

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO BULALAYAO Y DOMINGO AND DIOSDADO DOMONDON Y ECHALER, ACCUSED.

G.R. No. 103497. February 23, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

In an information dated 24 September 1987, accused Diosdado Domondon and Roberto Bulalayao were charged by the Assistant City Prosecutor of Manila with the crime of Robbery with Homicide allegedly committed as follows:

“That on or about the 17th day of September, 1987, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, [and] did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: by brandishing their bladed weapons and announcing it was a hold-up, take, steal and carry away (one) 1 Men’s Seiko 5 Wrist-watch, square, automatic, gold plated including bracelet valued at P1,500.00, belonging to Rodolfo Ungsod y Purificacion, to the damage and prejudice of said owner in the aforesaid sum of P1,500.00, Philippine currency; that by reason and on the occasion of the commission of the said crime of robbery, the said accused did then and there wilfully, unlawfully and feloniously, with intent to kill, attack and assault and use personal violence upon one Jaime Lim y Soriano by stabbing him on the left side of the body with the bladed weapon thereby inflicting upon the latter a mortal wound which was the direct and immediate cause of his death thereafter.

Contrary to law.”[1]

Upon arraignment, both accused pleaded not guilty. After trial, the Special Criminal Court, Regional Trial Court of Manila, Branch 5 rendered a decision[*] dated 4 January 1989, the dispositive part of which reads:

“WHEREFORE, with the overwhelming evidence presented by the prosecution against both accused, this Court finds Roberto Bulalayao and Diosdado Domondon guilty beyond reasonable doubt of having conspired and confederated with each other in committing the crime of Robbery with Homicide and sentences them to suffer the penalty of LIFE IMPRISONMENT[**]; to pay the heirs of the deceased Jaime Lim the sum of Fifty-Thousand (P50,000.00) Pesos as damages; One Thousand Five Hundred Pesos P1,500.00) as pecuniary damages and to pay the costs.”[2]

Only Diosdado Domondon has appealed his conviction.

The factual findings of the trial court, as aptly summarized by the Solicitor-General in the appellee’s brief, and which we have verified to be supported by the records, are herein reproduced in full:

“On September 7, 1987, a passenger jeepney plying the Taft Avenue-Grace Park, “Monumento” route was hailed by Ofelia Lim and her brother Jaime Lim as the said jeepney passed by in front of the Philippine General Hospital. Ofelia sitted (sic) herself immediately behind the driver while Jaime sitted (sic) himself near

the door at the back of the jeepney. (pp. tsn, Apr. 27, 1988) The passenger vehicle continued with its journey when Grace Cua and her friends, after witnessing a concert of Basil Valdez, spotted the jeepney in Intramuros and boarded the same. (pp. 2-8, tsn, Jan. 26, 1988) As the jeepney traversed the road leading to Monumento, Rodolfo Ungsod, a cashier of the Department of Agriculture, hailed the jeepney in order to go home. (pp. 2-3, tsn, June 10, 1988)

The jeepney first took the route of Port Area then Sta. Cruz passing Avenida, Rizal. While the loaded jeepney was traversing near the corner of Avenida, Rizal and Pampanga Street, two men hailed the jeepney and boarded it. One sitted (sic) himself on the right side of the jeepney beside Ofelia Lim, while the other positioned himself at the back, standing at the running board. The jeepney continued its journey passing through Avenida, Rizal. Before reaching the corner of Aurora Boulevard, the man who was sitted (sic) beside Ofelia Lim who later turned out to be accused Diosdado Domondon, armed with a bladed weapon, shouted in a loud-clear voice saying, "This is a Hold-up." With drawn bladed weapon, Domondon collected assorted valuables of the passengers while accused Roberto Bulalayao, also with drawn bladed weapon, threatened the passengers as he stood on the jeep's running board. While the collection was going on, trouble ensued. Jaime Lim refused to part with his valuables and instead fought Bulalayao who was beside him. During the scuffle, accused Bulalayao stabbed Jaime Lim on different parts of his body. With the wounds suffered by Jaime Lim, his hold on accused Roberto Bulalayao weakened, and Bulalayao was able to extricate himself from his hold. Immediately thereafter, accused Roberto Bulalayao jumped out of the jeepney leaving his co-accused Diosdado Domondon. (pp. 4-7, tsn, Apr. 27, 1988) With the escape of his companion, accused Domondon followed suit and while in the process of getting out of the jeepney, Rodolfo Ungsod suddenly kicked Domondon by the seat of his pants resulting in Domondon being thrown outside the jeepney thru the backdoor and falling in the pavement. (pp. 11-13, tsn, June 10, 1988) With Jaime Lim still alive, the jeepney rushed to the Manila Central University Hospital. Immediately upon arrival, Jaime Lim was operated (on) but died inspite of all the efforts of the doctors. (pp. 6-7, tsn, Apr. 27, 1988).

