

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SILVERIO DAOS, DOMINADOR SABLADA AND GERARDO BACABIZAS, DEFENDANTS AND APPELLANTS.

G. R. No. 40331. April 27, 1934

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PER CURIAM:

Charged in the trial court with the crime of robbery with homicide and later convicted of said complex crime., the herein appellants were sentenced to death, to indemnify the heirs of their victim Felino Dumalo in the sum of P1,000, each to pay the proportionate part of the costs of prosecution, and, in case of non-execution of said death penalty by reason of pardon, to suffer the corresponding accessory penalties provided for by the law. The said three defendants appealed and now contend that the trial court committed the three errors assigned in their brief, to wit: (1) That the trial court improperly declared them guilty of robbery with homicide, instead of simple murder; (2) that instead of imposing upon them another penalty, the trial court likewise improperly imposed upon them the death penalty; and (3) that instead of doing so, the trial court failed to estimate in their favor the mitigating circumstance of having acted upon impulses so powerful as to have produced in them passion and obfuscation.

After carefully reviewing the case and the evidence of record, this court is convinced that the true facts, according to said evidence are, briefly, as follows:

At about 4 o'clock in the afternoon of June 7, 1933, the dead body of a chauffeur of very poor physical constitution, for it hardly weighed 94 pounds and 8 ounces, was found inside car No. 771 of the Malate Taxi Cab Co., in an isolated place within the municipality of San Juan del Monte, Rizal. The said body turned out to be that of Felino Dumalo, who, not long ago, had been employed as chauffeur in the garage of said entity, Malate Taxi Cab Co. From the autopsy performed the following day by Dr. Pablo Anzures of the Medico-Legal Department of the University of the Philippines, the body of said deceased showed the following marks of violence:

- Horizontal cord or ligature marks on the neck, immediately below the thyroid cartilage, with ecchymoses.
- Irregular depressions on the nape.
- Multiple ecchymoses not only on the mandible, behind the right ear, but also on that ear, on the forehead, on the cheeks and on the nose.
- Abrasions on the right lateral eyelid of the right eye.
- 5. Hemorrhage in the cornea or white of the right eye.
- Lacerated wound on the interior surface of the left side of the upper lip.
- Abrasions on the left elbow.
- Abrasions on the left knee.

- Hemorrhage in the muscles of the neck.
- Fracture of the hyoid cartilage.
- Distention, congestion and emphysema or swelling of the lungs.
- Petechial hemorrhages in the heart, which was dilated, and
- Congestion of all internal organs.

From said signs, the said doctor, whose experience was admitted and acknowledged at the trial by the defense, inferred and expressed the opinion, which was not questioned in the least by the defense, that the death of said Felino Dumalo was due to asphyxia through strangulation or compression of the neck. This undoubtedly was the cause of the death of said deceased, not only because it has been so stated by said doctor, but because it was so admitted by the appellants themselves, first, before the agents of authority who had arrested and investigated them, and, later, to the very authorities before whom they were brought, no other than Lieutenant-Colonel Juan C. Quimbo of the Intelligence Division of the Constabulary and the justice of the peace of the municipality of San Juan del Monte, Rizal, who should have conducted the preliminary investigation but did not have need to do so, for the reason that said appellants expressly waived such proceeding.

