooperation he extended to the malefactors, which, by no means, is an indispensable one. Cresencio, on the other hand, was not given any part of the loot. It was only Romaquin who gave him P41.00, clearly not what should represent his share if he were a full-fledged ally or confederate.

The apprehension of the malefactors that upon realizing the full impact of their vicious misdeeds, Romaquin might speed away from the scene in fear of being implicated, as shown by the measure they had taken to prevent his escape, is further proof that Romaquin was not considered a co-conspirator, who is one who should not be looked upon with mistrust. For his part, Cresencio testified that while he was given a gun with which to cover Romaquin who might escape, he returned the gun because he did not know how to use it, and so one of the malefactors was left near the beach to prevent appellants fleeing from the scene of the crime with the banca. In his statement, however, (Exh. M, p. 35, Record of Exhibits), he refused to accept the gun, but they gave it just the same, and he received it.

The circumstances pointed out would not make appellants liable as co-principals in the crime charged. At the most, their liability would be that of mere accomplices. They joined, in the criminal design when Cresencio consented to look for a banca and Romaquin provided it when asked by the gang leader Joe Intsik, and then brought the malefactors to the scene of the robbery, despite knowledge of the evil purpose for which the banca was to be used. It was the banca that brought the malefactors to the bank to be robbed and carried them away from the scene after the robbery to prevent their apprehension. Appellants thus cooperated but not in an indispensable manner. Even without appellants providing the banca, the robbery could have been committed, specially with the boldness and determination shown by the robbers in committing the crime.

The complicity of appellant Cresencio is further shown by his note (Exhibit "H", p. 26, Record of Exhibits) addressed to Romaquin asking him not to reveal to the police the names of their companions. He went to Romaquin and asked for money which the latter gave in the sum of P41.00, as if to show that he had helped in some material way to deserve a share in the loot.

As to Romaquin, while he testified that the malefactors gave a gun to Cresencio with which the latter would prevent Romaquin from fleeing away from the scene, evidently to show that he never joined in the criminal purpose, and that all his acts were in fear of bodily harm and therefore, not voluntary, the measure taken by the malefactors to prevent his escape, could have been just an extra precaution, lest he would be stricken with fear in the course of the commission of the crime specially if attended by shootings as it was really so. If it is true that he never voluntarily made the trip with knowledge of the planned robbery, and with Cresencio saying that he returned the gun given him with which to prevent Romaquin from speeding away, Romaquin could have tried a getaway, as should have been his natural impulse had he not joined in the criminal design. His act of hiding the money he received from the malefactors, and repainting his boat, all attest to his guilty conscience arising from the act of cooperation he knowingly extended to the principal culprits to achieve their criminal purpose.

An accomplice is one who, not being principal as defined in Article 17 of the Revised Penal Code, cooperates in the execution of the offense by previous or simultaneous acts (Art. 18, Revised Penal Code). There must be a community of unlawful purpose between the principal and accomplice and assistance knowingly and intentionally given (U.S. vs. Belco, 11 Phil. 526), to supply material and moral aid in the consummation of the

offense and in as ef-ficacious way (People vs. Tamayo, 44 Phil. 38). In this case, appellants' cooperation is like that of a driver of a car used for abduction which makes the driver a mere accom-plice, as held in People vs. Batalan, 45 Phil. 573, citing the case of U.S. vs. Lagmay, G. R. No. L-15009.

It is however, not established by the evidence that in the meeting held in the house of Simeon Doble, the malefactors had agreed to kill, if necessary to carry out successfully the plan to rob. What appellants may be said to have joined is the criminal design to rob, which makes them accomplices. Their complicity must, accordingly, be limited to the robbery, not with the killing. Having been left in the banca, they could not have tried to prevent the killing, as is required of one seeking relief from liability for assaults committed during the robbery (Art. 296, Revised Penal Code).[2]

The finding that appellants are liable as mere accomplices may appear too lenient considering the gravity and viciousness of the offense with which they were charged. The evidence, however, fails to establish their complicity by a previous conspiracy with the real malefactors who actually robbed the bank and killed and injured several persons, including peace officers. The failure to bring to justice the real and actual culprits of so heinous a crime should not bring the wrath of the victims nor of the outraged public, upon the heads of appellants whose participation has not been shown to be as abominable as those who had gone into hiding. The desire to bring extreme punishment to the real culprits should not blind Us in meting out a penalty to appellants more than what they justly deserve, and as the evidence warrants.

Accordingly, We find appellants Cresencio Doble and Antonio Romaquin guilty beyond reasonable doubt, but only as accomplices for the crime of robbery in band.[3]As discussed earlier, appellant Simeon Doble is entitled to acquittal as so recommended by the Solicitor General who finds no sufficient evidence, to which We agree, to establish his guilt beyond reasonable doubt.

The penalty imposable upon appellants Cresencio Doble and Antonio Romaquin, as accomplices for the crime of robbery in band is prision mayor minimum which has a range of 6 years, 1 day to 8 years as provided in Article 295 of the Revised Penal Code in relation to Article 294, paragraph 5 of the same code. The commission of the crime was aggravated by nighttime and the use of a motorized banca. There being no mitigating circumstance, both appellants should each be sentenced to an indeterminate penalty of from five (5) years, four (4) months, twenty-one (21) days of prision correccional to eight (8) years of prision mayor as maximum, and to indemnify the heirs of each of the deceased in the sum of P12,000.00 not P6,000.00 as imposed by the trial court.

WHEREFORE, modified as above indicated, the judgment appealed from is affirmed in all other respects. The imme-diate release of Simeon Doble who is hereby acquitted is ordered, unless he should be continued in confinement for some other legal cause. Proportionate costs against Cresencio Doble and Antonio Romaquin.

SO ORDERED.

Fernando, C.J., Makasiar, Guerrero, Melencio-Herrera, Vasquez, and Gutierrez, JJ., concur.

Teehankee, Barredo, Plana, and Relova, JJ., join J. Abad Santos in his concurring and dissenting opinion.

Aquino, and Escolin, JJ., no part.

Concepcion, Jr., J. previously voted to concur with the main.

[1] People vs. Mollada, 86 SCRA 667; People vs. Dorado, 30 SCRA 53; People vs. Narciso, 23 SCRA 844.

[2] People vs. Hamiana, 89 Phil. 225.

[3] People vs. Palencia, 71 SCRA 679; People vs. Geronimo, 53 SCRA 246; People vs. Pastores, 40 SCRA 498.

CONCURRING AND DISSENTING OPINION

ABAD SANTOS, J.:

Giving to Cresencio Doble and Antonio Romaquin the benefit of a lenient attitude, I can agree that they were not principals but merely accomplices as stated in the main opinion. However, I cannot persuade myself that their complicity must be limited to the robbery only and should not include the killing. For it must be remembered that the principal malefactors were each fully armed; the arms consisted of pistols, carbines and Thompson sub-machine guns. This fact was known to the appellants. In fact the principal malefactors had so many guns that one was given to Cresencio with which to cover Antonio in case he tried to escape. This shows that the principal malefactors were prepared to kill even an accomplice so that they could accomplish their criminal objective. How then can it be said that there was no criminal design to kill but only to rob among the principal malefactors as suggested in the main opinion. And I cannot believe that under the circumstances the appellants were unaware of the criminal design to kill and that they gave their cooperation - albeit not indispensable - only to the robbery. Accordingly, I believe that the appellants should be held guilty as accomplices in the crime of robbery with homicide.

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