

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO IZON ALIAS FRANKIE, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 10397. October 16, 1958

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10397/>

MONTEMAYOR, J.:

Francisco Izon alias Frankie, Buena Saldariaga alias Ben, Adriano Dagundong alias Andring, Rustico San Miguel alias Rotec, Francisco Robles, Jr. alias Kikoy, Rodolfo Plomantes alias Rody, and John Doe alias Tony who later turned out to be Antonio Eugenio, were charged in the Court of First Instance of Rizal with frustrated robbery in band with homicide. All pleaded not guilty. The case was dismissed as to Antonio Eugenio for lack of identity and insufficiency of evidence. San Miguel was discharged before the trial and utilized as a state witness. After trial, Saldariaga, Plomantes and Robles, Jr. were found guilty of frustrated robbery in band with homicide under Article 297 of the Revised Penal Code and were sentenced each to reclusion perpetua. Dagundong and Izon were found guilty of frustrated robbery in band with murder, under the last part of the same article, and were both sentenced to death. All the defendants were ordered to jointly and severally indemnify the heirs of the deceased Gualberto Pimentel in the amount of P6,000, to suffer the accessory penalties prescribed by law, and to pay costs.

Only Dagundong, Robles and Izon appealed the decision. Dagundong does not question the finding of the trial court as to his participation in the commission of the crime. All that he claims is that he is guilty only of the crime of frustrated robbery with homicide with the aggravating circumstance of nighttime, compensated by the mitigating circumstance of voluntary surrender and, therefore, he should be sentenced to an indeterminate penalty ranging from IS years, 8 months and 1 day to 20 years.

The compound of the Colgate-Palmolive Peet (Phil.) situated at the Corner of the national road and Kaingin Street in Pasig, Rizal, was the scene of a frustrated robbery accompanied by the killing of one of the security guards, a little after midnight of August 14, 1954. About two weeks before said date, Izon accompanied by Robles, went to the house of San Miguel, situated about fifty meters from the company compound. About ten minutes later, Saldariaga arrived at the same house. In the presence of Robles, Izon and Saldariaga made the proposal to San Miguel to rob the Colgate-Palmolive compound. San Miguel demurred, saying that it would be quite hard to do so because the company compound was well guarded, to which Izon and Saldariaga replied that he should not worry about the guards because they would be taken care of. A week thereafter, Saldariaga returned to the house and told San Miguel that Izon wanted him to call at the latter's house the following day to discuss the details of the plan of the robbery. San Miguel, however, told Saldariaga that he was not interested in the plan. In the morning of August 14, the day of the robbery, San Miguel went to fish at the estero or canal, some distance from the street along the side of the Colgate-Palmolive compound. After fishing, he met Saldariaga who asked him why he did not go to the house of Izon. About eleven o'clock in the evening, Saldariaga came to the house of San Miguel to remind him of the plan to rob the company compound and for him (San Miguel) to be at the premises about 11:30. About midnight, San Miguel, evidently decided to participate in the planned robbery, went near the fence of the

compound, and there he met Saldariaga and Izon, the latter reproaching him for not coming earlier. Plomantes and Dagundong were already inside the fence of the compound. The inside of the compound was well lighted. Shortly, thereafter, Perfecto Ranara, one of the company's security guards, was seen walking toward Outpost No. 2. He was in uniform with a shotgun slung over the shoulder and carrying a punch clock which he was supposed to punch at the outpost. After Ranara had reached the outpost, Plomantes and Dagundong, who had previously been warned by their companions of the guard's coming, and had taken precautions not to be seen, stealthily approached him from behind and threatened him to death if he made any false move, Dagundong poking a .38 caliber nickel plated pistol, Exhibit M, behind his neck and Plomantes doing the same with his hunting knife, Exhibit P. Under the threat, Ranara meekly permitted himself to be led outside of the compound to a marshy place covered with tall grass. There he was stripped of his uniform, relieved of his shotgun, hog-tied and made to lie down on his stomach. Plomantes now carrying the guard's shotgun went to join his companions Izon, Saldariaga and San Miguel outside the fence, while Dagundong remained to guard Ranara. Plomantes asked his companions to relieve Dagundong, because he could not well guard Ranara, not knowing how to handle a shotgun, but Izon and San Miguel declined, saying that they were well known to Ranara. So, Plomantes returned to where Ranara was being guarded and shortly thereafter, Dagundong, carrying the nickel plated pistol and now dressed in the uniform of the guard, came saying that he had left Plomantes to guard Ranara. Thereafter, Izon who all along acted as the leader of the group, instructed Saldariaga to enter the fence and break into the warehouse where the finished products of the company, such as, soap, toothpaste, etc., were kept. With the aid of an iron bar, Saldariaga raised the lower end of the wire fence and crawled under it, and upon reaching the side of the warehouse, he jumped up and with the crowbar broke the glass pane of one of the windows. He then called Izon to help him climb through the window. Izon entered the fence and boosted and raised Saldariaga who inserting his hand through the broken window pane, was able to unlatch the window open and climbed through it into the warehouse.

