

**THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RAFAEL CABUENA, ET AL., DEFENDANTS. GREGORIO CORDIZAE
AND EUTQUIO BOHOL, DEFENDANTS AND APPELLANTS**

G.R. No. L-6202. April 28, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

One evening in 1949, an armed band 'raided the house of Andres Bantiles shooting dead three of its inmates and taking and carrying away their money, jewelry and other belongings.

For this crime, seven men were arrested and prosecuted. Three pleaded guilty and three more were found guilty after trial. Convicted of robbery in band with triple homicide, the six were sentenced, five of them to life imprisonment, and one, (Anastacio Lapanig, who was below 18 years) to the penalty next lower in degree. One of the defendants was acquitted.

The present appeal is only by two of those convicted. They are Gregorio Cordizar and Eutiquio Bohol.

It appears from the evidence that at about 7 o'clock in the evening of November 18, 1949, while the spouses Andres Bantiles and Simplicia Lauron and their 9-year old niece Macaria Bantiles were in their house in barrio Soron, Balamban, Cebu, eating their supper in the kitchen, the floor of which was only one or two steps from the grotmd, they were hit and killed by a volley of shots fired apparently from outside the house. The couple's 10-year old daughter Estrella, who was then in the sala tending her baby brother, upon hearing: the shots and her mother's cries for help, ran down to the kitchen and there saw her parents and her cousin Macaria lying on the floor wounded and already dead. Eeturning to the sala to pick up her little brother, Estrella saw three men enter from the stairs, each armed with a rifle and wearing blue denim clothes. (These three she identified at the trial as the defendants ' who pleaded guilty, namely:Rafael Cabuena, Anastacio Lapanig, and Juan Oliverio.) Once inside, the intruders asked Estrella to produce her parents' money and, by threatening to shoot her, succeeded in having her locate and deliver to them money amounting to P2.500. The intruders also ransacked the house, taking therefrom jewelry, a shotgun with ammunitions and other belongings. Thereafter they left with their three companions who had remained downstairs. Those three were the two appellants herein and the accused Anatalio Son, who, like those who went up, was also armed with a rifle.

Post-mortem examination of the cadavers of the victims revealed that Andres Bantiles sustained a gunshot wound in the chest, his wife Simplicieia Lauron, a gunshot wound in the left gastric region ..which pushed out a portion of the big intestines; and Macaria Bantiles, a gunshot wound through the head. The examination also revealed that the cause, of death was "One evening in 1949, an armed band 'raided the house of Andres Bantiles shooting dead tiiree of its inmates and taking and carrying away their money, jewelry and other belongings.

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A tip from the lieutenant of a neighboring barrio led to the arrest of the malefactors, each of whom, upon being investigated, confessed and signed affidavits admitting his participation in the crime or making damaging admissions.

There is no question about the perpetration of the crime as those convicted have signed affidavits describing in .detail how it was committed and.three of them have even pleaded guilty. And while it is claimed that those affidavits were obtained through, duress, the 'claim is clearly disproved by the testimony of the investigators as well as by that of the justice of the peace before whom the confessions were signed and sworn to.

Neither do we entertain doubt as to the guilt of the two appellants. One of them,; Cordizar, said in his affidavits that on the day of the crime, five of his co-accused four of them with firearms, passed for Mm at his house and they "went to kill Sesay-Andres and their daughter"; that while three of his companions shot the victims and robbed the house, he himself remained downstairs because he was known to the daughter; that it was he who carried the cans containing money and paper taken from the house; and that it was also he Who kept them afterwards. On his part, the other appellant, Bohol, admitted in his affidavits that, in accordance with what his co-accused Calixto Cabuena had told him the day before, four of his co-accused came to his house on the day of the crime and took him along with them, one of them informing him that their purpose v«as to go to the place of the Bantiles "in order to kill them." And while his affidavits also contained statements intended to convey the impreasion that he went along because he was threatened with death, such exculpatory statements are inherently incredible, for it does not seem natural that a group of persons out to commit a grave crime would want to take along by force or threat an unwilling companion who might later denounce them to the authorities. There is thus no question that both appellants were in the group that went to the house of the Bantiles for the express purpose of killing and robbing them. They cannot claim exemption from criminal liability simply because they did not actually take pajt in the shooting and did not even go up the house. Obviously, they played the role of guards or

lookouts by remaining, downstairs, thereby contributing in an important manner to the success of the enterprise; In those circumstances, their liability, under the law, is that of principals.

We agree with the trial court that the crime committed was robbery in band with triple homicide. But it was error to sentence the appellants to three life imprisonments each as if three separate crimes had been committed. The complex crime of robbery with homicide is not to be multiplied with the number of persons killed. As was said by this Court in *People vs. Madrid*, * G. R. No. L-3023, January 3, 1951, "the general concept of this. crime does not limit the taking of human life to one single victim making the slaying of human beings in excess of that number punishable as separate individual offense or offenses. All the homicides or murders are merged in the composite, integrated whole that is robbery with homicide so long as the killings were perpetrated by reason or on the occasion of the robbery." Such appears to be the case here.

The crime committed is punishable, under Article 294 in relation to Article' 296 of the Revised Penal Code, as amended by Republic Act No. 12, with reclusion perpetua to death. We cannot agree with the trial court that the perpetrators did not intend to commit so grave a crime as that which actually resulted, and even if lack of instruction be taken, into account as recommended by the Solicitor General, this would not be enough to offset the aggravating circumstances of treachery and dwelling which, attended the commission of the crime, so that the penalty prescribed by law is imposable in its maximum degree. But for lack of sufficient votes for the imposition of the death penalty, the appellants are only sentenced to life imprisonment in addition to the indemnity imposed by the trial court.

Modified as to the penalty, the sentence of conviction is affirmed with costs against the appellant.

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

* 88 Phil, 1.

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