

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PASTOR TAPAC, ET AL., DEFENDANTS, PASTOR TAPAC, GLICERIO
CABIGAYAN, ANTONIO TAPAC, RAMON CABIGAYAN, RODRIGO
TAPAC AND JUAN...**

G.R. No. L-26491. May 20, 1969

Ponente: DIZON, J.

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DIZON, J.:

Pastor, Antonio and Rodrigo Tapac, Glicerio and Ramon Cabigayan, Juanito Abegonia and Jesus Abadiac were charged with robbery with homicide in the Court of First Instance of Samar. As Jesus Abadiac was never arrested, the trial below proceeded only as against the other six defendants all of whom had pleaded not guilty. After such trial the court rendered judgment as follows:

"There is no sufficient evidence to prove that the several defendants conspired to commit the crime; although it is evident that they helped each other in committing the same. As there is no way to prove which wounds were caused by each one of them; so they all shall be held equally liable for the result of their illegal act, for the death of the deceased, for homicide.

"All of them were armed; and since they were seven, the circumstance that advantage was taken of superior strength shall be considered to aggravate the penalty against all of them (par. 15, Id.).

"The cutting of the ear, of the jaw and of the tongue as well as the removal of both eyes were unnecessary in the commission. They were other wrongs deliberately caused to augment the wrong already done; acts which characterized vindictiveness; acts which were absolutely not necessary for the execution of their purpose to kill the victim. They were acts of rashness and cruelty indicative of complete disregard of the physical pains of another. This is another aggravating circumstance (par. 21, Id.).

"We have it therefore clear and beyond reason-able doubt that the six accused on trial have com-mitted the crime of homicide as defined in Art. 249 of the Revised Penal Code and therein pena-lized by reclusion temporal.

"With respect to the crime of robbery, we hold that only Pastor Tapac should be made res-ponsible for the same: for he alone committed the robbery after the victim was wounded and fallen and was rendered helpless, and might be dying if not yet then dead. He took the money, a personal property of the deceased, with intent to gain, after committing violence upon the person of his victim (Art. 293, Revised Penal Code).

"We have no evidence to prove that the other accused participated in that robbery. There was no conspiracy, it could be that none of them stopped Pastor Tapac from committing the robbery; but such would not be a just conclusion that they participated in its commission. The robbery there-fore should be attributed only to him (Pastor Tapac).

"As the robbery was committed in connection with the homicide, the crime should fall under Art. 294 (Supra) which provides the penalty of reclusion perpetua to death.

"Therefore the crime committed by Pastor Tapac is homicide complexed with robbery; and the penalty to be imposed shall be for the most serious crime (Art. 46, supra).

"There is no evidence to show that the drunk-ness of the accused was either habitual or intentional. Such shall be considered to mitigate the penalty for all the accused (Art. 15, Supra).

"In view of the above, the Court finds and declares Pastor Tapac guilty beyond reasonable doubt of the crime of homicide complexed with robbery, and his five co-accused guilty of homicide, in the commission of which one mitigating and three aggravating circumstances were present; and,

"Therefore, convicts each one of them to suffer as follows: Pastor Tapac, to reclusion perpetua; Antonio Tapac, to an indeterminate penalty from TWELVE (12) YEARS of prision mayor to TWENTY (20) YEARS of reclusion temporal; and Glicerio Cabigayan, Ramon Cabigayan, Rodrigo Tapac, and Juanito Pbegonia, each, also to an indeterminate penalty 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; all with the accessory penalties, and all of them to indemnify, jointly and severally the heirs of the deceased P6,000.00 plus P800.00, and pay the corresponding costs." (pp. 61-63 rec.).

The six defendants appealed and submitted a brief, through their counsel de oficio, with the following assignment of errors:

"I

THE LOWER COURT ERRED IN SENTENCING APPELLANTS TO INDEMNIFY THE HEIRS OF THE DECEASED IN THE AMOUNT OF P800.00 WHEN, IN ITS DECISION, ONLY DEFENDANT PASTOR TAPAC WAS FOUND GUILTY OF ROBBERY WITH HOMICIDE.

