

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEOCADIO BAUTISTA Y BASA @ CADIO, ET AL., DEFENDANTS,
ARMANDO GONZALES Y JOSE @ BOY, DEFENDANT-APPELLANT.**

G.R. No. L-23303. May 20, 1969

Ponente: DIZON, J.

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DIZON, J.:

Leocadio Bautista, alias Cadio, Armando Gonzales, alias Boy, and Fortunato Angeles, alias Totoy, were charged with robbery with homicide in two separate informations filed in the Court of First Instance of Manila (Criminal Case No. 72552 where the defendants were Bautista and Gonzales, and Criminal Case No. 72619 where the lone defendant was Angeles). After a joint trial upon a plea of not guilty entered by all the defendants, the court found them guilty of attempted robbery with homicide and rendered judgment as follows:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused herein, Leocadio Bautista y Base @ Cadio, Armando Gonzales y Jose @ Boy and Fortunato Angeles Y Sarmiento @ Totoy, guilty beyond reasonable doubt of the crime of attempted robbery with homicide, as defined and punished under Art. 297 of the Revised Penal Code, and considering the ag-gravating circumstance of superior strength, hereby sentences each and all of them to suffer the penalty of reclusion perpetua, with the accessories of the law, to indemnify the heirs of the deceased, jointly and severally in the amount of P5,000, without, however, any further subsidiary imprisonment in case of insolvency, and to pay the proportionate amount of the costs.

SO ORDERED."

From the above decision only Gonzales and Angeles appealed (G. R. L-23303 and L-23304, respectively).

The evidence shows that at about 2 o'clock in the afternoon of August 28, 1963, while a delivery truck of the Central Salted Foods Manufacturing Company driven by Filemon King, with truck helper Jose Tan beside him, was cruising near the corner of Yakal and Tayabas streets, Manila, an unidentified person stepped on its running board on the side of Tan, while appellant Angeles stepped on the opposite running board beside King and asked liquor money from him. When King refused to give, the unidentified man on the running board threw a stone at Tan. The stone hit the switch of the truck and forced it to a stop. Thereupon King and Tan went down but were met with a volley of stones thrown at them by Angeles, Gonzales, Bautista and others. Upon being hit King asked Tan to call a policeman. Tan then ran towards Camarines street where, with the help of someone, he was able to contact a policeman, whom he informed that they had been held up at the corner of Yakal and Tayabas streets. Having done this, Tan re-turned to the scene of the incident where he found King sprawled on the gutter. He then hailed a tricycle and brought him to the North General Hospital where, in spite of medical assistance, King died the following morning.

Dr. David S. Cabrera of the Manila Police Department per-formed an autopsy on the cadaver of the deceased and found the latter to have sustained the following injuries:

"MISCELLANEOUS EXTERNAL WOUNDS AND EXTENSION INTERNALLY:

- (1) Sutured contused lacerated wound, measuring 3 cm. long on the frontal region of the head, left.
- (2) Another sutured contused lacerated wound measuring 2.5 cm. long located on the vertex of the head.
- (3) Multiple (10) incised wounds, measurement ranging from 2 to 3 cm. long, located on the right face.

MISCELLANEOUS FINDINGS IN INTERNAL ORGANS:**CENTRAL NERVOUS SYSTEM:**

Hemorrhage, subdural, extensive, brain.

BONES AND JOINTS:

Compound comminuted fracture, occipital, left and right parietal bone. Fracture-separation, sagittal suture, parietooccipital bone.

CAUSE OF DEATH:

Shock and hemorrhage due to traumatic fracture of the skull and subdural hemorrhage, severe." Exh. A, p. 68, rec. of L-23303; pp. 1-2, t.s.n.).

A criminal complaint in connection with the death of King was subsequently lodged with the Manila Police Department by the manager of the latter's employer, this having led to the arrest of Gonzales and Bautista. Subsequently, the corresponding information against them was filed.

In the course of the police investigation, the names of the other confederates of Bautista and Gonzales were revealed, among them being Fortunato Angeles who, as a result, was prosecuted in a separate information (Criminal Case 72691).

Appellant Armando Gonzales (in G.R. L-23303) and appellant Fortunato Angeles (in G.R. L-23304) submitted separate briefs.

Angeles' brief submits the following assignment of errors:

"I

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED DEMANDED LIQUOR MONEY FROM THE VICTIM.

II

THE TRIAL COURT ERRED IN CONCLUDING THAT VICTIM'S REFUSAL TO GIVE LIQUOR MONEY WAS THE CAUSE OF THE STONING OF SAID VICTIM.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED ACTED IN CONCERT WITH EACH OTHER IN STONING THE VICTIM.

IV

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED FORTUNATO ANGELES OF THE CRIME OF ATTEMPTED ROBBERY WITH HOMICIDE.

V

THAT, GRANTING ARGUENDO, THAT THE CRIME OF HOMICIDE WAS COMMITTED THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF RECLUSION PERPETUA AND IN NOT TAKING INTO CONSIDERATION THE ATTENDING MITIGATING CIRCUMSTANCES IN THIS CASE."

Gonzales' brief, in turn, submits the following assign-ment of errors:

"I

THE TRIAL COURT ERRED IN GIVING GREATER WEIGHT AND CREDIT TO THE EVIDENCE FOR THE PROSECUTION DES-PITE THE FACT THAT THE EVIDENCE PRESENTED BY THE DEFENSE IS MORE TRUSTWORTHY, RELIABLE AND MORE WORTHY OF CREDIT.

