

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SALAMUDDIN NO. 1, PANGILAN, LAJIM, IMADI AND IGASAN, DEFENDANTS AND APPELLANTS.

G.R. No. 29896. January 24, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This appeal was taken from the judgment of the Court of First Instance of Jolo imposing upon Pangilan, Imadi and Igasan, twenty years cadena temporal with the corresponding accessory penalties, and upon Lajim and Salamuddin No. 1, life imprisonment, also with the accessory penalties besides the joint and several obligation of all of them to indemnify the heirs of the deceased Kalon for the latter's death, in the sum of P1,000 and the party stolen from, Tan Chin Chuan, in the amount of P1,500, the value of the stolen property, plus the costs, for the crime of robbery with homicide.

Although all the aforesaid defendants are now appellants, their counsel confines his remarks to Salamuddin No. 1, Pangilan and Imadi in so far as they are found guilty of homicide and sentenced as aforementioned, and said counsel does not discuss either the sufficiency of the evidence of conviction of all the appellants or the penalty imposed upon the two, Lajim and Igasan.

Counsel contends that as the defendants only conspired to rob and not to kill Kalon, and as appellants Salamuddin No. 1, Pangilan and Imadi did not attack the said deceased, these three should only answer for the robbery and not the homicide; and in support of this contention, the case of *People vs. Basisten* (47 Phil., 493), is cited.

It should be borne in mind that in said case of *People vs. Basisten*, it clearly appeared that the homicide committed by Emilio Huesca on the person of Nicolas Soldevilla, one of the occupants of the assaulted house, did not enter into the common plan of the aggressors. What happened in that case is that when the malefactors arrived at the house Nicolas Soldevilla fell upon his knees and told the aggressors that all the occupants in that house surrendered. Thus, without more difficulty, the malefactors proceeded to take possession of the goods in the house. At that moment, and without any known motive, Emilio Huesca stabbed Nicolas Soldevilla with a bolo in the abdomen, the others not being aware of such attack made by their companion Emilio Huesca. Hence the killing of Nicolas Soldevilla was not necessary for the execution of the common purpose to rob, nor was it an incident to the said robbery, neither to facilitate it nor to defend the possession of the property taken—that killing could not be looked upon in any way as a part of the common scheme to commit the robbery.

In the case before us the deceased Kalon stopped and attacked the offenders when the latter had already come out of the store where the robbery was committed and were carrying away the stolen goods. Two or three of them, doubtless those who were nearest, returned Kalon's attack and killed him. That act was done in order to repel an aggression which, had it been effective, would have endangered the whole success of the robbery committed ; it was done, in the final analysis, in order to defend the possession of the stolen property. It was therefore an act which tended to ensure the practical termination of the robbery, to secure to the robbers the possession and

enjoyment of the goods taken. And it has been held time and again by this court that each conspirator answers for all the acts of the others committed for this accomplishment of the common purpose. (U. S. vs. Estabillo, 11 Phil., 150; U. S. vs. Ipil, 27 Phil., 530; People vs. Cabrera, 43 Phil., 64.)

In the aforementioned case of People vs. Basisten, the homicide then, was not, and could not be, looked upon as if it were committed for the accomplishment of the common purpose, while in the present case, the homicide was committed for the complete and effective carrying out of the preconcerted robbery. For this reason, said doctrine is not applicable hereto.

The crime alleged and proven is that defined in article 502 of the Penal Code in connection with paragraph 1 of article 503 of the same Code. There were present in the crime the aggravating circumstances of dwelling, nocturnity and band, and with respect to the defendants Pangilan and Igasan, the extenuating circumstance of age, as both of them were over 15 and under 18 years of age when the crime was committed.

We find no error in the judgment appealed from nor any abuse of discretion on the part of the lower court in taking into account in favor of the defendants the provisions of section 106 of the Administrative Code of Mindanao and Jolo.

The judgment appealed from is affirmed, with costs against the appellants. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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