II

THE LOWER COURT ERRED IN CONVICTING APPELLANTS RAMON CABIGAYAN AND RODRIGO TAPAC OF THE CRIME OF HOMICIDE INSTEAD OF THE OFFENSE PENALIZED UNDER ARTICLES 4 (2) AND 59 OF THE REVISED PENAL CODE.

III

THE LOWER COURT ERRED IN CONSIDERING THE AGGRAVATING CIRCUMSTANCE OF CRUELTY AGAINST APPELLANTS GLICERIO CABIGAYAN, ANTONIO TAPAC, AND JUANITO ABEGONIA.

IV

THE LOWER COURT ERRED IN SENTENCING APPELLANTS TO INDETERMINATE PENALTIES AS FOLLOWS:

ANTONIO TAPAC TWELVE (12) YEARS OF PRISION MAYOR TO TWENTY (20) YEARS OF RECLUSION TEMPORAL.

GLICERIO CABIGAYAN TEN (10) YEARS AND ONE (1) DAY OF PRISION MAYOR TO SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL.

RAMON CABIGAYAN TEN (10) YEARS AND ONE (1) DAY OF PRISION MAYOR TO SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL.

RODRIGO TAPAC. TEN (10) YEARS AND ONE (1) DAY OF PRISION MAYOR TO

SEVEN-TEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL.

JUANITO ABEGONIA TEN (10) YEARS AND ONE (1) DAY OF PRI-SION MAYOR TO SEVEN-TEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL."

On March 17, 1967, Pastor Tapac filed a motion for the withdrawal of his appeal. We granted the same in our resolution of April 5 of the same year (record pp. 32-33).

Appellants' brief states the facts as follows:

"Felipe Mabutas (deceased) and his wife, Lolita, were residents of the Barrio proper of Parasanon, Municipality of Pinabacdao, Samar. The Barrio has a Sitio, Magdawat, about 8 kilo-meters from the Barrio proper.

"The spouses own a store in Parasanon managed by the wife, and an abaca plantation in Magdawat. Within the year prior to June 1, 1963, they established a stripping machine in the latter place, and they engaged in the abaca business under the management of the deceased. He was to buy both raw abaca for stripping, and also dried abaca, from other planters. To haul the purchases, they had to have a carabao (T.S.N. pp. 6-8, Sept. 8, 1965).

"On May 27, 1963, the deceased left his home in Parasanon to go to Magdawat. His wife handed P800.00 to him with which to buy abaca and a carabao (T.S.N., p. 6, Sept. 8, 1965).

"On June 1, 1963, an upland ricefield in Sitio Inalaran (Enalaran), Parasanon, belonging to Antonio and Dolores Ocenar, was being planted (T.S.N., p. 5, Sept. 23, 1965). On hand in the morning of that day to help them were more than 50 neighbors, among whom were Benedicto Cabaljao, a nephew of the deceased, and the seven defendants herein. Of the latter, Antonio Tapac is the father of Pastor Tapac and Rodrigo Tapac, and the father-in-law of Glicerio Cabigayan. Ramon Cabi-gayan is the brother of Glicerio Cabigayan, the brother-in-law of Juanito Abegonia, and the cousin-in-law of Jesus Abadiac (T.S.N., p. 4, Sept. 23, 1965).

"At noon time, the planters repaired to the nearby house of Trinidad Ocenar for their lunch. Just before the meal was about to be served, the deceased arrived at the house of Trinidad for the purpose of buying the latter's carabao (T.S.N., p. 20, Sept. 23, 1965). He had a radio receiving set with him which, presumably, he allowed Juan Labutin, Trinidad's son, to handle (T.S.N., p. 8, Sept. 23, 1965). Trinidad's asking price for the carabao was P250.00, which she later on reduced to P230.00. The deceased was willing, to pay only P200.00 and, in an effort to psychologize Trinidad, he drew that sum from his wallet and offered it to her, stating that the amount should be suf-ficient considering that the carabao was still young ('small'). Thus, the people around came to know that the deceased was carrying money with him (T.S.N., p. 21, Sept. 23, 1965). Trinidad remained adamant, and the negotiation terminated in the understanding that the deceased could take up the matter with her son, Juan Labutin. If the son agreed, the carabao would be sold at the price of-fered by the deceased (T.S.N., p. 25, Sept. 24, 1965).