Thereafter, Izon instructed Dagundong to enter the fence and watch for the other security guard. After about a quarter of an hour, the other security guard, Gualberto Pimentel, also carrying a shotgun slung over his shoulder was seen walking toward the same outpost or guardhouse No. 2 and calling out the name of his companion Ranara. Dagundong who was already inside the compound, hid himself behind the guardhouse and when Pimentel about reached that place, Dagundong suddenly emerged from his hiding place, pointed his nickel plated .38 caliber pistol at him, placed his left hand on Pimentel's right shoulder over which the shotgun was slung, and ordered him to raise his hands—"Taas ang kamay." It would appear that Pimentel made a move to brush aside or actually removed Dagundong's left hand placed over his shoulder, and Dagundong, presumably considering this as a show of resistance shot him in the abdomen. Pimentel fell forward and died not long afterwards.

Upon hearing the shot, somebody, presumably one of the malefactors shouted—"Takbo na kayo!" Saldariaga who was in the warehouse, lost no time in leaving the same. Izon and San Miguel took to their heels and even Plomantes who was guarding Ranara left his charge in a hurry. Ranara realizing that he was no longer guarded, was able to untie himself, hurried to the compound and called for help. The police soon arrived and they found Pimentel already dead. Beside his body was found an empty .38 caliber shell, Exhibit P-1.

In the morning, the nickel plated pistol, Exhibit M, was found not far away, half submerged in water. In the course of the autopsy by Dr. Drion of the body of Pimentel, he found a .38 caliber slug or bullet, Exhibit P, lodged in the abdominal wall. Ballistic experts assured the trial court that said slug and the empty shell were fired from the nickel plated pistol, whose serial number showed that it belonged to defendant Robles. Employees of the company found toiletries kept in the warehouse, removed from the stockpile and scattered beneath a window which had been forced open.

Saldariaga, Plomantes and Dagundong each gave an extrajudicial statement or declaration, Exhibits Y, AA and CC, respectively, giving an account of the conspiracy to rob the Colgate-Palmolive compound as well as the manner it was carried out, though not successfully. They implicated Robles who according to them not only took part in the conspiracy, but also was present during the commission of the robbery with homicide. On the basis of these extrajudicial confessions or declarations, and because of his ownership of the pistol with which Dagundong shot Pimentel to death, Robles as already stated, was found guilty of frustrated robbery in band with homicide.

In the course of the trial, defendants Izon, Saldariaga, Dagundong and Plomantes presented as a witness Jose Torres, an inmate of the New Bilibid Prison, who testified that early in the morning of August 15, 1954, he was at the Colgate-Palmolive compound with Federico Patnugot and Jose Yumul for the purpose of robbing the said compound. He said that they entered the fence and that thereafter, he saw a guard approaching and whom he threatened with his pistol and was able to lead out of the compound to be guarded by Patnugot; that he (Torres) returned to the compound where he met the other guard whom he also threatened with his pistol and that when the guard reached for his firearm, he shot him. He did not know whether he hit the guard, but the latter struck him with the butt of his shotgun after which they grappled; then the guard fell down, after which he (Torres) ran away without accomplishing his purpose to rob. This Jose Torres, a convict, made a vain attempt to assume all responsibility, evidently to shield all the accused in the case.

We agree with the trial court that his testimony does not deserve serious consideration. Said the trial court on this point:

"This Court cannot give any credence or weight to the testimony of Jose Torres, who, in a desperate attempt to come to the rescue of the accused, confessed in open court that it was he, with Federico Patnugot and Jose Yumul, who committed the crime charged in the information. The Court failed to detect the ring of truth in this testimony nor can the Court find earmarks of sincerity in the same that even the lawyers who presented him did not elaborate on his testimony. As a matter of fact, the accused Francisco Robles, Jr. did not even adopt his testimony as a part of his defense. What prompted Jose Torres for giving such self-incriminating testimony only he knew. At any rate, the Court finds his testimony highly unbelievable, and he impresses the Court as one belonging to that kind of witnesses who would stop at nothing to pollute truth. Not even the defense was impressed by his sincerity as borne out by the fact that the lawyers for the defense who presented him as their witness, hurriedly dismissed him."