The first to reveal how Felino Dumalo's death occurred was Dominador Sablada, and he did it on the same afternoon of his arrest which took place at about 6 o'clock on June 23, 1933, first, to Constabulary agents SyQuia, Noriega and Java, and, later, at about 7 o'clock the same evening of June 23, 1933, to Captain Jose P. Guido, Assistant Superintendent of the Intelligence Division of the Constabulary, and on the following day to Colonel Quimbo, and, lastly, to the justice of the peace of said municipality of San Juan del Monte, Rizal. On said occasions, Sablada stated that he and his co-appellants Silverio Daos and Gerardo Bacarizas, after having planned among themselves to take a taxicab by pretending to be bona fide passengers, kill the chauffeur thereof and later take away his money, as they were all in need of money, having been jobless since they declared a strike on May 25, 1933, in fact took the first taxicab that passed by the place where they had stationed themselves in order to execute their plan, the taxicab of said deceased having been the first to appear at about 12 o'clock at noon of said day. They took it to Taft Avenue, Manila, near the General Hospital, and thence went to Santa Mesa, San Juan del Monte, and Mariquina, returning afterwards to San Juan del Monte, sometimes stopping here and there under the pretext of looking for somebody, in order not to arouse the suspicion of their predestined victim, Felino Dumalo. He also stated that it was his co-appellants Silverio Daos and Gerardo Bacarizas who first struck said deceased from the back seat of the taxicab where they were seated, striking him with their fists on the nape or on the back of the head and later dragging him to their seat, and, to that end, one of them placed his arm in the fashion of a hook around the victim's neck, while he (Sablada) took the wheel, and that they did so upon arriving at a certain sparsely inhabited place within said municipality of San Juan del Monte, Rizal. When said appellant Dominador Sablada made the above statements to Captain Guido, to whose house he was taken immediately after his arrest, he did so in the presence of the family of said officer. Furthermore, he offered to accompany the agents, who might be designated, to the place where they could arrest his co-appellant Silverio Daos, who, according to him, was then in the municipality of Pozorrubio, of the Province of Pangasinan.

On the same night of June 23, 1933, shortly after Dominador Sablada's arrest, the other appellant Gerardo Bacarizas was also arrested in the Radio Theater, where the former had gone with agent SyQuia and his companions in order to point out said Bacarizas to them, telling them that they would, in all probability, find him there. After the appellant Gerardo Bacarizas had been arrested and when he was already at the Intelligence Division of the Constabulary, he made the same revelations and admissions as his co-appellant Dominador Sablada, but his confession as well as that of the latter. With regard to his revelations, was not taken in writing

until the following day, June 24, 1933. The confessions of said two appellants are those now contained in Exhibit J, the translation of which is Exhibit J-I, and in Exhibit I, the translation of which is Exhibit I-1. The Intelligence Division of the Constabulary accepted Dominador Sablada's offer to accompany the designated agents in order to arrest and bring the appellant Silverio Daos to Manila.

They all started from said city on the night of June 23, 1933, and from Pozorrubio, they in fact brought said defendant-appellant Silverio Daos to the Intelligence Division of the Constabulary, all of them having returned from said place at about 10.30 o'clock in the morning of the next day. As soon as Silverio Daos was informed on the way from Pozorrubio to Manila that Sablada and Bacarizas had confessed their crime, he, in turn, had to admit his participation in the commission thereof, although he tried to make himself innocent of said crime, alleging to have done only that which, under threats of death, according to him, he had been compelled to do by his co-appellant Bacarizas. As soon as they had arrived in Manila and Daos had been brought to the Intelligence Division of the Constabulary, the latter repeated to Captain Jose P. Guido the same facts which, according to the agents he had related to them during the trip, and his confession, like those of his co-appellants, was taken on the afternoon of that day, said confession being that which now appears in Exhibit H, the translation of which is Exhibit H-I.

The three confessions Exhibits J, I and H of said three appellants were ratified by them at about 5 o'clock in the afternoon of June 24, 1933, before Lieutenant-Colonel Quimbo, Chief of the Intelligence Division of the Constabulary, and, on the next day, before the justice of the peace of the municipality of San Juan del Monte within the jurisdiction of which the crime under consideration had been committed. When the three defendants appeared before said justice of the peace, and after the latter had informed them of their rights and the consequences of their admission of the criminal act with which they were charged, again reading to them their confessions Exhibits J, I and H, Sablada and Bacarizas told him that they ratified everything that appeared in their respective confessions; and when said official asked if they needed or desired to have the services of an attorney to defend them, they answered that there was no need of such formality because, at all events, they were pleading guilty. However, they withdrew their plea of guilty upon making a formal waiver of their right to a preliminary investigation.

Silverio Daos did not plead guilty but admitted the truth of all the facts appearing in his confession Exhibit H, the translation of which, as aforesaid, is Exhibit H-I.