Jaime Lim's cadaver was autopsied and the cause of his death was severe hemorrhage secondary to stab wounds of the chest (Exhibit D).

The body of Jaime Lim was first brought to the house of a cousin and later brought at 7170 B. Langoa St., Comembo, Fort Bonifacio, Makati. The family and relatives of the deceased observed a 15-day wake and buried him on October 4, 1987 in La Union. (pp. 7-8, tsn, Apr. 27, 1988) "[3]

Both accused testified in their own behalf and set up different defenses. Bulalayao's defense was alibi. He claimed that at the time of the incident, he was driving a tricycle owned by someone he only remembered as Mang Boy.

Domondon, on the other hand, claimed that he was also driving a tricycle near Avenida Rizal and Cavite Street when two (2) men hailed him and ordered him to bring them to Bulacan Street. Along the way, one of the passengers poked a bladed weapon at the right side of his body and told him to stop at a dark portion of the street. The two (2) men took his earnings for the day in the amount of P40.00 together with his wallet and were about to take his wristwatch when he was able to escape and run towards Avenida Rizal leaving his tricycle behind. At Avenida Rizal, he hailed and boarded a jeepney. However, the two (2) men who earlier held him up overtook him on the jeepney and boarded the same. One of them turned out to be accused Bulalayao who positioned himself at the jeepney's running board.

According to Domondon, upon seeing Bulalayao, he shouted "hold-up" in order to catch the attention of other jeepneys passing through the same route. He took off his wristwatch and was about to give it to Bulalayao when a man behind him wrestled with Bulalayao. Bulalayao stabbed the man he wrestled with who turned out to be Jaime Lim. Bulalayao extricated himself from Jaime Lim and jumped out of the jeepney. Because of the commotion, Domondon claimed he headed for the jeepney's exit. While on the way out of the jeepney, someone kicked him

from behind causing him to be thrown out of the jeepney. He fell on the pavement causing him to lose his consciousness. He allegedly regained consciousness on the following day at a garage in Oroquieta Street, a place where he used to hang around. Later, he was arrested and identified by the Barangay Captain to the police, where, in a police line up, he was identified by witnesses.[4]

This testimony of Domondon was about to be rebutted by his co-accused Bulalayao, when the latter requested thru counsel that he be recalled to the witness stand to give his version of the incident. There being no objection, Bulalayao's request was granted by the trial court. While on the witness stand, accused Bulalayao abandoned his earlier defense of alibi and admitted having committed the crime with a new twist: that Domondon was innocent and had nothing to do with the crime. Bulalayao also admitted that he was in the company of another man that held-up Domondon, and took his money and wallet. He further stated that it was he who stabbed and killed Jaime Lim and absolved Domondon of any participation in the robbery and killing.[5]

Domondon, as aforesaid, has appealed the decision of the trial court and assigns a single error allegedly committed by the trial court, to wit:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT (DOMONDON) GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE AND ORDERING HIM TO PAY THE HEIRS OF THE DECEASED P1,500.00 AS PECUNIARY DAMAGES DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE CRIME OF ROBBERY.

Appellant Domondon prays that the decision of the trial court dated 4 January 1989 be modified in the sense that he should be convicted only of the crime of homicide (not robbery with homicide).

The Solicitor General, in the appellee's brief, while agreeing with appellant Domondon that the crime of consummated robbery was not proven by the prosecution beyond reasonable doubt, contends that the evidence for the prosecution has nonetheless clearly established that appellant Domondon should be held liable for attempted robbery with homicide under Art. 297 of the Revised Penal Code which provides:

"Attempted and Frustrated robbery committed under certain circumstances - when by reason or on occasion of an attempted or frustrated robbery a homicide is committed the person guilty of such offenses shall be punished by reclusion temporal in its maximum period to reclusion perpetua unless the homicide committed shall deserve a high penalty under the provisions of this Code."