We also quote with approval the comment of the Solicitor General on this same point:

"This witness, Muntinglupa prisoner, voluntarily testifying for all defendants except appellant Kobles, confessed that he and two other companions (Federico Patnugot and Jose Yumul) were the ones who committed the crime in question (pp. 1, 2, t.s.n., July 22, 1955). His- testimony, however, is nothing but contradiction and insincerity. It is belied by the very physical condition of the robbed premises discovered subsequent to the perpetration of the crime. While Torres said he and his two companions were unable to reach the warehouse, having been met by a guard on the way (p. 6, t.s.n., July 22, 1955), the window of this building was found by the investigators to have been forced open and the articles therein in disorder, showing that someone else must have succeeded in entering the said warehouse. Torres could not even describe what kind of gun he wielded that night and when pressed on this point he was evasive and merely said that it was a 'small gun' (p. 5, t.s.n., July 22, 1955). Having stayed together in detention in the Pasig provincial jail with the four defendants (Dagundong, Saldariaga, Plomantes, and Izon) from August, 1954 until February, 1955, and talked with them about the crime while in confinement (p. 6, t.s.n., July 22, 1955), it is indeed not remote that this witness would have agreed with all the said four defendants or some or one of them that he would assume criminal responsibility for the crime for some consideration; otherwise he would not have risked his own neck for a crime so grave as the one at bar. And while he said that he had never conferred with any lawyer on this matter (p. 7, t.s.n., July 22, 1955), the records show that the subpoena issued to him was at the instance of

Dagundongs lawyer, Atty. Norberto C. Ponce, Jr. (p. 293, rec.), a circumstance which either belies his statement or is confirmatory of an understanding he had at least with Dagundong.

"It is significant that appellant Izon (should be Robles) did not avail of this witness in his defense. As we gather from his brief, he believes that Torres is a fake witness and his co-defendants are the real culprits (p. 55, Robles' brief).

"In any event, evidence of this kind is 'one that could easily be invented without danger of contradiction and is not free from suspicion.' (People vs. Diwa, et al., 89 Phil., 170), and 'insufficient to offset the evidence for the prosecution, or even to create a reasonable doubt on appellants' guilt.'" (People vs. Samaniego, 95 Phil., 218; 50 Off. Gaz. 2433, 2439)."

As regards the appeal of Robles, after examining the record, including the able brief filed on his behalf, frankly, we have our doubts about his guilt. It may be that he was present at the house of San Miguel when Izon and Saldariaga made the proposal to rob to San Miguel. But it is significant that throughout the whole proposal and discussion, Robles uttered not a word either of approval or disapproval. There are authorities to the effect that mere presence at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

"Knowledge without participation"

"Mere knowledge or approval, without participation, does not make one a party to a conspiracy.

"The rule laid down in Corpus Juris, which has been quoted and cited with approval, is that mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose." (15 C.J.S. 1062).

It will be remembered that neither Rañara, the security guard who was subdued and hog-tied, nor San Miguel who was present at the commission of the crime and who saw all those who were present, testified as to the presence of Robles. The only evidence linking Robles to the crime was in his ownership of the pistol, Exhibit M. It is possible that he loaned it to Dagundong to be used in the commission of the crime. It is equally possible also that as claimed by him during the trial, he lost it on August 11, about three days before the robbery was committed. As a matter of fact, he reported the loss to Lt. Andres Reyes of the Makati police on August 12, 1954. Under the circumstances, there is room for doubt, and every reasonable doubt should be resolved in favor of the accused. It is true that Corporal Gregorio Aberia of the Makati police testified that in the evening of August 14, 1954, he was with Robles in a bus and that Robles told him in the presence of Corporal Constantino that he was going to the house of Izon to get "reserved bullets." We are not inclined to give credence to this testimony. If Robles was really one of the conspirators and he was making preparations for the commission of the crime to be staged a few hours later, by getting more ammunition for his revolver, it was not likely that he would tell anyone about said bullets, much less to a peace officer of the very locality where the robbery was to be committed, and in the presence of another peace officer, Corporal Constantino, and not in a whisper, to keep it a secret, but in a loud voice, for the other bus passengers to hear. Criminals about to perpetrate a crime, involving the use of a gun do not usually act in this manner.

With respect to the extrajudicial confessions of Dagundong and Saldariaga, Exhibits CC and Y, respectively, linking Robles not only to the conspiracy, but also to actual participation in the commission of the crime, both the trial court and the Solicitor General, to render said extra-judicial declarations binding on Robles, rely on the following doctrine:

"While a defendant's extrajudicial declaration is generally admissible only against him and not against a

co-defendant, it has already been held that when, as in the instant case, the extrajudicial declarations of several co-defendants charged with a conspiracy are secured without collusion and materially identical and confirmatory of a judicial confession by another defendant, the same are admissible against all the other defendants. (People vs. Go, et al., supra, citing People vs. Badilla, 48 Phil. 718, 725-726)"

It will readily be noticed from the above-quoted doctrine, however, that in order that an extrajudicial declaration of a conspirator shall apply and bind a co-conspirator, it is necessary that said declaration be confirmed by the testimony in court of a co-conspirator. The only con-conspirator who testified in court about the conspiracy and about the actual perpetration of the crime was San Miguel. He did not say that he saw Robles taking part or even being present at the scene of the crime when the same was committed. On the contrary, he told the court that he did not see Robles. Consequently, the extrajudicial declarations, Exhibits CC and Y cannot bind Robles, for the reason that they do not confirm or strengthen any judicial declaration.

