

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SERAPIO CARUNUNGAN ALIAS PAPONG, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-13283. September 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Before the Court of First Instance of Batangas, Serapio Carunungan alias Papong, Manuel Buceta, Hospicio Panganiban, Calixto Ferrer, Basilio Salva and Marcelino Fontila or Fontanilla were charged with the crime of robbery in band with homicide. After trial, they were all found guilty as principals of the crime of homicide only, with the aggravating circumstances of nocturnity, dwelling and in band. Accordingly each of them was sentenced to the indeterminate penalty of from 8 years ajrtd 1 day of prision mayor, as minimum, to 17 years 4 months and 1 day of reclusion temporal, as maximum, to indemnify jointly and severally the heirs of the deceased Lorenzo Vivas in the amount of P4,000.00, and to pay the costs. From this sentence, all the accused except Marcelino Fontila or Fontanilla, appealed to the Court of Appeals.

After the briefs had been filed before that court, Manuel Buceta filed a motion to withdraw his appeal. The motion was subsequently granted and his appeal dismissed. Thereafter, the appellate dfeurt certified the case to us, said court holding that the crime committed was attempted robbery with homicide, punishable with reclusion temporal in its maximum period to reclusion perpetua, which should be imposed in its maximum period, or reclusion perpetua, Considering the presence of the aggravating circumstances of nighttime, dwelling and in band. After the case had been docketed in this Court, Serapio Carunungan and Basilio Salva filed separate motions to withdraw their respective appeal, it being alleged that they were satisfied with the sentence of the trial court and were willing to serve the same. In separate resolutions, this Court granted their motions and dismissed their appeals.

The present case is therefore now before us solely on the appeal of the other accused, namely, Calixto Ferrer and Hospicio Panganiban.

The evidence for the prosecution shows that at about 11 o'clock in the evening of April 3, 1946, Pablo Abellera was on his way home, after paying court to a girl in barrio Dilao, Balayan, Batangas, when he met a group of about ten persons. In the group were the six accused Serapio Carunungan, Manuel Buceta, Hospicio Panganiban, Calixto Ferrer, Basilio Salva, Marcelino Fontila, and another Felipe Mendoza, all of whom he recognised, because he had seen and met them before in cockpits and in tupadas. He saw that Carunungan, Buceta, Ferrer and Salva were each carrying a short firearm, while Panganiban and Fontila each had a rifle. Abellera walked with them for about half a kilometer. As he did so, he fell into a conversation with Felipe Mendoza, who told him that he and his companions iwere on their way to the house of Lorenzo Vivas in barrio Cumba, Lian, Batangas, to extort or elicit-some money (magdidilihensiya). After that conversation, Abellera walked home while the group went on their way.

At about midnight of that same day (April 3, 1946), Lorenzo Vivas, his son Hermogenes and daughter-in-law

Francisca Mendoza were awakened by the presence below their house of appellants and their companions, who asked for some water to drink. Three of the group, namely, Serapio Carunungan, Manuel Buceta and Felipe Mendoza, went up, forced open the door and entered the house. Lorenzo Vivas, who got hold of his own firearm, confronted the trio and asked why they were roaming around at that ungodly hour of the night. Felipe Mendoza replied that they were guerrillas being processed. Hermogenes Vivas stood up and started for the door, but Felipe Mendoza blocked his way. At that instant, the intruders cocked their firearms and Carunungan ordered the inmates of the house not to make any false move and to bring out their money. All of a sudden, the intruders started firing at Lorenzo Vivas, who fought back and returned the fire. When the smoke of gunfire cleared, Lorenzo Vivas was found dead on the floor in the pool of his own blood. Also found dead was Felipe Mendoza. Manuel Buceta fled. Carunungan, who sustained a wound in the right chest, was also able to escape. The spouses Hermogenes Vivas and Francisca Mendoza came out unscathed because they laid flat on their bellies as soon as the shooting started. The said spouses were able to recognize the three who went up their house, the whole house being then lighted up from a bright lamp locally known as farol de combate.

On the following morning, several officials from the town repaired to the Vivas house. There they found the dead bodies of Lorenzo Vivas and Felipe Mendoza. They also retrieved empty .45 caliber shells inside the house and carbine shells on the ground outside. A post mortem examination showed that Lorenzo Vivas received four gunshot wounds, two of which were fatal.

Intensive sleuthing by the PC and local police brought about the arrest of six of the culprits, the accused Serapio Carunungan, Manuel Buceta, Hospicio Panganiban, Basilio Salva, Calixto Ferrer and Marcelino Fontila. During their investigation Carunungan, Salva, Ferrer and Fontila made extrajudicial statements. In his statement, Serapio Carunungan admitted, among other things, that at about midnight of April 3, 1946 he and his co-accused went to the house of Lorenzo Vivas in barrio Cumba, Lian, Batangas for the purpose of extorting money; that they were all armed at the time; that he together with Felipe Mendoza and one Francisco Panganiban entered the house; that shooting broke inside the house and on that occasion he received a gunshot wound in the right chest (See Exhibit C). Calixto Ferrer and Basilio Salva, on their part, declared that they were with the accused on the night of the incident; that they went with them because they were invited to go serenading; that when they arrived at barrio Cumba, Serapio Carunungan and some others went up and entered the house of Lorenzo Vivas, while they remained outside; that once inside, they heard gunfire and they fled (See Exhibits D & E). Marcelino Fontila declared in the statement that on the night of the incident he met the accused and their companions who asked him to join them; that he was not able to refuse, because he saw that they were all armed; that he was provided with a carbine; that when they were near the house of Lorenzo Vivas, he heard that their purpose was to rob the same; that Buceta, Carunungan and Mendoza entered the house; and that when he heard several shots coming from the house, he fled without firing any single shot (See Exhibit F).