It would appear that appellant Domondon's plea to be convicted of the crime of homicide, and not of robbery with homicide, runs counter to his feign of innocence before the trial court and to the evidence that showed that it was his co-accused Roberto Bulalayao, who actually stabbed and killed Jaime Lim on the occasion or as a result of the robbery which they both conspired to perpetrate on that night of 17 September 1987. Curiously, appellant Domondon confesses guilt to the lesser crime of homicide even if he was not the actual assailant while his co-accused Bulalayao, who did not appeal his conviction, will suffer the harsher penalty for robbery with homicide.[***]

To support his contention, appellant Domondon points to the variance between the allegation in the information and the testimony of Rodolfo Uingsod y Purificacion, the alleged victim of the robbery. The Information alleges that:

"x x x to wit: by brandishing their bladed weapons and announcing it was a hold up take, steal and carry away one (1) Men's Seiko 5 wrist watch, square, automatic, gold plated including bracelet valued at P1,500.00, belonging to Rodolfo Uingsod y Purificacion x x x. (underscoring supplied)[6]"

On the other hand, the testimony of Rodolfo Uingsod revealed that:

“Q

Now, Mr. Witness, after Domondon and Bulalayao stage that hold-up, there was (sic) no personal belongings that was (sic) taken from among the passengers?

A

None, sir.

Q

And in fact there was (sic) no personal belongings that was (sic) taken from you, is that right?

A

None, sir.” (underscoring supplied)[7]

Ofelia Lim, another eyewitness to the event, testified that:

“Q

When Domondon started collecting watches from the passengers, did he ask anything from your brothers?

A

No, sir.

Q

You mean, his two arms were empty?

A

Yes, sir.

Q

Do you know how many watches did Domondon was able to (sic) collect from the passengers?

A

One only, sir.

Q

Do you know to whom among the passengers the watch belong? (sic)

A

No, sir.

Q

Aside from the watch, was Domondon able to get other valuable things?

A

No more, sir.”[8]

xxxx xxxx xxxx

Q

And you will agree with me also Mrs. Witness, that you did not witness to any among the passenger jeepney that they were divested by their valuables because you were frightened by that announcement of that hold-up, is that right?

A

I saw one of the passengers being divested of one watch.

Q

And you remember the name of that passenger, is that right?

A

No, sir.”[9]

To the same effect was the declaration of another passenger-witness Grace Cua:

“Q

So, you do not know what was transpiring to the passengers while you were bowing your head to the floor?

A

While I was bowing my head, I saw an arm was stretched and took the watch of one passenger. Although, I was bowing my head, I did not close my eyes. Even you, you can experience that. But I was not sure, but I just state (sic) there was an arm (sic) and took the watch from one passenger.”[10]

In the case of *U.S. vs. Lahoy Lahoy and Madanlog*,[11] this Court laid down the rule that an accused cannot be convicted of the complex crime of robbery with homicide if there exists a variance between the allegation in the information and proof as to the ownership of the property taken. The Court then rationalized that:

“From the fact that the name of the injured person may, in case of necessity be alleged as unknown it should not be inferred that the naming of such person, when known is of no importance. Where the name of the injured party is necessary as a matter of essential description of the crime charged, the complaint must invest such person with individuality by either naming him or alleging that his name is unknown-(Wharton, Criminal Pleading and Practice, 9th ED. Secs. 111, 112). It is elementary that in crimes against property, ownership must be alleged as matter essential to the proper description of the offense.

To constitute larceny, robbery, embezzlement x x x obtaining money by false pretenses, malicious mischief, etc. the property obtained must be that of another, and indictment for such offense must name the owner and a variance in this respect between the indictment and the proof will be fatal. It is also necessary in order to identify the offense.” (Clark’s Criminal Procedure, p. 227, p. 337)[12]

In charging the complex crime of robbery with homicide, the information should charge each element of the complex offense with the same precision as if the two (2) constituent offenses were the subject of separate prosecutions. Where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted of the offense proven.[13]

In the present case, there appears to be no conclusive evidence proving the physical act of asportation by the appellant, inasmuch as the testimonies of the prosecution witnesses have adequately shown that no personal belongings were taken from them, and that the alleged wristwatch that was stolen was not submitted in evidence. The fact of asportation was not therefore established beyond reasonable doubt.[14]

