

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EUGENIO OLAES, ACCUSED AND APPELLANT.

G.R. No. 11166. April 17, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Defendant-appellant Eugenio Olaes, together with Cosme Isip and Bienvenido Dayuta, who were then at large and five other men, unidentified and also at large, were accused of the crime of attempted robbery with homicide and frustrated homicide before the Court of First Instance of Rizal. Olaes was the only one who stood trial, after which he was found guilty of robbery with homicide and frustrated homicide and sentenced as follows:

"WHEREFORE, the accused Eugenio Olaes is hereby declared guilty of robbery with homicide and frustrated homicide defined and penalized in Article 294, Case No. 1, Revised Penal Code. Although the crime was attended by the aggravating circumstances of nocturnity and in band, in view of the attitude of the Chief Executive on death penalty, the accused is hereby sentenced to life imprisonment, to indemnify the heirs of Maria Argame in the sum of P6,000 without subsidiary imprisonment in case of insolvency, and to pay the costs. In the service of his sentence, the accused should be credited with one-half of the period of preventive imprisonment suffered by him since January 24, 1955."

Because of the penalty imposed, the appeal of Olaes was taken directly to this Court.

The facts in this case as established by the evidence and found by the trial court are the following: Between 4:00 and 4:30 a.m. of November 9, 1954, Bus No. 64 of the Laguna Transportation Company, driven by one Feliciano Limosnero, with one conductor, left the town plaza of Biñan, Laguna, bound for Manila. Among the passengers were Mariano Inobio, a resident of Bo. Almanza, Las Piñas, Rizal, Maria Argame and Elena Loyola. When the bus reached the curve in Bo. Almanza, Las Piñas, a man later identified by passenger Inobio as Cosme Isip, holding a rifle or carbine, suddenly appeared on the right side of the road and signalled the bus to stop. Limosnero, taking him for a prospective passenger, applied his brakes and slowed down, but before the vehicle could come to a complete stop, seven other men, also carrying guns, such as, garands or carbines, emerged from the left side of the road. Isip shouted, "Para, pasok!" The appearance of these armed men on both sides of the road must have affected the equanimity of Limosnero on the wheel, and he must have forgotten to press the clutch with his foot, resulting in the engine stalling or stopping. Probably convinced that the eight men were not passengers but were bent on holding-up the bus and robbing the passengers, Limosnero started the engine and sped away from the place despite the shouts of the men on both sides of the road for him to stop. Those men immediately commenced firing at the bus which was riddled with bullets.

One of the shots grazed the head of Limosnero. Another shot hit passenger Maria Argame on the back, the slug penetrating the abdominal wall and entering the abdominal cavity. Still another shot struck passenger Elena Loyola on the shoulder, fracturing her right clavicle. When the bus was out of range of the guns of the eight men on the road and they had ceased firing, passenger Inobio on rising from his prone position in the bus, saw driver Limosnero's wound on the head, which was bleeding profusely, the blood dimming his vision, and so he took over

the wheel. On reaching Zapote, an inspector of the Laguna Transportation Company took over the wheel from Inobio and drove the bus straight to the Las Pinas Municipal Building where the incident and shooting was reported to the police. Thereafter, the same bus, with a police officer, drove straight to Manila and to the Philippine General Hospital. Maria Argame was pronounced dead on arrival. The fracture of the right clavicle of Elena Loyola necessitated an operation, which was performed, and she was confined in the hospital for about twenty days, after which she was discharged, though she was not completely recovered, to continue treatment at home. The expert testimony on her condition is that if she had not been given prompt medical attention, she would have died from her wound. Driver Limosnero was treated at the same hospital for his head wound and was released, but treatment was continued by the bus company for about a month.

During the trial, passenger Inobio, star witness for the Government, told the court that he clearly identified the person standing on the right side of the road, who signalled the bus to stop and who cried out "Para, pasok!" as Cosme Isip. Inobio also said that among the seven armed men who emerged from the left side of the road and who fired at the bus when it sped away, he saw and clearly identified defendant-appellant Olaes, because he is a barriomate, both of them being residents of Bo. Almanza, Las Piñas and that Olaes was then carrying a gun, either a garand or a carbine.

Appellant Olaes at the trial insisted that he was not in the group of men that supposedly tried to hold up the bus, much less was he seen by Inobio because in the course of the investigation made by the municipal police and the Philippine Constabulary, on two occasions when he was present, and while Inobio was making statements to the authorities, Inobio never mentioned his name much less pointed to him. The evidence, however, shows that the failure of Inobio to point to appellant as one of the supposed hold-uppers and who stopped the bus was because of fear of reprisal, believing that Olaes was a dangerous character. Appellant also tried to establish a motive or reason for Inobio's accusing him. We quote with favor the pertinent portions of the decision of the trial court on this point:

"He (Olaes) further averred that a poljeeman from Las Pinas investigated the holdup at 7:30 o'clock in the morning of November 9; that during the questioning of Inobio, Inobio never implicated him, although he was present for some twenty minutes; that at around 1:00 p.m. while on his way home, he met a PC team investigating the crime headed by then Lt. Ver, whom he led to the house of Mariano Inobio; that in the course of the questioning of Inobio which lasted for about half an liour, Inobio never made mention of his (accused's) name and told the PC that he did not recognize the persons who attempted to waylay the bus and hold-up its passengers. When asked for a possible motive why Inobio should testify against him the way he did, the accused narrated that in May, 1954, he tried to pacify and separate Inobio and Dayuta who were quarreling; that as Inobio struggled against him, he encircled Inobio's neck with the arm; that Inobio resented this and accused him of siding with Dayuta; that shortly, Inobio left muttering, "Your day of reckoning will come; you will pay for this"; that from that time on, he and Inobio had strained relations.

