

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO RAMOS Y ANTONIO, ELADIO CALUYA Y BINUYA, SIXTO
GABORNE Y LLUADER AND EDUARDO SUBLECHERO Y GABUAT,
DEFENDANTS-APPEL...**

G.R. No. 32265. May 16, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Automatic review of the decision of the Court of First Instance of Rizal, Branch XIV at Caloocan City, for robbery with homicide, sentencing Ernesto Ramos, Eladio Caluya, Eduardo Sublechero, and Sixto Gaborne "to suffer the supreme penalty of death by electrocution, and to indemnify the heirs of Dr. Mariano Gana jointly and severally the sum of P12,200.00, without subsidiary imprisonment in case of insolvency and to pay the costs."

With respect to the accused Sixto Gaborne who, upon arraignment, pleaded guilty to the charge and was sentenced accordingly, this Court on July 25, 1974 set aside the decision of the lower court of March 5, 1970 and granted him a new trial "to enable him to be afforded the opportunity to be heard in accordance with the guidelines set forth by this Court from Apduhan and the subsequent cases." Thus, this appeal concerns the accused Ernesto Ramos y Antonio, Eladio Caluya y Binuya and Eduardo Sublechero y Gabuat only.

Evidence shows that about nine o'clock in the evening of December 8, 1967, Vilma Pitelo and Milagros Bural, housemaids of Dr. and Mrs. Mariano Gana whose residence is at 139 Tirad Pass, Balintawak, Caloocan City were in the kitchen of the said Gana residence. Vilma was scrubbing the kitchen floor while Milagros was putting water in bottles near the kitchen sink. Suddenly, appellant Ernesto Ramos came from behind Milagros Bural, held her left shoulder and tied a handkerchief over her mouth. A companion of Ernesto Ramos helped in tying her hands behind her back, following which Vilma Pitelo was also tied, her mouth with a twisted shirt and her hands and feet tied with a rope. Upon hearing the footsteps from the other side of the kitchen, Milagros Bural and Vilma Pitelo saw Ernesto Ramos and the other appellants who had entered the kitchen door, hide behind the door near the refrigerator. Dr. Gana entered the kitchen and got a bottle of water inside the refrigerator. He then went back to the sala and listened to the radio.

Appellants entered the sala, except Ernesto Ramos who stayed and stood guard in the kitchen. Suddenly, Mrs. Rosario Bella-Gana who at the time was resting in her bedroom at the ground floor of their residence heard a groan and thinking that her husband, Dr. Gana, might be suffering from "bangungot", shouted: "Manoy, Manoy, may sakit ka ba? Ano ang nangyari?" and immediately rushed to leave her room to give her husband a glass of water. As she opened the door, she met appellants Caluya, Sublechero, Gaborne and another one she described as tall and thin. These four men led her back to her room and demanded money. Mrs. Gana told them they can get everything and pleaded not to hurt her. Appellant Sublechero asked for the key to the aparador while the tall one took the money which is a little over P200.00.

Thereafter, the four men led Mrs. Gana to the kitchen where they tied her hands behind her back with a rope. She

was made to join her two maids who were tied to the ricesack near the cupboard. The five men including Ernesto Ramos fled from the house.

Mrs. Gana managed to go up to the second floor of the house where she called her daughter-in-law, Sarah Florentino Gana, who untied her. They went down the ground floor where they saw Dr. Gana slumped at the foot of the stairs, soaked with blood. Sarah went to the kitchen and untied the maids, following which, they returned to the sala and found Dr. Gana already dead.

The matter was reported to the police who came to investigate and ordered the members of the household not to touch anything. Vilma then and there told the police that she knew one of the five men, Eduardo Sublechero, because the latter used to play basketball in their yard.

After the statements of the other witnesses had been taken, appellants Ernesto Ramos, Eladio Caluya and Eduardo Sublechero were investigated by the police of Caloocan City before whom they gave their respective statements which were subscribed and sworn to before the inquest fiscal. Sixto Gaborne refused to give a statement.