It is very obvious from said confessions (Exhibits H, J and I) that, although the appellants admit having been together on the afternoon of the crime and having, also together, used taxi No. 771 of the Malate Taxi Cab Co., where the crime was committed, they mutually charge one another with the worst part of said act, which is, that of having strangled Felino Dumalo to death with a handkerchief and having taken away from him the sum of P12 which he then carried, since it is but natural for anybody under the same circumstances, after becoming aware of the gravity of his offense, a thing which almost always takes place when it is already too late, to try to make excuses or at least minimize his own liability in the eyes of the others.

However, the truth is that, considering the three confessions Exhibits H, J and I jointly, without putting aside the other evidence which corroborates them and which will be referred to later, they show that the liability of each of the appellants is also the liability of all of them together, on the ground that Felino Dumalo's death and the robbery committed against him were the result of a conspiracy and a previously prepared and conceived plan which was later carefully carried out by them, each of them having contributed with separate acts which, although less effective, were indispensable to the attainment of the same end.

After Felino Dumalo had died and before the three separated, they divided among themselves at the very scene of

the crime the little money which they had found in the possession of their victim. Sablada and Daos, testifying on this point, stated that Bacarizas had given to each of them the sum of 50 centavos and that the latter, or Daos, also kept the pocket book of the deceased which contained his cedula and driver's license.

It is true that, while the three defendants were tried in the lower court, they retracted, categorically denying having made the confessions appearing in the documents above stated, and testified that if they did so—not being able, as in fact they were not able, to deny their signatures on said documents—it was due to the maltreatment to which they had been subjected, alleging that they had been struck with the fist and slapped on the soft parts of the body, like the stomach and the cheeks, in order to avoid leaving marks that might show such acts, all for the purpose of causing them to make said confessions. This allegation was undoubtedly made to refute somehow the testimony of iaeotenant-Colonel Quimbo of the Constabulary to the effect that when they appeared before him in order to ratify their respective confessions, their acts—according to the proof—in the presence of one another, in that of Captain Jose P. Guido of the same organization, and of other employees, their looks,, their conduct and their behaviour on that occasion, were absolutely normal, neither showing nor disclosing anything that might indicate that they had been subjected to violence or maltreatment. On the other hand, Colonel Quimbo and Captain Guido, who were present when the appellants' confessions were taken, Colonel Quimbo occasionally and for more or less definite lengths of time, because when the necessities of the service requited his presence in the adjoining room where he had his office, he used to leave but would return shortly, thus momentarily stopping to witness said act, and Captain Guido, all the time, except when the confession of Bacarizas was taken because, inasmuch as he had already been informed of the nature of the latter's revelations, he deemed it convenient to intrust said task to agent Nepomuceno, affirmed that each and every one of said appellants made his confession freely, voluntarily, without any pressure, and with full knowledge of the purpose for which it was taken.

Furthermore, every detail of said confessions of the appellants was corroborated by competent and impartial witnesses, like Jose Ma. Barredo, Vicente Call, Pio Borja, Godofreda Carro, Aguedo Martinez, Donato Galicia, Santos Pableo and Petronilo Peregiino.

Jose Ma. Barredo, assistant-manager of the Malate Taxi Cab Co., testified that the three appellants were among the chauffeurs of the garage of his company who, led by Petronilo Peregrino,' declared a strike in order to espouse the cause of the chauffeurs who, on May 25, 1933, also did the same in the Try Tran, National and Makabayan transportation companies which were also engaged in the same taxi business; that the appellant Silverio Daos was among those who frequently stationed themselves in the vicinity of the garage of the Malate Taxi Cab Co. in order to prevent other chauffeurs from filling the vacancies left by him and his companions; that on one occasion he saw said appellant stop one of his cars and threaten the strike breaker who was at the wheel; and that the deceased Felino Dumalo was among the various. chauffeurs whom the strikers considered as strike breakers.