"The deceased stayed for lunch at Trinidad's house. After eating, he went down from the house and sat on a rung of the stairs. Here, he was joined by appellant Antonio Tapac. The latter asked the deceased for a monetary loan which was refused, the deceased stating that he needed his cash for his purchases of abaca. The refusal was resented by Antonio's son, Pastor Tapac, to the extent that, when the deceased rose to leave and had asked Juan Labutin for his radio, Pastor struck him with a bolo from behind. That act of Pastor precipitated a general attack on the deceased. Antonio also boloed him, followed by Glicerio and Juanito (T.S.N., pp. 7-10, Sept. 23, 1965). After he was already dead, Ramon Cabigayan, Jesus Abadiac and Rodrigo Tapac also boloed him (Exh. '1-b', p. 54, of record). His tongue and right ear were cut, his lower jaw smashed, and his two eyes were gouged (Exh. 'A', p. 52 of the record). Then, Pastor grabbed the wallet of the deceased which was in his pocket, tearing the pocket in the pro-cess (T.S.N., pp. 9-10, Sept. 23, 1965)."

Comparing the above statement of facts, with the findings of fact made by the trial court and the counter statement of facts made in the brief filed by the Office of the Solicitor General, one will find no substantial discrepancy except as to this: that while according to the trial court and the Office of the Solicitor General Ramon Cabigayan, Jesus Abadiac and Rodrigo Tapac boloed the deceased Felipe Mabutas while he was still alive, appellants contend that the three did so after Mabutas was already dead. In fact, in their brief (second assignment of error) it is claimed that the lower court erred in convicting Ramon Cabigayan and Rodrigo Tapac of the crime of homicide instead of finding them guilty of an impossible crime, defined and penalized under Articles 4(2) and 59 of the Revised Penal Code. In support of this view they rely exclusively upon a portion of the affidavit of prosecution witness Benedicto Cabaljao, which reads as follows:

"When Felipe bade farewell, he asked his radio from Juan Labotin. I saw Pastor Tapak stab Felipe Mabutas, hitting him in the left neck, then Antonio Tapak stabbed Felipe on his head, Felipe fell and rolled, then Glicerio Abiguña stabbed Felipe, Ramon Cabigayan stabbed while Felipe was already dead and they kept on stabbing when Jesus Abadiac arrived at the cadaver let us stab him so that he cannot go home to his store, Rodrigo Tapak arrived and stabbed Felipe Mabutas....."

In the light of the evidence of record, We are of the opinion that the sworn statement relied upon is not sufficient to show that the trial court erred.

It is extremely doubtful that Cabaljao could have known positively that Felipe Mabutas was already dead when Ramon Cabigayan and Rodrigo Tapac also struck him, because Cabaljao was upstairs near the window of the house of Trinidad Ocenar where the crime was committed, from which vantage point he was looking down and saw the incident. The most that one may perhaps accept in this connection is that from the place where he was, it seemed to him that the victim was already dead. Material in this connection is the evidence to the effect that Jesus Abadiac - the accused who did not stand trial because he was never arrested - told his companions to continue stabbing their victim so that the latter could no longer go home. This clearly justifies the inference that when Abadiac made such statement, their victim was still alive.

We therefore, find the second assignment of error to be without merit.

In support of the first assignment of error, appellants argue that as the trial court held that it was only Pastor Tapac who committed the robbery - although it likewise held all the appellants to be equally guilty of homicide - he alone should have been sentenced to indemnify the heirs of the deceased in the sum of P800.00 - the amount of which he robbed their victim.

