

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MIGUEL CAMPOMANIS, ET AL., DEFENDANTS, PELICOLO TULBA,  
DEFENDANT-APPELLANT.**

*G.R. Nos. L-27999-28000. November 23, 1971*

Ponente: CONCEPCION, C.J.

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**CONCEPCION, C.J.:**

Appeal, by defendant Pelicolo Tulba, from a decision of the Court of First Instance of Negros Oriental, in Criminal Cases Nos. S-159 and S-159-A thereof, finding him and his co-defendants, Silverio Lumaghan and Bernardo Magaso - who have not appealed - guilty as principals of two (2) crimes of robbery with homicide - committed together with Miguel Campomanis, who has not been apprehended, as yet - and sentencing Tulba, Lumaghan and Magaso, in each one of said cases, to life imprisonment, to indemnify the heirs of the deceased Dionisio Tracarol and Maxima Baroro in the sum of P6,000, without subsidiary imprisonment in the event of insolvency, and to pay the proportionate part of the costs. Owing to the penalties thus meted out, said cases were certified to Us by the Court of Appeals, to which Tulba had interposed his appeal.

In the morning of December 11, 1963, the dead bodies of Dionisio Tracarol and his wife Maxima Baroro were found, the latter in their house, and the former in the yard thereof, at Barrio Capalasanan, Municipality of Lazi, Province of Negros Oriental. A hunting knife with its scabbard (Exhibits A and A-1), another scabbard (Exhibit B), a dagger and its scabbard (Exhibits E and E-1) and two (2) stems of coconut palms (Exhibits F and F-1) were found near Dionisio's body. Various documents, several pieces of cloth-ing and other personal effects (Exhibits H-1 to H-24, I and I-1 to I-23), were scattered around. About 100 meters away was a trunk (Exhibit H) that had been pried open. Dionisio Tracarol had the following injuries:

"(1) Head - contusion, of scalp, frontal region, with hematoma. No evidence of skull fracture.

"(2) Chest - wound, stab, 7 in number, with sharp ends, varying in sizes - 1 1/2 inches, 2 1/2 inches, 3 inches, 2 1/4 inches, 1 3/4 inches, 1 1/2 inches, and 1 1/2 inches.

"(3) Wound, stab, axillary region, left, mea-suring 1 1/2 inches long.

"(4) Wound incised, dome, liver, measuring 3 inches long, 1 1/2 inches deep.

"(5) Wound, incised, 1 inch long x 1 inch deep, located in middle lobe, left lung.

"(6) Blood, pleural cavity, left, and abdominal cavity, amounting to 500 cc.

"(7) Wound, chopping, 2 inches long, left wrist."

His death had been caused by "(h)emorrhage, external and internal due to multiple wounds of the chest, involving liver and middle lobe of left lung." Maxima Baroro had, in turn, sustained "(1) Wound, stab, 3 inches long, left, base of neck" and "(2) Wound, incised, 3/4 inches long, left common carotid artery" and the cause of her death was "(h)emorrhage, external, due to stab wound, neck, base, left, involving common carotid artery, left."

On December 14, 1963, appellant Tulba and his co-defendants, Lumaghan and Magaso, were arrested at the wharf of Lazi, as they were about to board a boat for Mindanao. Upon investigation, Lumaghan and Magaso confessed that they had - together with Miguel Cam-pomanis, and accompanied by Tulba, who refused to make any state-ment - killed the aforementioned couple, incidentally to their (defend-ants') design to steal from them (Mr. & Mrs. Tracarol). These con-fessions were taken down by the local chief of police, Lorenzo Baroro, and then subscribed and sworn to before the municipal mayor of Lazi, Domingo Arcamo. Meanwhile, two (2) criminal complaints had been filed with the municipal court of Lazi, first for robbery with double murder and later for robbery in band with double murder. After the corresponding preliminary investigation, the two (2) cases were forwarded to the Court of First Instance of Negros Oriental, where the provincial fiscal filed two (2) separate informations for robbery with homicide, one involving the killing of Dionisio Tracarol and another, that of his wife, Maxima Baroro. After a joint trial, under a plea of not guilty, said court of first instance rendered its afore-said decision, from which defendant Pelicolo Tulba appealed to the Court of Appeals, which, in turn, certified both cases to Us, in view of the penalties meted out.

