THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BUENCONSEJO DACIO, DEFENDANT AND APPELLANT.

G.R. No. L-7457. April 25, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance, Isabels; finding Bueneonsejo Dacio guilty of robbery with, homicide upon the person of one Uy Moy, and sentencing him to reclusion perpetua, with the accessory penalties provided for by law, to indemnify the heirs of the deceased by Uy, Moy, in the sums of P400 for money taken and of P600 for his death, and to pay the costs.

The evidence submitted by the prosecution, which defendant and appellant does not deny in his confessions' (Exhibit "B" and "D"), shows the following facts:

On and before March 21, 1951, Uy Moy kept a store in the barrio of Sinamar, municipality of Sari Mateo, province of Isabela. At 6 o'clock in the afternoon of that day, as night was approaching, he ordered his helper to close the doors of the store. At that time, there were two persons sitting on benches at one of the doors, as Uy Moy asked them to move away to allow the closing of the doors. They requested Uy Moy not to .close the store yet and asked for Sy Hoc Tong (local Chinese wine).. After taking the wine, he again requested them to go away. The two strangers, instead of going away approached Uy Moy and his helper. At this juncture a third man who seemed to be a companion of the. two and was armed with a carbine, entered the store and ordered one of the two to close the front door. The other went to the back door and opened it. All of them were armed with firearms. They then demanded money from Uy Moy. Because of fear Uy Moy opened a drawer where he kept his money and allowed one of the trio to grab the contents of the drawer. l^Jut they were not satisfied with this; one of them tied the hands of Uy Moy and ordered him to proceed outside to be shot, but Uy Moy refused to go out. Then the one who took the money ordered the one with the carbine to shdot at Uy Moy. The man with the carbine did as he was ordered and fired at Uy Moy, hitting the latter in the stomach and felling him. Then the three hurriedly went away.

The companion of Uy Moy at the time was Jao Ka Chiong. After the robbers had closed the front doors, he went aside, and when the shot was fired at Uy Moy he laid himself flat to avoid being shot and did not get up until the robbers had gone away. When the robbers were gone, he went to a nearby rice mill and informed the owner, one by the name of Jose, of what had taken place at the store. Both of them rushed to the side of Uy Moy who was still alive. Uy Moy told Jao Ka Chiong that he was going to die and that the matter must be reported to the authorities. Uy Moy also told his helper that a few days before that night, a woman by the name of Felisa Marte had gone to the store to make purchases on credit but as Uy Moy refused to give her credit she warned him that something might happen . to him in a few days. Uy Moy instructed Jao Ka Chiong to tell the authorities' that this woman might be able to throw light on the case. After receiving these instructions, Jao Ka Chiong proceeded to Oscariz to call for a doctor. He succeeded in getting one by the name of Dr. Alejandro, but when Dr. Alejandro and Jao Ka,Chiong arrived at the store in Sinamar, Uy Moy was already lifeless. The authorities thereafter were

informed of the robbery and they came to the scene of the crime. The body of Uy Moy was examined by the physician, Dr. Alejandro, and he found that a bullet had pierced the body of Uy Moy, entering "at the right iliac fossa about three inches inward from the right anterior superior iliac spine and emerged in the back at the left gluteal region about two inches below" the rim of the left iliac crest" (Exhibit "C"). Dr. Alejandro also found that the immediate cause of death was loss of blood (ex-sanguination) (Exhibit "C").

The authorities started to investigate and find the three robbers. A man, whose name had been withheld for reasons of security, disclosed the names of three persons, namely, appellant Buenconsejo Daeio, Ceferino Feliciano, and Carlito Ortega, so the three were charged with the crime. At the investigation held on January 24, 1952, Ceferino Feliciano declared that he had seen the commission of the crime by two persons, namely, Buenconsejo Dacio and Carlito Ortega; that Buenconsejo Dacio was armed with a carbine, while Carlito was armed with a pistol ; that he was a driver at that time of Dr. Alejandro and when Jao Ka Chiong went to Oscariz to the office of Dr. Alejandro to fetch him it was he who drove Dr. Alejandro to Sinamar, but at that time Uy Moy was already dead. In view of the statements of Ceferino Feliciano, an amended complaint was filed, this time charging the three— Buenconsejo Daeio, Carlito Ortega and Ceferino Feliciano— with robbery with homicide. At the preliminary investigation, Buenconsejo Dacio made a confession (Exhibit "B"), admitting that he was one of the three who had entered the Chinese store and that the owner of the. store was killed; that he was present at that time and that it was Ceferino Feliciano who shot Uy Moy with a carbine; that he was already getting out of the store when he saw Feliciano firing a shot at the Chinaman, who was already kneeling at the time; that he passed out of the store through the back door; that after that the three proceeded to Oscariz where they divided the proceeds of the robbery, each receiving P33 of the loot.

