

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. KAGUI MALASUGUI, DEFENDANT AND APPELLANT.

G. R. No. 44335. July 30, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

At about 5.30 o'clock in the morning of March 5, 1935, Tan Why, a Chinese merchant, a resident of Cotabato, was found lying on the ground, with several wounds in the head, on a path leading to the barrio of Carcar, Cotabato, and situated within the property of another Chinese named Yu Enching Sero. Tan Why received a wound on the upper part of his forehead, which necessarily proved fatal because it fractured his skull. He died as a result of this wound shortly afterward in the Cotabato Hospital where he had been brought by an agent of authority with the aid of some laborers who had gone to the scene of the crime.

The death of Tan Why was imputed to the herein accused who was charged with the crime of robbery with homicide. He was convicted of said crime and sentenced to reclusion perpetua, to return the sum of P150 to the Mindanao Rice Industrial Company, and to indemnify the heirs of the deceased Tan Why in the sum of P1,000, with costs. The accused appealed therefrom and assigns five errors as committed by the lower court, which may be briefly summarized as follows:

- "(1) In not having granted him a period of twenty-four hours to prepare his defense;
- "(2) In having denied his petition for the return of the articles taken from him during the search of his person, without the corresponding judicial warrant;
- "(3) In having admitted Exhibits A, B, C, D, F, L and L-1, as evidence in the case;
- " (4) In having denied his petition to dismiss for lack of evidence, filed immediately after the fiscal had finished presenting his evidence; and
- "(5) In having found him guilty of robbery with homicide, instead of acquitting him."

When Tan Why was found on the morning in question, he was still alive and able to answer laconically "Kagui" when Moro Alamada, was among the first to approach him, asked who had attacked him. The appellant was known by this name in Cotabato, whereupon Lieutenant A. Jacaria of the Constabulary ordered his immediate arrest. The accused was arrested shortly after eight o'clock in the morning of the same day, and after he had been brought forthwith to Lieutenant Jacaria, who had already been informed that he had just redeemed two pairs of bracelets from some pawnshops of Cotabato and that he carried money, said lieutenant asked him for the bracelets and he then voluntarily and without protest produced what now appear in the record as Exhibit A. He was later searched, without opposition or protest on his part, and it was discovered that he also had the pocketbook (Exhibit B), containing P92 in bills (Exhibit C), Tan Why's identification card and a memorandum of amounts with some Chinese characters (Exhibit D). In one of the pockets of his pants was found some change, making the total amount of money found in his possession P92.68.

Tan Why, the deceased, carried the pocketbook, Exhibit B, as he did on former occasions, a few hours before his body was found in the condition and under the circumstances above stated. Before he left his home between 4.30

and 5 o'clock that morning, he had it full of bills because he was, as usual, on his way to purchase palay in Carcar as part of his work. The memorandum of amounts, Exhibit D, found in the pocketbook, Exhibit B, is in Tan Why's handwriting; and in the afternoon before his death he was given by Raw Tin of the Mindanao Rice Industrial Company the sum of P150 to be invested in the purchase of palay, in addition to the P80 that remained of the amount previously delivered to him.

The appellant had to be searched after he had voluntarily produced the bracelets Exhibit A and placed them on Lieutenant Jacaria's table, because, upon being asked if he had any thing else, he tremblingly answered in the negative.

The foregoing facts are inferred from the testimony of the government witnesses Alamada, Chua Sian, Kaw Tin, Yap Sea, Lieutenant Jacaria, and Police Sergeant Urangut

Alamada testified that the deceased, shortly before he died, named Kagui as his aggressor, and the appellant was known by this name in Cotabato. He also testified that on the morning in question, he saw the appellant, with a club in his hand, pass by the house where he and the deceased lived. The club, Exhibit M, then with bloodstains) was found near the place where Tan Why was wounded.

Chua Sian, an employee of the deceased, identified the pocketbook Exhibit B saying that it was the same that the deceased used to carry whenever he went to make purchases ; that it was usually kept in a box at Tan Why's store; that the deceased in truth carried it when he left his store on the morning of March 5, 1935, to purchase palay, and that it was then full of bills.

Kaw Tin, cashier of the Mindanao Rice Industrial Company, in turn, testified that on the night before the crime, he gave the deceased, at the latter, request the sum of P150 to purchase palay, inasmuch as he was a buyer of said commodity for the company in Cotabato.

About four meters from the place where Tan Why's body was found, there was a coconut tree with two dangling leaves, as if they were so arranged intentionally to hide anybody who might post himself near the trunk. At the very place where the tips of the leaves touched the ground, there were footprints presumably of somebody who had posted himself there in ambush, without being seen: the fresh footprints were exactly the same size as the appellant's foot; and the said bloodstained club was found very near the place. Such was the testimony of Lieutenant Jacaria and Sergeant Eusebio de los Santos who inspected the scene of the crime, particularly the latter who did so early in the morning and took said measurements With the aid of Exhibit E which is part of a reed-grass leaf.