The evidence for the prosecution - consisting of the confessions, Exhibits C, C-1 to C-5, D and D-1, the aforementioned physical evidence (Exhibits H, H-1 to H-24, I and I-1 to I-23) and the testimony of Lorenzo Baroro, Domingo Arcamo, Leonarda Sangquenza, Cesar Sangquenza, Sergio Paghasian, Honorato Juma-lon, Adriano Bonocan and Inocentes Omandam - tended to establish the following: In a party at Buloran, Zamboanga del Sur, on Novem-ber 27, 1963, Bernardo Magaso, Silverio Lumaghan and Miguel Cam-pomanis agreed to sail for Negros Oriental, on December 3, 1963. Said defendants, together with appellant Tulba, then boarded a vessel at Lampanid, Municipality of Ramon Magsaysay, Zamboanga del Sur. The next day, they arrived at Plaridel, Misamis Occidental. Thence, they proceeded, the following day, to Larena, Negros Oriental, which they reached on December 6. After taking some drinks at its market-place, they resumed their journey and arrived at the Barrio of Capa-lasanan, Municipality of Lazi, Negros Oriental, at about 9:00 p.m. They took their dinner and spent the night in the house of Sergio Pag-hasian. Early the next morning, they went to Calunasan, Municipality of Maria, Negros Oriental, and slept in the house of the spouses Cesar and Leonarda Sangquenza. The day following, they merely relaxed, doing nothing of particular relevance to the cases at bar. The next morning, they went to a house in the poblacion, in connection with the town fiesta. Thereafter, that evening, they tried to go elsewhere, but, were unable to do so, having arrived late for the bus that would have taken them to their destination. They, accordingly, returned to the house of the Sangquenzas. The following evening, Magaso, Campomanis and Tulba slept in the house of one by the name of Pecoy.

Although Lumaghan remained in that of the Sangquenzas, the next day, at about 6:00 p.m., the four (4) of them got together and headed for the Barrio of Capalasanan, Lazi, which they reached at about 10:00 p.m. They went directly to the place where Dionisio Tracarol and his wife Maxima Baroro lived. Upon reaching their yard, Magaso took Dionisio's cow from where it was and tethered it to a corner under his house. Soon thereafter, Dionisio came down with a lighted torch, seemingly to ascertain what was going on. When Dionisio passed near a coconut tree, behind which Magaso had taken cover, the latter hit him on the back of the neck with the stem of a coconut palm. As Dionisio screamed, saying that he was being killed, Magaso covered his (Dionisio's) mouth with the palm of his (Magaso's) hand, whereas Lumaghan hit Dionisio with another stem of coconut palm. Attracted by Dionisio's scream, his wife, Maxima Baroro, had, meanwhile, gone to the window of their house and seen that he was being beaten up, whereupon she, likewise, began to scream. This induced Campomanis to go up the house and stab her twice. Then, Campomanis came down and, similarly, stabbed Dionisio, who was still shouting. After thus silencing him, Campomanis went back to the house, together with Lumaghan, and then brought down a trunk, which Magaso helped them bring some distance away, and then pry it open with a hunting knife, to find - after throwing out its contents, consisting of documents, pieces of clothing and other personal

effects - that there was no money inside. While these events were transpiring, appellant Tulba watched or stood guard on the yard, holding a stone.

Each one of the defendants, however, set up his own alibi. Tulba said that he was, at the time of the occurrence, in the barrio of Candaping. Magaso would have us believe that he had never been at the scene of the crime and that, since his arrival from Zamboanga, he had been in the town of Larena, where his grandparents were. Upon the other hand, Lumaghan limited himself to denying his guilt, stating that his extra-judicial confession had been obtained thru duress, and that his sole purpose in coming from Zamboanga del Sur was to harvest coconuts from the plantation of his uncle, Honorato Jumalon, in the barrio of Candanay, Siquijor, in order to raise funds, with the proceeds of the sale of said coconuts, to pay for the hospitalization of a sick brother.

At the outset, We are satisfied that - contrary to the testimony of Lumaghan and Magaso - the extra-judicial confessions, Exhibits C, C-1 to C-5, and D to D-1, had been freely and voluntarily made by them. Indeed, this fact was established by the testimony of police chief Lorenzo Baroro, who took said confessions, and that of Municipal Mayor Arcamo, before whom said confessions were subscribed and sworn to. Moreover, the testimony of Magaso to the effect that he had informed his godfather, Inocentes Omandam, of the duress under which his confession had allegedly been obtained, was refuted by the latter. Again, the confessions corroborated each other, and the contents thereof were, in turn, corroborated by the testimonies of Cesar Sangquenza, his wife Leonarda Sangquenza, and Sergio Paghasian, in whose houses said defendants and their co-accused, including appellant Tulba, had stayed for some time between December 6 and 10, 1963, and by the presence, at the scene of the occurrence, of Lumaghan's hunting knife and its scabbard, Exhibits A and A-1, the scabbard Exhibit B of Campomanis, Magaso's dagger and its scabbard, Exhibits E and E-1, the stems of coconut palms, Exhibits F and F-1, the trunk, Exhibit H, and the documents, garments and other personal effects, Exhibits H-1 to H-24, I and I-1 to I-23. Indeed, Sergio Paghasian identified the hunting knife, Exhibit A and its scabbard, Exhibit A-1, the first having been used by Lumaghan when he slaughtered a dog and skinned the same, while he and his co-defendants were in the house of said witness, on December 7. Paghasian, likewise, identified the scabbard, Exhibit B, as that of the hunting knife used by defendant Campomanis, when he assisted Lumaghan in the task aforementioned. Similarly, the fact that both Lumaghan and Magaso have not appealed from the decision of the trial court, convicting them as charged, implies an acknowledgment of their guilt and belies their plea of innocence, as well as their respective alibis. In fact, apart from the Sangquenzas and Paghasian, Adriano Bonocan asserted positively that he had seen Tulba, together with Magaso, Lumaghan and a fourth person - not in the courtroom during the trial - in Capalasanan, on December 7, 1963.

