

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO PAMINTUAN, EDGAR PABALAN Y BENAMIRA, MARIO BRIONES Y GUINTO, FRANCISCO VILLANUEVA Y SEVILLA, SAMMY ORGA, EDU SENUBIO, AL...

G.R. No. 100771. May 28, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 42, San Fernando, Pampanga, in Criminal Case No. 5300, entitled "The People of the Philippines v. Romeo Pamintuan, et al.," finding accused-appellants guilty beyond reasonable doubt of the crime of "Robbery with Homicide and Serious Physical Injuries."

The information filed against the accused in Criminal Case No. 5300 reads:

"That on or about the 30th day of May, 1989 inside the Pampanga Provincial Jail at Provincial Capitol, municipality of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who are cellmates at Cell No. 6, with evident premeditation and taking advantage of their superior strength, and with intent to escape from their detention cell, by conspiring, confederating and mutually helping one another, with intent of gain, and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon Conrado Basa, Emilarado Valencia and Arnel Aldana who are all Provincial Jail Guards and while engaged in the performance and discharge of their official duties as such, by beating and striking them repeatedly with pieces of wood (bamboo stick) on the different parts of their bodies, thereby inflicting upon Conrado Basa and Emilarado Valencia serious and fatal injuries which cause their death thereafter, and serious physical injuries upon Arnel Aldana, and on the same occasion thereof and thereafter, did then and there take, steal and carry away with them the following properties, to wit:

1. One (1) shotgun 12 gauge - SN957475 - P8,500.00
2. One (1) shotgun 12 gauge - SN974412 - 8,500.00
3. One (1) shotgun 12 gauge - SN974105 - 8,500.00
4. One (1) Ruby cal. 22 - SN613085 - 5,200.00
5. One (1) Ruby cal. 22 - SN637171 - 5,200.00
6. One (1) Ruby cal. 22 (highstd) SN1166602 - 5,200.00

belonging to the armory of the Provincial Jail valued at FORTY ONE THOUSAND ONE HUNDRED PESOS (P41,100.00), Philippine Currency, to the damage and prejudice of the said owner in the total amount of P41,100.00 Philippine Currency.

All contrary to law." (Rollo, pp. 17-18)

Only accused Romeo Pamintuan, Edgar Pabalan, Mario Briones, Vivencio Feliciano, Ronnie Pilapil and Gerardo Javier were rearrested and arraigned. Antonio Lopiga was dropped from the information after he was killed by police authorities in an encounter. Alberto Parungao, who is serving sentence in the National Penitentiary in Muntinlupa, could not be brought to Pampanga for arraignment inasmuch as the clearance from the Supreme Court had not been secured. The other accused remained at large. The accused, who were arraigned, pleaded not guilty to the charge and entered trial.

After the prosecution had rested its case, the defense opted not to present any evidence.

The findings of facts of the trial court were summarized in the brief of the Solicitor General as follows:

"At 7:00 o'clock in the evening of May 29, 1989, Mario Quito, a detention prisoner in Cell No. 2 at the Provincial Jail of San Fernando, Pampanga, was asked by cellmate Jun Solis if he wanted to escape, to which he answered "Bahala na." Very early the following morning, at 2:00 a.m. of May 30, 1989, Mario Quito saw a prisoner, Ramon Sevilla, open the door of their cell with a key, and then tell him that Cell No. 6 was already open. Upon a signal from appellant Pamintuan, who was a trustee staying outside the cell, prisoners from Cell Nos. 2 and 6 went out. Pamintuan then opened the control gate, and he, together with co-appellants Pilapil and Pabalan, Edu Senubio, Dino Sta. Ana and Solis, went to the gate. (tsn, July 30, 1990, pp. 18-20)

At that time, jailguards Arnel Aldana and Conrado Basa were at the third gate and first gate, respectively, while their companion Emilardo Valencia was at the jailyard. Another guard, Fernando Pacheco, was three meters away from Valencia. All of them were sleeping (tsn, July 31, 1990, pp. 17-28; August 9, 1990, pp. 33-34) when Aldana's arm was suddenly held by Pamintuan who got the gate key from him, as Pilapil sat on his belly and unsuccessfully tried to stab him. At the same time, Aldana heard the shouts of Conrado Basa. Aldana was also being beaten on his arm and head with bamboo sticks, which resulted in his losing consciousness. Upon regaining consciousness and making sure that his attackers were gone, he ran to the Philippine Constabulary (PC) compound to report the jailbreak (Ibid., pp. 18-24).