Aside from making the confession, when the information was read to Buenconsejo Daeio and he was asked whether he pleaded guilty to the charge of. robbery with homicide, he again pleaded guilty thereto (Exhibit "E"). Also on that same day, Buenconsejo Dacio made another confession before the Constabulary (Exhibit "D") and the same was put in writing and subscribed to by him under oath before the justice of the peace.

After the above proceedings, the case was forwarded to the Court of First Instance where Buenconsejo Dacio again pleaded guilty to the charge of robbery but not to that of robbery with homicide. So the Judge ordered that a plea of not guilty to the charge of robbery with homicide be entered in his favor. At the trial the prosecution presented as witnesses for the State the provincial commander of the Constabulary, who testified on the steps taken to secure the. arrest of the accused and identified the confession made before him by appellant Puenconsejo Dacio; three robbers, and described the details of the robbery as. Jao Ka Chiong, who identified the appellant as one of the above set forth; and Dr. Alejandro, who testified on the cause of the death of Uy Moy.

It was also proved at the trial that when Bueneonsejo Dacio was already in the custody of the Constabulary, he and Ceferino Feliciano and some other persons were lined up before Jao Ka Chiong and Jao Ka Chiong was able to identify the two, namely, Ceferino Feliciano and Buenconsejo Dacio as two of the three who had committed the robbery in the store of Uy Moy on the night in question.

The appellant was represented by Atty. Melanio Singson, who insisted on the defendant's plea of guilty to the crime. of robbery, but as the fiscal objected the court sustained the fiscal's objection holding that the plea of not guilty should be entered for the defendant-appellant to the charge of. robbery with homicide. No testimonial evidence was submitted by appellant, his counsel limiting himself to the presentation of Exhibit "1", a statement of Jao Ka Chiong.

After the submission of this evidence, counsel for the defendant closed his evidence and the ease was submitted for decision.

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Counsel for the appellant in this Court does not .contest the sufficiency of the evidence submitted by the prosecution to prove the guilt of the defendant beyond reasonable doubt. He, however, argues that before making his pleas, the appellant should have been warned by the presiding judge of the effects of his plea of guilty; that his counsel should have advised him to take the witness stand to explain and show that he had no participation in or responsibility for the crime of homicide, although he was to admit participation in or responsibility for. the crime of robbery.

We find no merit in the argument of counsel de oficio for the defendant-appellant. As defendant appears to have appeared with counsel at the time of the trial, there was no duty on the part of the judge to warn the defendant-appellant of the seriousness of the charge or advise him to take the witness stand and explain why he should not be responsible for the homicide. If counsel for the accused in the trial court did not advise his client to take the witness stand to try to explain away his supposed participation in the homicide, it must have been because he was aware of the principle that all persons who enter into a conspiracy to commit the crime of robbery are responsible for the complex crime of robbery with homicide, even those who did not actually participate in this killing unless it appears that they endeavored to prevent the homicide. (People iis. Morados, 70 Phil., 558.) There is no indication that appellant there had ever endeavored to prevent the homicide. All his confessions contain no such attempt on. his part to prevent the homicide. Under these circumstances his liability is not for the crime of robbery alone but for that of robbery with homicide. No benefit or advantage, therefore, could have been gained by the defendant-appellant in taking the witness stand, unless.of course he intended to change his confessions and fabricate a supposed attempt on his part to prevent the commission of the. homicide. But even if he had done so and made an attempt to fabricate, such a defense at the trial, his testimony would have availed him nothing as the fabricated nature of such testimony would become apparent in the face of the confessions that he had made before the justice of the peace and the provincial commander (Exhibts "B" and "D").

We, therefore, find that. the judgment appealed from is fully justified by the evidence. We affirm the sentence imposed upon the appellant, except for the indemnity for the money taken, which is hereby reduced from P400 to P100, with costs against the defendant-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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