It is to be observed that the information charges all the appellants with having conspired, confederated and helped one another in killing Felipe Mabutas in order to rob him of his money. The evidence in this connection fully justifies the conclusion that upon seeing the money in cash which Felipe Mabutas carried, the cupidity of appellants Antonio and Pastor Tapac - father and son - in whose presence Mabutas counted the P200.00 which he showed to Trinidad Ocenar to induce her to sell her cara-bao seized and overwhelmed them. When inspite of the fact that the transaction had failed, Mabutas refused to give the loan sought by Antonio Tapac, the latter and his children and other relatives present suddenly attacked him in the cruel manner heretofore described - going to the extent of cutting his ear, tongue and jaw, gouging his eyes - in other words mutilating him unnecessarily. Thereafter they left together, but not until after Pastor Tapac had robbed their victim of his money. All these leave us no other alternative but to conclude that there was conspiracy amongst them (People vs. Castro et al., G. R. No. L-17465, August 31, 1964; People vs. Luna et al., G. R. No. L-15480, January 28, 1961).

For conspiracy to exist, no previous agreement to commit the offense is necessary. Conspiracy is deemed to have been established if the evidence shows that the de-fendants had the same purpose and joined together in its

execution (People vs. Cadag, et al., G. R. No. L-13830, May 31, 1961). In this case such evidence exists. Con-spiracy having thus been established, the act or acts of any one conspirator is or are the acts of all of them, and each conspirator is responsible for the unlawful act or acts of his co-conspirator (People vs. Cadag, supra; People vs. Monadi et al, G. R. No. L-3370-71, September 27, 1965; People vs. Reyes et al., 46 O. G. 3780).

In connection with the third and last assignment of error, all that We now need to say is the following:

The acts of cruelty unnecessarily perpetrated against the deceased Felipe Mabutas are beyond question. His assailants - notwithstanding the fact that because of the unexpectedness of the assault he could not have offered any resistance - inflicted upon him the following physical injuries:

"Three (3) fatal wounds (all penetrating) on the left breast;

"Three (3) fatal wounds (all penetrating) on the left portion of the abdomen;

"One stabbed wound just below the neck (front section) wound on the right arm (palm about to be separated);

"Two (2) fatal wounds (both penetrating) on the left and right portion of the back;

"One stabbed wound on the left shoulder with fractured bones;

"One stabbed wound on the right ribs (penetrating);

"One fatal wound on the forehead;

"One fatal wound on the right section of the head; and

"One fatal wound on the right leg.

"The following parts were no longer found on the cadaver:

'1. The tongue

'2. The lower jaw

'3. The two (2) eyes

'4. The right ear' (Exh. 'A', p. 52, rec.)"

As in this case conspiracy is clearly deducible from the concerted action taken by all the appellants, it is not necessary to show which of the above physical injuries was inflicted by this or that particular appellant. Each one of them is responsible for the act or acts of the others.

The foregoing shows conclusively that all the appellants are guilty beyond reasonable doubt of the crime of robbery with homicide punishable with Reclusion Perpetua to Death under the provision of Article 294(1) of the Revised Penal Code, the commission thereof having been attended by the aggravating circumstances of treachery and cruelty (Article 14, paragraph 21, Revised Penal Code).

There is, however, some evidence tending to show that appellants were under the influence of liquor when they committed the crime. This can not be entirely disregarded considering that on June 1, 1963 they worked on the land of Antonio and Dolores Ocenar to help them for free in its cultivation and lunch was served them at the usual time of the day. As customary in similar occasions, some intoxicating beverages may have been served before and after the meal. We are, therefore, inclined to appreciate in favor of appellants the mitigating circumstance of intoxication, not habitual or intentional, in accordance with the provisions of Article 15, Revised Penal Code. This mitigating circumstance, however, would suffice only to offset one of the aggravating circumstances mentioned

heretofore, this justifying the imposition of the heavier penalty of Death. However, for lack of the required number of votes, the same can not be imposed. Consequently, all the five appellants are hereby sentenced to suffer Reclusion Perpetua. The indemnity of P6,000.00 is also raised to P12,000.00.

THUS MODIFIED, the appealed decision is affirmed in all other respects.

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

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

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