Meanwhile, Pacheco woke up when both his hands were being tied by accused Miranda, Senubio, Orga, Pabalan, and Lopiga. He was about to be beaten by bamboo sticks when appellant Briones, who was armed with a knife, said, "We agreed not to harm him." Pacheco was then warned by Briones not to move so that no harm could befall him. Miranda, Pabalan, Lopiga and Orga handed a bamboo stick to Pamintuan, who, in turn, went to the sleeping Valencia and hit him hard on the head as the others followed suit. Valencia managed to rise but staggered towards the comfort room. Briones later brought Pacheco to the kitchen and placed him under the concrete stove, and told him, "Sir, whatever happens, don't leave this place." Briones left shortly afterwards (tsn, August 9, 1990, pp. 34-39).

Approximately thirty five minutes later, Pacheco came out of his hiding place and heard people shouting for him to come out. Since the rope used on his hands were loose, he was able to untie himself. Before the arrival of the PC soldiers, he heard Valencia moaning inside the toilet, and when he verified it, Valencia was already dead. He also saw Basa lifeless under the stairs leading to the second floor of the jail (Ibid., pp. 39-40). Upon reaching the jailyard, his eyes were met again with bloodstained pieces of lumber, a shotgun and knives, as well as spoons with their handles sharpened (Ibid., p. 46)

Aldana was treated at the Jose B. Lingad Memorial Hospital (tsn, July 31, 1990, p. 24), while the bodies of Basa and Valencia were autopsied on the same day by Dr. Eracleo Gaddi, Municipal Health Officer of San Fernando, Pampanga.

Later, an investigation by the Integrated National Police (INP) of San Fernando, Pampanga showed that six (6) firearms worth P41,100.00 were missing from the prison armory and that a total of sixteen (16) prisoners had escaped from their cells. Nonetheless, appellants Pamintuan, Pilapil and Briones were not able to get out of the prison compound, and were apprehended by responding PC soldiers earlier called by Aldana. (Appellants'

Brief, pp. 5-9; Rollo, pp. 86-90)

The decretal portion of the decision of the trial court reads as follows:

"WHEREFORE, the Court finds accused Vivencio Feliciano and Gerardo Javier not guilty for failure of the prosecution to prove their guilt beyond reasonable doubt. However, the accused Romeo Pamintuan y Bautista, Edgar Pabalan y Benamira, Ronnie Pilapil y Esaya and Mario Briones y Guinto, having been proven guilty beyond reasonable doubt by the prosecution, are hereby sentenced to suffer the penalty of life imprisonment and to pay solidarily the following:

1. The heirs of the late Emilardo Valencia the total sum of P180,000.00, broken down as follows: P50,000.00 for the death of Emilardo Valencia, P10,000.00 for funeral/burial expenses; P100,000.00 for loss of earning capacity; P20,000.00 as moral damages;
2. The heirs of the late Conrado Basa the total sum of P182,000.00 broken down as follows: P50,000.00 for the death of Conrado Basa; P12,000.00 for funeral/burial expenses; P100,000.00 for loss of earning capacity; P20,000.00 as moral damages;
3. Arnel Aldana the amount of P800.00;
4. Provincial Jail of San Fernando, Pampanga the amount of P41,100.00.

x x x

IT IS SO ORDERED." (Rollo, pp. 27-28)

In this appeal, appellants claim that the prosecution failed to establish their participation in the robbery of the armory and in the maltreatment of Conrado Basa, Emilardo Valencia and Arnel Aldana. They pass the blame to the accused who are still at large. (Appellant's Brief, p. 8; Rollo, p. 49)

The participation of each of the appellants in the commission of the offense charged against them has been established by the evidence.