Dr. Plaridel Vidal of the National Bureau of Investigation conducted the examination on the body of the deceased Dr. Mariano Gana. Necropsy report shows that the victim died of "[h]emorrhage, meningeal, subdural, subarachnoidal, extensive and generalized, traumatic." (Exhibit "F")

In his defense, Ernesto Ramos professed innocence of the crime charged due to the exempting circumstance of irresistible force and uncontrollable fear. His evidence tends to show that:

"[O]n December 8, 1967, at about 7:00 o'clock in the evening, accused-appellant Ernesto Ramos was fetched from his house at 109 G. de Jesus, Caloocan City by co-accused Eduardo Sublechero and brought to the house of the latter at General Tirona, Bagong Barrio, Caloocan City to fill out application forms for overseas employment. While thus preparing their application forms, two other co-accused, Sixto Gaborne and Boy Andy came and invited them to eat in a restaurant for they won in gambling. (t.s.n., p. 3, March 19, 1969). Thereafter, they proceeded to a store at Bagong Barrio where Boy Andy bought a rope. Upon seeing the rope, accused-appellant Ernesto Ramos became curious and asked Boy Andy what he will do with the rope and he was told to keep quiet but after about two minutes Ernesto Ramos insisted in knowing what the rope was for. Finally Boy Andy told them if they really want to have money. Ernesto Ramos protested and said what they were thinking was not good and that he wanted to go home. Boy Andy prevented him from leaving for he had already known of their evil scheme and was afraid he might tell the police. When Ernesto Ramos refused to join them, and was insisting to go home, Boy Andy held him by the collar of his shirt at the same time pulling out a dagger which he pointed to Ramos and told him if Ramos will not go with him he will kill him. For fear, Ramos went with them to Samson Road where they waited for Jojo. From there, they proceeded to the house of Dr. Mariano Gana. After cutting the wire fence, Boy Andy pushed Eduardo Sublechero inside. When they were all inside, Ramos was forced by Andy to go inside too. Ramos' knees were trembling. (t.s.n., p. 4, March 19, 1969) Ramos saw the two housemaids hogtied but he could not see clearly who hogtied them for it was dark inside—the lights were off. Boy Andy ordered Ramos to stand guard and threatened him not to leave or he will kill him. After a while he heard banging noises inside and then saw all the others running towards the kitchen so all of them ran outside of the house, and proceeded to Boy Andy's house where the loot of P200.00 was divided. At first Ramos refused to accept his share of P40.00 by saying they could keep it and he will just go home. When Boy Andy suspected that Ramos might tell the police of the incident, the latter got nervous and afraid so for fear of his life, he accepted the money and went home. The following day, they were arrested by the police and investigated at the police headquarters." (pp. 3 & 4, Appellant Ernesto Ramos' Brief)

The defense of Eduardo Sublechero is as follows: On December 8, 1967, he and Ernesto Ramos were preparing their applications for overseas employment. Boy Andy arrived and invited them to go to Bagong Barrio. On the way, and in front of the house of Dr. Mariano Gana, Boy Andy held Sublechero by the collar of his shirt, poked a

three-bladed instrument at him and ordered him to enter the residence of Dr. Mariano Gana. While inside the residence of the victim, Sublechero did not have the chance to go out of the house because Boy Andy was always beside him. In short, this appellant claims exemption from any criminal liability because his acts and/or participation in the criminal design of Boy Andy, who up to then remains at large, was under compulsion of an irresistible force and under the impulse of an uncontrollable fear of an equal or greater injury.

Likewise, Eladio Caluya claims that on December 8, 1967, at about 8:00 in the evening he was on his way to his residence at Bagong Barrio, Caloocan City, from work at the Asiatic Shoe Factory and met Boy Andy, Caborne, Sublechero and Ramos waiting for him at Samson Road. He claimed no conversation took place among them and they walked towards Bagong Barrio until they reached the residence of Dr. Mariano Gana. They stopped in front of said house and he claimed he was surprised when Boy Andy told them that they would enter the said house to rob. He remonstrated but Boy Andy threatened to kill him if he would not join. His testimony follows:

"Q

When he told you would rob said house, what did you do, you particularly?