Panganiban and Buceta, on the other hand, were not persuaded and refused to give any statement.

At the trial, Carunungan, Salva, Ferrer and Fontila repudiated their extrajudicial statements and claimed that the same were obtained through force, violence, intimidation, threats and promise of immunity and leniency. They also set up the defense of alibi, each claiming that he was at some other place at the time the offense was committed.

Not giving credence to the claim that the statements (Exhibits C, D, E & F), were not freely and voluntarily executed by the respective declarants, and observing that the defense of alibi "is buttressed upon testimonial evidence of a shaky nature which came from the lips of interested witnesses", the trial court found the accused, including herein appellants, guilty as principals, conspiracy having been established.

After going over the record, we find no reason to disturb the above findings of the lower court. Aside from the quoted observation of the trial court, alibi as a defense is the weakest and easiest to concoct. In the case before us, the alibi set up by appellants cannot prevail over the positive declaration of prosecution witness Pablo Abellera who identified them as members of the armed gang consisting of some ten persons who planned the robbery. That appellants were at the scene of the crime is evident from the statement of appellant Calixto Ferrer himself, as well as those of other accused (Exhibits C, D & F) who did not appeal or who have withdrawn their appeal. These statements, as found both by the trial court and the Court of Appeals, were freely and voluntarily executed by the respective declarants. This finding is amply supported by the evidence and for this reason, we hold that said statements are admissible against appellants, and more particularly for the purpose of proving conspiracy.

From the events leading to and the circumstances attending the commission of the crime, it may logically be inferred that there was a common design, understanding and agreement among appellants and their co-accused to rob the house of Lorenzo Vivas with the use of force if required. Witness Pablo Abellera testified that at about 11 o'clock on the night of April 3, 1946 he met and recognized appellants among a group of persons. They were all armed. Felipe Mendoza, a member of the group, revealed that their purpose was to rob the house of Lorenzo Vivas. The extrajudicial statements of appellant Calixto Ferrer himself and the other accused establish the fact that appellants were with their co-accused on the night of April 3, 1946. Upon arrival at the house of Lorenzo Vivas, accused Carunungan, Buceta and Mendoza went up the house, while the rest, including appellants, posted themselves downstairs. Inside the house, Carunungan demanded the inmates to bring out their money. However, he became trigger-happy and started the shooting.

In this connection, we agree with the Court of Appeals that the crime committed is attempted robbery with homicide as denned and penalized under Article 297 of the Revised Penal Code. The demand made by Serapio Carunungan to the inmates of the house to bring out their money constitutes an overt act leading to the commission of the robbery. If the robbery was not committed, it was because of armed resistance.

The killing in this case was apparently an offshoot of the plan to carry out the robbery. Simply because appellants did not take part in the killing, it cannot be argued that they are not equally responsible therefor. Settled is the rule that whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the crime of robbery with homicide, although they did not take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide. (People vs. Morados, 70 Phil., 558; People vs. De la Cruz, 88 Phil., 29.) In the case at bar appellants armed presence unquestionably gave encouragement and a sense of security to those who went up the house. It may also be assumed that they were there to lend assistance in case of necessity. Their possession of firearms is consistent with their guilt. And, the presence of empty carbine shells downstairs is indicative of the fact that they too fired shots and actively participated in the commission of the offense. They are, therefore, guilty as principals of the crime of attempted robbery with homicide. By reason of the conspiracy, the act of each conspirator is the act of all. (People vs. Evangelista, 86 Phil., 112; 47 Off. Gaz., [12] 3857; People vs. Binsol, 100 Phil., 713; 53 Off. Gaz. [10] 3045.)

Appellants assail the credibility of Pablo Abellera as a "concocted witness" whose name does not even appear in the list of witnesses for the prosecution. The non-appearance of his name in the list of witnesses, however, is of no importance. There is no intimation that at the time the amended information was filed his name was already known to the prosecuting officers. And at the start of the trial, the prosecution could ill-afford to reveal his name since he was threatened not to testify (People vs. Palacio, 108 Phil., 220; 58 Off. Gaz., [24] 4498). Appellants also allege that Abellera had 'an ax to grind against Serapio Carunungan, but assuming this to be true, we do not think it is sufficient motive for him to railroad all the other accused, against whom he had no quarrel or misunderstanding.

According to the Court of Appeals, he "is not the type of man capable of wearing falsehoods."

The crime committed as already stated is attempted robbery with homicide as defined in Article 297 of the Revised Penal Code, "which imposes a penalty ranging from reclusion temporal in its maximum period to reclusion perpetua. As the crime was attended by the aggravating circumstances of nighttime, dwelling and in band, without any mitigating circumstances to offset them, the penalty must be assessed in its maximum period, or reclusion perpetua. In keeping with established jurisprudence, the Indemnity to be paid to the heirs of deceased Lorenzo Vivas fixed at P4,000.00 by the trial court should also be increased to P6,000.00.

Modified as above indicated, the judgment appealed from is affirmed, with costs against appellants.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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