Thus, the following facts appear to have been duly established, namely: Campomanis, Lumaghan and Magaso, had, on November 27, agreed to and did sail from Ramon Magsaysay, Zamboanga del Sur, on December 3, as well as proceed to the Municipality of Lazi, for the purpose of robbing. In that trip, they were accompanied by appellant Tulba, who was together with them continuously, not only from December 3 to 10, when the crime charged was committed, but, even, subsequently thereto, or up to December 14, when Tulba, Lumaghan and Magaso were apprehended at the wharf of Lazi, as they were about to board a vessel, to sail away. Tulba was not merely present when the crime was committed. He stood guard, armed with a piece of stone, which he held with one hand. He did or said nothing to indicate his disapproval of the acts of vandalism committed by his companions upon a defenseless old couple. Worse still, he remained in the company of Lumaghan and Magaso, until the three (3) of them were arrested on December 14. These facts suffice to establish conspiracy between Tulba and his co-defendants to commit the crimes adverted to above, and to hold him responsible as a co-principal in the commission thereof.

It should be noted, also, that here we have two (2) cases and two (2) convictions for robbery with homicide.

Considering, however, that there had been, in fact, no more than one (1) robbery, which was the main purpose of the offenders; it follows that they have committed only one crime of robbery with homicide[1] - that of Dionisio Tracarol - apart from that of homicide of Mrs. Traca-rol. The penalty for the first is life imprisonment to death, which should be imposed in its maximum period, or death, the offense having been committed in the dwelling of the offended parties, as well as at nighttime and with the aid of armed men. For lack of the number of votes necessary for the imposition of the extreme penalty, that next lower in degree, or life imprisonment, meted out by the lower court in L-27999 is imposable therein to appellant Pelicolo Tulba.

As regards L-28000, the crime committed is homicide, and, in view of the circumstances already adverted to, the penalty of reclusion temporal, prescribed by law therefor, should be meted out in its maximum period.

Insofar as Pelicolo Tulba is concerned, the decision appealed from should, accordingly, be modified in the sense: (1) that only one robbery with homicide has been committed, aside from another crime of homicide; (2) that appellant should be sentenced, for the robbery with homicide, to life imprisonment with the corresponding accessory penalties and, for the crime of homicide, to an indeterminate penalty ranging 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, likewise, with the accessory penalties prescribed by law therefor; and (3) that his civil liability, jointly and severally with Lumaghan and Magaso, should be increased from P6,000 to P12,000 in each case, or P24,000 altogether, considering that two (2) persons had been killed,<sup>2</sup> although, not having appealed from the decision of the trial court, the civil responsibility of Lumaghan and Magaso can not exceed the sum therein fixed.

Thus modified, as to the characterization of one of the crimes committed and the criminal and civil liabilities therefor of appellant Pelicolo Tulba, the appealed decision is hereby affirmed, in all other respects, with the costs of this instance against said appellant.

### **IT IS SO ORDERED.**

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.  
Barredo, J., no part.

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[1] U. S. v. Ibañez, 19 Phil 463; People v. Manuel, 44 Phil. 333; People v. Hernandez, 46 48, 49; People v. Uday, 85 Phil. 498, 503; People v. Dakilan L-27851, Oct. 28, 1969.

2 People v. Pantoja, L-18793, Oct. 11, 1968; People v. Sangaran, L-21757, Nov. 26, 1968; People v. Gutierrez, L-25372, Nov. 29, 1968; People v. Buenbrazo, L-27852, Nov. 29, 1968; People v. Bakang, L-20908, Jan. 31, 1969; People v. Labutin, L-23513, Jan. 31, 1969; People v. Acabado, L-26104, Jan. 31, 1969; People v. Vacal, L-20913, Feb. 27, 1969; People v. Gonzales, L-23303-04, May 20, 1969; People v. Tapac, L-26491, May 20, 1969; People v. Dakilan, L-27851, Oct. 28, 1969.

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