Moreover, although his co-defendants Izon, Saldariaga, Dagundong and Plomantes presented Jose Torres, a false witness, to deceive the court and lead it to believe that it was he and not the defendants who committed the crime of robbery with homicide, Robles alone disdained such subterfuge and underhanded tactics, presumably convinced and satisfied that could legally clear himself of the unfounded charge; all this, in addition to the defense of alibi which he interposed. In all conscience, we are not prepared to find that Robles' guilt has been established beyond reasonable doubt.

The trial court found the crime committed to be frustrated robbery in band with homicide. The Solicitor General believes that the robbery was not in band for the reason that only three of the culprits were armed, the arms being one pistol, one hunting knife and one crowbar. We agree with the Solicitor General. The trial court also found Izon and Dagundong guilty of frustrated robbery in band not with homicide, but rather with murder. Again the Solicitor General disagrees, and we believe that he is right. The killing cannot be qualified with treachery. The assault upon Pimentel by Dagundong was face to face. Both were armed and if Dagundong shot Pimentel, it was because at least he thought that the latter offered resistance.

The trial court found the presence of five aggravating circumstances, namely, nighttime, with the aid of armed men, use of superior strength, with the aid of motor vehicle, and with evident premeditation, and as to Izon, that of having taken advantage of his public position, being a member of the Makati police at that time. The Solicitor General disagrees in part, claiming that the last three aggravating circumstances were not present, first, because only one man (Dagundong) attacked and shot the deceased to death; second, that there is no sufficient proof that a motor vehicle was ever used; and third, because premeditation is inherent in the commission of robbery, and because in the killing of Pimentel, there had been no evident premeditation for the reason that the plan was merely to rob the Colgate Palmolive compound and incidentally to dispose of any resistance on the part of the guards. We agree with the Solicitor General that as regards the aggravating circumstance of premeditation, the record shows that there was no intention on the part of the conspirators to kill any of the guards and the shooting perpetrated by Dagundong was unexpected, and surely not a part of the conspiracy, because as a result of the shooting, the conspirators had to escape from the compound without carrying out their plan of robbery. It will be remembered that guard Ranara was not harmed. We also agree as to the absence of the aggravating circumstances of use of a motor vehicle and use of superior strength.

Dagundong claims the mitigating circumstance of surrender. Despite the objection of the Solicitor General, we are inclined to find in Dagundong's favor, but unfortunately for him, it would not do him any good because there are the two other aggravating circumstances of nighttime and with the aid of armed men, and the mitigating circumstance offsetting only one of them, there still remains one aggravating circumstance against Dagundong, which justifies the imposition of the penalty in its maximum degree.

We agree with the trial court that Dagundong and Izon are the most guilty. There was no necessity for the killing of Pimentel. Had the accused used more discretion and calmness, they could have disposed of Pimentel in the same manner that they had threatened and cowed Rañara; but as the trial court said, Dagundong was one who could be called trigger-happy, and without perhaps realizing the fatal consequences of his impulsive act, he fired his pistol point blank at Pimentel. As to Izon, there is no question that he was the leader of the conspirators. He not only made the proposal to commit the robbery to San Miguel but also directed and supervised the manner the robbery was to be carried out, giving instructions to his companions but taking precautions so as not to be seen by the security guards who evidently knew him. Not only this, but at the time, he was a member of the Makati police. He was a peace officer charged with the prevention or detection of crime and the capture of criminals; but faithless to his trust and sworn duty as such peace officer, he not only thought up the scheme to rob, but led and directed his co-conspirators to commit the same, though unsuccessfully. It is to be deplored that under the circumstances, he cannot be given a higher penalty than that meted out to his co-accused. By this act, he has definitely forfeited his right to serve the Government and society as a public officer, specially as a peace officer. Of all the accused, found guilty and convicted, he and to a lesser degree, Dagundong, are the least deserving of executive clemency.

In view of the foregoing, we find and hold that the guilt of Francisco Robles, Jr., alias Kikoy, has not been established beyond reasonable doubt, and he is hereby acquitted with his proportionate, part of the costs de officio. Appellants Francisco Izon alias Frankie and Adriano Dagundong alias Andring are found guilty of frustrated robbery with homicide with the aggravating circumstances of nighttime and with the aid of armed men and sentenced to life imprisonment, with the accessories of the law. In all other respects, the appealed decision is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.