A

I told him that I would not go with him.

Q

When you told him you would not go with him, what happened?

A

He threatened me if I would not go with them, he would kill me.

Q

When he threatened you, did he have any weapon with him then?

A

He had.

Q

What was with him?

A

A knife this long (Witness demonstrating a foot long).

ATTY. BALGONA:

Q Did he threatened you with that knife?

A Yes, sir, by poking the same at my side.

Q Did you finally enter the premises of the house of Doctor Gana?

A Yes, sir." (tsn. p. 21, March 19, 1969 hearing)

He claimed, however, that he did not do anything while inside the house of Dr. Gana.

"Q

What did you do when you were already at the premises of the house of Doctor Gana?

A

None, sir." (tsn. p. 21, March 19, 1969 hearing).

On December 9, 1967, at about 3:00 in the morning, he was apprehended at his residence by policemen and brought to the Caloocan City Police Headquarters for investigation.

The trial court, with valid reason, refused to accept the alleged threat employed by Boy Andy to kill them if they would not join him and considered the same as flimsy and inadequate so as to strike fear in their hearts and compel them to obey and commit the heinous crime. "Even if Boy Andy was armed with a knife, he was alone and the three accused could manage to overpower him if not escape from the scene of the crime. It is evident that accused Ramos, Sublechero and Caluya were willing participants in the pursuit of their criminal design to rob and kill. The excuses of the defendants cannot prevail over the clear, conclusive and positive evidence of the prosecution. Moreover, the crime committed was proven independently of the extra-judicial confessions of the accused thru the testimonies of the prosecution witnesses beyond reasonable doubt. It is further observed by the Court that the evidence on record offers sufficient and ample ground to conclude that the accused committed the crime of robbery with homicide pursuant to a conspiracy. The circumstance of their meeting together one night in one place from which they proceeded to the scene of the crime; the taking along with them a newly bought rope; their separate, individual and assigned tasks in the commission of the crime; the almost militant dispatch and precision in the perpetration of the crime; and their departure together from the scene of the crime and meeting in one place to divide the loot - all these facts and circumstances taken together clearly manifest a preconceived, well-planned and concerted action on the part of the accused in pursuance of their common and evil design to rob and kill." (Decision, pp. 27-28)

We find no reason to differ from the conclusions reached by the trial court in finding herein appellants guilty beyond reasonable doubt of the crime charged. The defense invoked by the appellants that they acted in view of the irresistible force and uncontrollable fear of Boy Andy in the unfortunate incident which resulted in the death of Dr. Mariano Gana is devoid of merit. Basis of these two exempting circumstances is the complete absence of freedom. In the case at bar, appellants Ramos, Sublechero and Caluya failed to show that they resisted the threats of Boy Andy and that in spite of their resistance they were still forced to act in accordance with his wishes. Their fear of Boy Andy was merely speculative and there was complete absence of real or reasonable fear for one's life. Had appellants wanted to, they could have easily overpowered Boy Andy who was alone.

On the other hand, the manner in which the crime was executed shows that appellants had community of design and that they cooperated and helped each other in the commission thereof. They met in Samson Road, Caloocan City and from there proceeded to the scene of the crime. In the presence of the appellants, Boy Andy bought a rope from a store. Upon entering the house, each one performed his assigned task and after the commission of the crime, they left the scene of the crime and met in the place of Boy Andy to get their respective shares.

By and large, the people's evidence is sufficient to sustain the judgment appealed from. However, in the absence of the necessary votes, We have to impose the penalty lower than death which is reclusion perpetua.

WHEREFORE, as modified in the sense that the penalty imposed on herein appellants Ernesto Ramos y Antonio, Eladio Caluya y Binuya and Eduardo Sublechero y Gabuat is reduced to reclusion perpetua, the appealed judgment is AFFIRMED in all other respects.

SO ORDERED.

Teehankee (Acting C.J.), Makasiar, Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Fernando, C.J., on official leave.

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