The testimonial evidence of the eye-witnesses presented by the prosecution belies the claim of appellants. The evidence on record shows that:

- (1) Appellant Pabalan was among the inmates who waited for the signal from appellant Pamintuan to break out of jail. He was one of those who beat to death Guard Conrado Basa. He forcibly opened the armory and took several firearms and he assisted in tying up Guard Fernando Pacheco;
- (2) Appellant Pamintuan gave the signal for the prisoners to leave their cells. He was the one who opened the control gate and he tried to stab Guard Arnel Aldana. He also hit Guard Emilardo Valencia on the head with a piece of wood and he tried to get the keys of the jail gate from Aldana.
- (3) Appellant Pilapil was with the group that left their cells and passed through the control gate when appellant Pamintuan gave the signal to escape. He tried to stab Arnel Aldana.
- (4) Appellant Briones was with the accused at the time of the jail break. He was armed with a knife. He was the one who told his co-accused not to harm Guard Pacheco, reminding them: "We agreed not to harm him." (Decision, pp. 3-8; Rollo, pp. 19-24)

The trial court was convinced that there existed a conspiracy among the accused, including appellants, not only to bolt jail but to harm the guards. The accused asked the other detained prisoners, if they wanted to join in the escape. The accused acted in coordination, from the unlocking of the different cell-doors to the beating with

bamboo poles of the guards. Noteworthy was the statement of appellant Briones that the conspirators had agreed not to harm Guard Pacheco. This statement of appellant Briones shows that the accused included in their planning the use of violence on the guards, except Pacheco.

When there is conspiracy, the act of one is the act of all. Each conspirator is responsible for all the acts of the others done in the furtherance of the conspiracy (*People v. Maranion*, 199 SCRA 421 [1991]).

Appellants, as *socii* of the conspiracy, cannot be relieved from their collective responsibility for the deaths of Conrado Basa and Emilardo Valencia and the injuries inflicted on Arnel Aldana, as well as the forcible taking of the firearms from the armory.

Appellants Pamintuan and Pilapil claim, that being trustees who had freedom to move about in the provincial jail and even to sleep outside the prison cells, it was unlikely for them to initiate or participate in the jailbreak. Furthermore, they claim that their staying inside the provincial jail instead of escaping like the other accused, was proof of their innocence. (Appellants' Brief, pp. 9-10; Rollo, 50-51) The motive or lack of motive of the accused may be of great weight in the evaluation of their guilt or innocence, if there was no positive evidence of their direct participation in the commission of the offense. Once the direct participation of appellants was established, the conclusion becomes inevitable that they contributed to the criminal enterprise their intimate knowledge of the security set-up of the prison which they acquired as trustees.

Whatever reason appellants Pamintuan and Pilapil may have in not joining the other escapees becomes irrelevant when we consider that the crimes had been accomplished by the time the opportunity to escape presented itself to them.

The trial court found appellants guilty of the offense charged in the information, that "of the crime of Robbery with Homicide and Serious Physical Injuries." (Information, p. 1; Rollo, p. 7) This is an error. In Robbery with Homicide as defined and penalized by Article 294 of the Revised Penal Code, the physical injuries committed during or on the occasion of the crime, are absorbed therein (*People v. Mendoza*, 96 SCRA 601 [1980]) and the offense is designated as such regardless of the number of homicides and physical injuries committed (*People v. Penillosa*, 205 SCRA 546 [1992]).

The trial court also erred in imposing the penalty of "life imprisonment," instead of reclusion perpetua. The two penalties are not synonymous. Life imprisonment is imposed for offenses penalized by special laws, like P.D. No. 1866. It does not carry with it any accessory penalty and does not have any definite duration (*People v. Baguio*, 196 SCRA 459 [1991]).

WHEREFORE, in view of all the foregoing, the judgment of the trial court is AFFIRMED with the MODIFICATION of the penalty to reclusion perpetua and the designation of the offense to Robbery with Homicide.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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