"* * * * *

"Much stress is laid on Inobio's failure to pinpoint Olaes during the investigation conducted by Lt. Ver of the PC at 2:00 p.m., November 9, 1954. But as explained by Inobio, he did not point to Olaes who was there present as he was afraid of reprisal against himself and members of his family. Indeed, two hours later, and feeling secure in the municipal building, he revealed the names of Eugenio Olaes, Bienvenido Dayuta and Cosme Isip to the chief of police of Las Piñas.

"Moreover, PC Capt. Ver testifying on rebuttal declared that when he questioned Inobio in his house, in the presence of Olaes, Inobio appeared nervous; that he took him upstairs and during the interrogation, a PC detachment commander investigating the same offense came and advised him (Ver) that Inobio already revealed to him that morning that Olaes was among the hold-uppers; that at this juncture, Inobio informed him

(Ver) that that man was his guide and companion who remained downstairs; that when they looked at the place where they had left Olaes, the latter was nowhere to be found, having slipped away unnoticed."

Defendant-appellant also interposed the defense of alibi. We also reproduce that portion of the decision of the trial court on this point.

"The defense of alibi must be clearly and satisfactorily proven (*People vs. Limbo*, 49 Phil., 94). The testimony of the accused that he slept in the house of his father or brother on the night of November 8 does not preclude the possibility that he woke up at, say 3:00 or 4:00 o'clock in the early morning of the next day and joined the band of armed men who at 4; 30 were frustrated in their nefarious plan to waylay the bus and rob its passengers, considering the fact that the houses of his father and brother are situated in the same barrio where the crime was committed (See *People vs. Palamos*, 49 Phil., 601). Moreover, the father and/or brother of the accused were available to him at all times to testify in his behalf and corroborate his alibi that he slept in his house that night. This was not done and no plausible explanation given why these corroborative witnesses were not presented (*People vs. Pili*, 52 Phil., 965)."

After a careful study of the case, we fully agree with the trial court that defendant Eugenio Olaes is guilty. However, it will be remembered that the charge against him was for attempted robbery with homicide and frustrated homicide. Under this charge, as the Solicitor General well said, he may not be convicted of consummated robbery with homicide as the trial court did. Moreover, we agree with the prosecution that inasmuch as no overt acts pointing to robbery or even an attempt thereof have been established, the killing of one passenger and the wounding of two others should be considered as plain murder, frustrated murder, and physical injuries respectively.

The trial court found that the aggravating circumstances of nocturnity and in band, there being more than three armed men in the group of malefactors, attended the commission of the crimes. The aggravating circumstance of in band may be considered to qualify the act of killing of Maria as murder, and the wounding of Elena as frustrated murder. The evidence for the defense was to the effect that appellant surrendered to the authorities when he found out that he was wanted by the constabulary. This was not refuted by the prosecution and so, it can be regarded as a fact. This mitigating circumstance will compensate the other aggravating circumstance of nocturnity. The penalty for murder which, is reclusion temporal in its maximum degree to death, should therefore be imposed in its medium period, namely reclusion perpetua, so that in the result, we agree with the trial court as to the penalty imposed by it.

However, we disagree with the lower court as to the reason given by it in imposing the penalty in its medium degree, namely, that "although the crime was attended by the aggravating circumstances of nocturnity and in band, in view of the attitude of the Chief Executive on death penalty", the accused was sentenced only to life imprisonment. Without attempting, even desiring to ascertain the veracity or trueness of the alleged attitude of the Chief Executive on the application of the death penalty, the courts of the land will interpret and apply the laws as they find them on the statute books, regardless of the manner their judgments are executed and implemented by the executive department. By doing so, the courts will have complied with their solemn duty to administer justice. Until the Legislature sees fit to repeal or modify the imposition of the extreme penalty, the courts will continue to impose the same when the facts and circumstances in a case so warrant.

For the crime of frustrated murder, appellant is hereby sentenced to not less than six (6) years of prison correctional and not more than fourteen (14) years of reclusion temporal, with the accessories of the law.

As to the physical injuries, the evidence shows that the period within which the injuries on the head of Limosnero were treated was less than 30 days, for which reason, the offense as to him should be considered as less serious physical injuries. For this, appellant is hereby sentenced to three (3) months of arresto mayor.

In view of the foregoing, with the modifications above indicated, the appealed decision is hereby affirmed, with costs.

Paras, C. J., Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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