Pio Borja testified that Dominador Sablada and Silverio Daos were two of the three persons who, on the afternoon in question had alighted from taxicab No. 771 at his land in Mariquina, in order to ask him about a certain person who was indebted to them in the sum of P17. Vicente Call, in turn, stated having on that occasion seen the same vehicle pass twice near his place, first with four passengers including the driver and the second time, which was a few minutes later, with only three passengers; that the three passengers maltreated the chauffeur striking him on the back of the head with their fists; that when the chauffeur already appeared dizzy, those in the back seat dragged him to the back seat while the third took the wheel and acted as driver; and that when he saw said car for the second time, those in the back seat were inclining forward as if they were trying to cover or conceal something in front of them. Donato Galicia testified that taxicab No. 771 which, on the afternoon in question, had four passengers including the driver, nearly collided with the truck he was then driving; that the passenger who sat beside the chauffeur and who became angry because of the incident was no other than the appellant Silverio Daos;

and that when he saw the same car a few minutes afterwards, there were then only three persons inside, the appellant Sablada being at the wheel. Godofreda Cairo, in turn, testified that on the afternoon of June 7, 1933, while she was in front of the stairs of her house in San Juan del Monte, she saw the appellant Silverio Daos coming from taxicab No. 771, which was parked not far from her lot, and running towards the main road in order to take, as in fact he took, a carretela, he at that time wearing an indigo-colored coat (black according to other witnesses) and white pants, without a hat. As for Aguedo Martinez, he testified that on the afternoon in question, at about 4 o'clock, the appellant Silverio Daos used his carretela; that when he reached the same, he was panting and visibly worried; that he was wearing white pants and black coat, without a hat; that when he was already in the carretela, he remarked that the horse would not run, for which reason he alighted therefrom and took another vehicle after paying him ten centavos.

Santos Pableo, cook of the Manila Heights Hospital belonging to Dr. Afable and situated in San Juan del Monte testified that the appellant Dominador Sablada, for several years before a chauffeur in the service of said doctor, went to the hospital at about 4.30 o'clock in the afternoon of June 7, 1933; that when Sablada came, he was perspiring and very pale; that he told Pableo and his companions about the chauffeurs' strike without stating whether or not he was one of the strikers; that they fed him because he said he had not yet eaten; that he left his coat hanging on a nail in the cook's room, saying that he would return for it the following day, but that he never did so, and, for that reason, it remained in the same place where it was hung until a member of the secret service went to take it and for a long time that was the only occasion when said appellant was seen at said hospital. It will be noted that in Exhibit J, Dominador Sablada stated having taken the road to the Manila Heights Hospital as soon as he had separated from Bacarizas, after the latter had given him fifty centavos.

Petronilo Peregrino, president of the striking chauffeurs of the Malate Taxi Cab Co., who led them in the strike and espoused their cause during the whole period of the strike, declared that at about 9 o'clock in the evening of June 7, 1933, the appellants Bacarizas and Sablada went to see Him in his house in order to ask for his help and to request him to accompany them to the house of Hugo Retaga, president of the National Labor League, because they had, with the aid of Silverio Daos, killed a strike breaker; that the two told him that Bacarizas was the first to strike their victim; that they strangled him with a handkerchief; that Silverio Daos took away his money; that they afterwards divided the money among themselves; and that, when the three separated, Sablada went to the Manila Heights Hospital where he left his coat.

If all these corroborations are still insufficient to give the lie to the appellants and to destroy their defense of alibi, there are other evidence and details showing how unfounded is their claim that the acts attributed to them in their confessions Exhibits H, I and J are not true.

In the first place, it should be noted that Silverio Daos, according to Exhibit H, admitted that in order to get rid of the pocketbook, cedula and license of the deceased Felino Dumalo, he burned them in his house in the very presence of his wife. He did not deny this fact although he would have been able to do so by merely calling his wife to testify in the case. In the second place, when the appellants went to point to the agents of the law the place where they had committed the crime, they did so in broad daylight and in the presence of many people, among whom were agents of the law, private individuals and newspapermen, and each of said appellants placed himself voluntarily and without any pressure on the spot where, according to them, the crime had been consummated. (Exhibits D-1, D-2, D-3 and D-4.) In the third place, when they were asked to make a graphic demonstration of the manner in which they had consummated the crime, they did so, not privately, but also in the presence of many people among whom were various representatives of the Manila press. Lastly, it is absurd to think that the Constabulary agents have been able not only to coordinate, but even to contrive, the facts narrated in the appellants' confessions Exhibits H, I and J, and it is no less absurd to believe that through mere guesswork said

agents succeeded in discovering the whereabouts of Silverio Daos in order to be able to arrest him.

