

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PIO VIVAS, SANTIAGO LAUDE, LORENZO CARAZO AND RAYMUNDO MECO, DEFENDANTS AND APPELLANTS.

G.R. No. 30993, December 02, 1929

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

At about 10 o'clock on the night of September 1, 1928, Pablo Estobesa and Hermogenes Eusebio, night-watchmen, and Joaquin Unlao, guard, in the College of Agriculture located in Los Banos, Laguna, inspected the paying teller's office and found all the doors and windows closed, except one window which was ajar. Seeing that near the lock of this window was a hole large enough to put the fist through, they lighted the room through it, and saw that all was well. Before leaving the place they closed the window and locked it from within, introducing the hand into the hole near the lock.

At half past 12 that night Unlao went to the college stores to inspect them, and Pablo Estobesa went to the garage, where he met the chauffeur Pablo Estrada who had driven an automobile from Manila. After conversing for some time, Estobesa and Estrada heard a noise coming from the office of the paymaster; Estobesa went up to the office and found that the window they had closed was again open, and in front of it was standing Raymundo Meco, whom he knew to be one of the workmen in one of the college departments. Although he had recognized him, Estobesa, acting as guard, asked him twice who he was, and Raymundo, instead of answering, hid himself behind a column. Estobesa, becoming suspicious of Raymundo's actions fired a shot in the air with his revolver as a signal for help. Raymundo ran behind the building, and at the same time, five persons jumped out of the window that had been opened again, and joined Raymundo. Estobesa approached the group, scrutinized their faces, and recognized that they were Raymundo Meco, Lorenzo Carazo, Santiago Laude, Pio Vivas and the Mulingtapang brothers. Raymundo was armed with a pistol and the others with penknives. The Mulingtapang brothers then attacked Pablo Estobesa with their knives wounding him on the right arm and in his back, and in self-defense, he used his revolver and killed the two brothers. Meanwhile, Estrada and Unlao came up to where Estobesa was, and confronted the other four members of the group, who attacked and killed Unlao.

After the incident an investigation was made and a piece of iron was found beside the paymaster's safe. The hinge of the safe was broken and its covering was on the ground. The safe contained about P12,000.

An information was filed against Raymundo Meco, Lorenzo Carazo, Santiago Laude, and Pio Vivas for the crime of frustrated robbery with homicide, as principals. The trial court found these defendants guilty of two independent crimes: the homicide of Joaquin Unlao, and physical injuries on the person of Pablo Estobesa, sentencing each for the first crime to seventeen years, four months, and one day of reclusion temporal, with the accessories, and to indemnify the family of the deceased Joaquin Unlao jointly and severally in the sum of P500; and for the second, to four months and one day arresto mayor, with the accessories, and to pay a fine of 1,500 pesetas, with subsidiary imprisonment in case of insolvency, and the proportional share of the costs. From this

judgment the defendants appealed.

With regard to the identity of the appellants, the evidence in our opinion leaves no room for doubt. The witnesses who testified in this case to the effect that the appellants were four of those who committed the crime, took an active part in, the occurrence and had every opportunity to see and recognize the appellants. The evidence adduced to sustain the alibi alleged by the appellants can in no wise offset the evidence presented by the Government.

The court below held that the evidence was insufficient to prove an attempted robbery, because if the appellants conceived the intention to rob the college safe, they desisted of their own free will. This conclusion is unfounded. The appellants commenced their proposed robbery with direct overt acts, by breaking the lock of the safe where the amount of P12,000 was kept. And although they failed to carry out all the acts of execution which should have produced the crime of robbery, it was not due to their own voluntary desistance, but to the shot fired in the air by Estobesa in front of; the building.

For these reasons we are of opinion that the appellants are guilty as charged in the information, of the crime of attempted robbery with homicide, and physical injuries, and therefore article 506, in connection with paragraph 1 of article 503 of the Penal Code is applicable. The aggravating circumstances of cuadrilla and nighttime were present in the commission of the crime, with no mitigating circumstance to offset them.

In conformity with the Attorney-General's recommendation, the judgment appealed from is modified, the appellants being sentenced to life imprisonment, the accessories, and the costs. So ordered.

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

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