In other words, the records show that the robbery was not consummated but was limited to its attempted stage by reason of some cause or accident other than the appellant's spontaneous desistance. The established fact is that it was Domondon who announced the "hold-up" while carrying a bladed weapon. This leaves no room for the mind to doubt that robbery was his purpose. "The requisite criminal design to rob, determined by his acts, prior to, contemporaneous with, and subsequent to the commission of the crime was duly proven." [15]

As the trial court in this case correctly observed:

" x x x Once on board the jeepney, the two positioned themselves in strategic places and Domondon suddenly whipped a bladed weapon and in a threatening manner shouted, "This is a hold up, and started collecting the valuables of the passengers inside the jeep. Bulalayao's jumping out of the jeepney followed by Domondon and the latter being kicked at the seat of his pants causing him to be thrown outside of the jeepney and falling on the pavement are clear proofs that accused Domondon was in conspiracy with accused Bulalayao in the hold-up, and the role which Domondon played was to threaten with a bladed weapon the passengers inside the jeepney and collect the passenger's valuables." (underlining supplied) [16]

The Court also notes that Bulalayao's admission of guilt as the lone author of the crime was a belated attempt to cover-up for his co-accused, herein appellant Diosdado Domondon. The trial court observed that Bulalayao first made it appear before the court that he was set to rebut the testimony of Domondon. On the witness stand, he made a sudden change of heart by admitting all the allegations of his co-accused. The admission was not however supported by competent evidence. Indeed, the assumption of full criminal responsibility by accused Bulalayao appeared to be a mere afterthought and cannot be given serious consideration. [17]

The foregoing considerations together with the evidence on record lead to no other conclusion than that appellant Diosdado Domondon commenced the commission of a felonious taking of personal property belonging to the passengers of the jeepney, by brandishing a bladed weapon to intimidate and cow said passengers into fear for their lives. The robbery would have been complete were it not for the resistance exerted by Jaime Lim which led to his untimely demise.

Under Art. 297 of the Revised Penal Code, the imposable penalty for attempted robbery with homicide in the absence of any mitigating or aggravating circumstances, is the higher half of the maximum period of reclusion temporal or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.

WHEREFORE, the decision appealed from is hereby modified and appellant Diosdado Domondon is hereby found guilty of the crime of Attempted Robbery with Homicide. Applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal maximum, to indemnify the heirs of Jaime Lim the amount of P50,000.00 as death indemnity; P10,000.00 representing expenses for funeral, burial and wake; and to pay the costs. SO ORDERED.

Narvsa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

[1] Rollo, p. 3

[*] Penned by Judge Felix B. Mintu

[**] Under Art. 294, par. 1 of the Revised Penal Code, the penalty for Robbery with Homicide is reclusion perpetua to death, not life imprisonment. Life imprisonment is not synonymous with reclusion perpetua. There is no penalty of life imprisonment in the scheme of penalties under the Revised Penal Code; (See *People vs. Baguio*, 196 SCRA 459; *People vs. Samillano*, 207 SCRA 50)

[2] Rollo, p. 20

[3] Rollo, pp. 76-77

[4] TSN, 16 November 1988, pp. 1-20

[5] TSN, 23 November 1988, pp. 2-5

[***] Robbery with homicide carries an imposable penalty of reclusion perpetua to death. Homicide carries an imposable penalty of reclusion temporal.

[6] Rollo, p. 3

[7] TSN, pp. 22-23, 10 June 1988

[8] TSN, p. 6; 27 April 1988

[9] TSN, p. 8; 14 July 1988

[10] TSN, p. 9; 10 February 1988

[11] 38 Phil. 330 (1918)

[12] Ibid.

[13] U.S. vs. Lahoy Lahoy, 38 Phil. 330 (1918); People vs. Pacala, 58 SCRA 370; People vs. Cruz, 133 SCRA 426

[14] People vs. Lapan, 211 SCRA 337; People vs. Espera, 175 SCRA 729; People vs. Puloc, 202 SCRA 179 (1991); People vs. Patricio, 79 Phil. 227 (1947)

[15] People vs. Guiapan, 129 SCRA 539, at 553 (1984)

[16] Rollo, p. 20

[17] Ibid.

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