In addition to all the foregoing, the finding in Silverio Daos' house of the coat Exhibit E, which belongs to him, and which was the one he wore on the afternoon in question, the color of which may be considered indigo as well as Black, and the finding of the coat Exhibit G, which belongs to Dominador Sablada, in the room of the cook of the Manila. Heights Hospital, necessarily serve to strengthen the other proof and details already adverted to, which overcome the appellants' change of front and destroy their evidence of alibi, which they have, after all, failed to prove satisfactorily.

From all the foregoing, it is obvious that the appellants committed the crime of robbery with homicide with which they were charged. The elements of both crimes, robbery and homicide, were clearly and conclusively proven by the prosecution. The appellants' act was the result of the plan which the three had previously conceived in order to absolutely insure its execution without risk to any of them. In the commission of the crime, the aggravating circumstances of craft and treachery should be taken into consideration, on the ground that the act of said appellants in pretending to be bona fide passengers in the car of the deceased, when they were not so in fact, in order not to arouse his suspicion, constitutes craft; and the fact that in assaulting him they did so from behind, catching him completely unawares, he believing, as in fact he believed, that he had in his car, not bad men who were plotting against his life, but bona fide passengers, certainly constitutes treachery. No mitigating circumstance, which may compensate said two aggravating circumstances of craft and treachery, can be estimated, for the reason that none has been proven, and evident premeditation, which has been proven at the trial, can neither be considered as an aggravating circumstance, on the ground that it is necessarily inherent in the crime of robbery. (U. S. vs. Blanco, 10 Phil., 298; U. S. vs. Hermosilla, 31 Phil., 405.)

Appellants' counsel, undoubtedly convinced of the futility of the defense made by them in the trial court, contends in this instance that the crime committed by them is not robbery with homicide but simply that of murder, and that even so, the mitigating circumstance of having acted upon impulses so powerful as to have produced in them passion and obfuscation should be estimated in their favor. This is an error, on the ground that, for the reasons stated, the treacherous death of Felino Dumalo took place on the occasion of a robbery, which, before its execution, had been planned and calmly meditated by the appellants, the small amount of money, which they succeeded in taking from him after depriving him of his life, being of no moment, and because the cause of the alleged passion or obfuscation is not lawful, as it is not lawful and it cannot be lawful, to resort to violence in order to maintain a strike and in that way compel those affected by the strikers' demands to accede to the same. (U. S. vs. Hicks, 14 Phil., 217; People vs. Hernandez, 43 Phil., 104.) The appellants' purpose in committing the crime was not only to give a warning to the strike breakers but to satisfy their need for money, since it was already several days that they were without employment or money. However, even considering, as a mere hypothesis, that the crime committed by the appellants is murder, which cannot be the case for the reasons already stated, the change would serve them no purpose, inasmuch as the same fate would await them in view of the circumstances under which they had committed it, to wit: with evident premeditation and with craft and treachery. However, the truth, which we here reiterate, is that the crime really committed by the appellants is not murder, but robbery with homicide defined and punished in article 294, paragraph 1, of the Revised Penal Code.

Wherefore, finding that the judgment appealed from is in accordance with the law, the same is hereby affirmed in toto; and it is ordered that, in the execution of the death penalty imposed upon the said appellants in the judgment in question, the provisions of articles 81, 82 and 84 of the Revised Penal Code be strictly complied with, the date of said execution to be previously fixed by the trial court, with the costs de oficio. So ordered.

Malcolm, Villa-Real, Abad Santos, Hull, Imperial, Butte, Goddard, and Diaz, JJ.

I certify that this case was heard and determined by the court sitting in bane, and that all the Judges present in the Philippine Islands, not disqualified or physically incapacitated, concurred in the judgment.—MALCOLM , Justice Presiding.

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