II

THE TRIAL COURT ERRED IN FINDING DEFENDANT-APPELLANT ARMANDO GONZALES ACTED IN CONCERT WITH HIS CO-ACCUSED IN THE COMMISSION OF THE CRIME OF ATTEMPTED ROBBERY WITH HOMICIDE.

III

THE TRIAL COURT ERRED IN CONVICTING DEFENDANT-APPELLANT ARMANDO GONZALES OF THE CRIME OF ATTEMPTED ROBBERY WITH HOMICIDE ALTHOUGH THE EVIDENCE OF THE PROSECUTION WITH RESPECT TO HIM IS UTTERLY INSUFFI-CIENT TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT."

It is clearly deducible from the assignment of errors and statement of facts made in the separate briefs submitted by appellants that they admit having been present at the scene of the crime. Gonzales, however, denies having thrown stones at the deceased King, while Angeles claims that the only thing he did was to pick up a small stone and throw it against the glass window et the rear of the truck, and that when he was hit on the leg by a stone he ran home. Thus it is clear that the main questions raised by both appellants are factual.

The trial court, after a thorough examination of the evidence, including the sworn statements made by the three defendants, arrived at the following conclusions:

"There is then no dispute over the fact that the deceased Filemon King, driver of the delivery truck of the Central Salted Foods Manufacturing Company, was stoned to death by several persons. The three accused herein are the only ones charged in connection with the said stoning. As far as they are concerned, it is a question of evidence whether they are guilty or not as co-participants in the commission of this crime. The only witness of the prosecution who identified the three accused as among those who took part in the stoning of the deceased is Jose Tan, the truck helper who was on the truck during the commission of the crime. According to him, these three persons, particular-ly Fortunato Angeles, who was the one who asked for money for liquor, boarded the truck on the running board nearest the driver. The other person who boarded on the other side of the truck on the running board has not been identified. However, among those who took part in the stoning were not only Fortunato Angeles but the two other accused Leocadio Bautista and Armando Gonzales in this case. The accused Leocadio Bautista, who was arrested first, admitted having stoned the

deceased no less than 3 times with big stones. Fortunato Angeles was surrendered by his mother for being involved, admitted having taken part in the said stoning of the Chinese and named his other companions.

"Having thus participated in the act that led to the death of the deceased, their responsibility for the consequences remains the same, whether it was their stones that finished with the deceased or not. They have acted in concert and, therefore, answerable for the direct and natural consequences of their acts and those of their companions."

After going over the record ourselves we have come to the conclusion that the evidence fully sustains the findings made by the trial court.

Prosecution witness Jose Tan unquestionably saw the incident at close range and could not have been mistaken as to the identity of the parties who attacked him and the deceased King. He gave a straight forward narration of the incident and, as far as the whole record is concerned, there is nothing to indicate that he perjured himself and testified falsely.

Appellant Gonzales' main contention, on the other hand, is that the trial court erred in giving credence to the pro-secution evidence in spite of the fact that the evidence for the defense is more trustworthy and reliable. As already stated, an examination of the record has failed to disclose anything justifying the conclusion that the trial judge had seriously misconstrued the evidence and had arrived at his conclusions arbitrarily. Inasmuch as he had the advantage - which is denied to us - of having heard the testimony of the witnesses, and had the opportunity to observe their conduct and demeanor on the witness stand, it is clear that we must accept, as we do accept, his conclusions concerning the weight and credibility of the evidence and of the witnesses presented by both parties.

As regards Gonzales' contention that the trial court erred in finding him guilty of the crime of attempted robbery with homicide, the following must be taken into consideration: Gonzales, Angeles, Bautista and their other companions, by concerted action, had shown that their intention was to extort money when they stopped the truck driven by King. When the latter refused to capitulate to their demand, they assaulted him and his truck helper. It is true that, according to the evidence, only one of them actually demanded money from King, but there being sufficient evidence of conspiracy, all his companions must also be deemed guilty of attempted robbery (People vs. Timbol, G. R. L-47471-73, August 4, 1944 and People vs. Macabuhay, G. R. L-16150, April 29, 1949).

The Solicitor General recommends that, in the light of the facts established by the evidence, the mitigating circumstance of lack of intention to commit so grave a wrong as the one actually committed be considered in favor of appellants. We are constrained not to agree with such recommendation precisely because the evidence shows that, if not all the persons who attacked the deceased King, at least some of them, intended to cause his death by throwing at him stones of such size and weight as to cause, as in fact they caused, a fracture of his skull. And as the act of one or some of them is deemed to be the act of the others in view of sufficient proof of conspiracy, We believe that the Court a quo was right in not considering such mitigating circumstance in favor of appellants.

On the other hand, the commission of the crime must be deemed aggravated by the circumstance that the attackers took advantage of their superior strength. Since this circumstance is not alleged in the information, it may only be considered as a general aggravating circumstance in the imposition of the corresponding penalty.

The indemnity of P5,000.00 which appellants were sentenced to pay, jointly and severally, is however raised to P12,000.00 in accordance with previous rulings of this Court.

WHEREFORE, thus modified, the appealed decision is affirmed, with costs.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Concepcion, C.J., and Castro, J., are on official leave.

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