The appellant testified at the trial that Lieutenant Jacaria and Sergeant Urangut had forcibly and through intimidation taken from him the bracelets (Exhibit A), the pocketbook (Exhibit B) and all the money which he carried (Exhibit C); and that, but for the printing thereon, the identification card found in the pocketbook then was blank and there was no memorandum of the kind of Exhibit D, in Tan Why's handwriting, inside the pocketbook, thereby insinuating that it was Lieutenant Jacaria who typed or caused to be typewritten on the card Tan Why's name and personal data and who placed Exhibit D in the pocketbook. There is nothing of record to corroborate the appellant's imputation to said two officers; and it is unbelievable that they so acted because they were induced by no other motive than to comply with their duties as agents of authority.

The appellant permitted them to search his person and to take from him the articles in question to be used as evidence against him in due time; at least, he neither made any objection nor even muttered a bit of protest. Consequently, his contention that he was subjected to the rigor of an un-reasonable search to dispossess him of his effects without judicial warrant, and that the court should have ordered their return to him when he so formally

requested before the trial, is unfounded. When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof. (Cooley, Constitutional Limitations, 8th ed., vol. I, page 631.)" The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly. On the other hand, the appellant was then charged with the crime, imputed to him by Tan Why before the latter's death, of having assaulted the deceased; that he was then also known to be carrying much money; and that a few moments before he was brought to Lieutenant Jacaria, and shortly after the assault on Tan Why, he was able to redeem two pairs of bracelets from two persons to whom he had pledged them several months before. These are circumstances which undoubtedly warranted his arrest without a previous judicial warrant, only upon a verbal order from said officer to Sergeant Urangut, or of the latter's own will, inasmuch as he had direct knowledge of the aggression committed on the person of Tan Why, his violent death, the revelation made by Tan Why before his death naming the appellant as the author of the aggression, and the other circumstances already stated. This is so because under the law, members of the Insular Police or Constabulary as well as those of the municipal police and of chartered cities like Manila and Baguio, and even of townships (secs. 848, 2463, 2564, 2165 and 2383 of the Revised Administrative Code) may make arrests without judicial warrant, not only when a crime is committed or about to be committed in their presence, but also when there is reason to believe or sufficient ground to suspect that one has been committed and that it was committed by the person arrested by them. (U. S. vs. Fortaleza, 12 Phil., 472; U. S. vs. Samonte, 16 Phil., 516; U. S. vs. Batallones, 23 Phil., 46; U. S. vs. Santos, 36 Phil., 853.) An arrest made under said circumstances is not unlawful but perfectly justified; and the agent of authority who makes the arrest does not violate the provisions of article 269 of the Revised Penal Code which defines and punishes unlawful arrest, nor infringe the constitutional precept relative to the inviolability of one's right to be secure in his person, house, papers, and effects against unreasonable search and seizures; as either provision of law permits, like the above cited sections of the Revised Administrative Code, the making of arrests without judicial warrant, when there exist reasonable motives therefor so that the person arrested may be brought to the corresponding authority. In fact such was the appellant's state and circumstances when he was searched and his alleged effects (Exhibits A, B, C and D with Tan Why's identification card) were taken from him and, such being the case, it was proper, perfectly lawful, prudent and even necessary, in order to avoid any possible surprise or aggression from the appellant, in the search to be made and the effects in question seized by the persons concerned, to be presented, as they were in truth presented to the competent authority. Section 105 of General Orders, No. 58 reads:

"A person charged with a crime may be searched for dangerous weapons or anything which may be used as proof of the commission of the crime."

Article III, section 1, paragraph (3), of our Constitution is identical in all respects to the Fourth Amendment of the Constitution of the United States; and said constitutional precept has been interpreted as not prohibiting arrests, searches and seizures without judicial warrant, but only those that are unreasonable.

In *United States vs. Snyder* (278 Fed., 650), it was said:

"The Fourth Amendment, providing that 'the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized contains no prohibition of arrest, search, or seizure without a warrant, but only against 'unreasonable' searches and seizures."

When the search of the person detained or arrested and the seizure of the effects found in his possession are incidental to an arrest made in conformity with the law, they cannot be considered unreasonable, much less unlawful. (*Weeks vs. United States*, 232 U. S., 652, 655, citing favorably 1 Bishop, Crim. Proc, sec. 211;

Wharton, Crim. Pl. & Pr., 8th ed., sec. 60; Dillon vs. O'Brien, 16 Cox, C. C., 245, Ir. L. R. 20 C. L., 300; Moreno vs. Ago Chi, 12 Phil., 439; United States vs. Welsh, 247 Fed., 239; United States vs. Kraus, 270 Fed., 578, 582, par. 7; Garske vs. United States, 1 Fed. [2d], 620; King vs. United States, 1 Fed. [2d], 931.) In this last case it was said:

"In these circumstances of search and seizure of defendant engaged in the commission of a felony, and of which the officers had reliable information and cause to believe, there is nothing unreasonable within the import of that term in the Fourth Amendment. After the amendment, as before it, the law necessarily sanctions arrest, search, and seizure of persons engaged in commission of a crime, or reasonably believed to have committed a felony, without any paper warrant. This case is so plain that it suffices to say so."

Anent an identical question, the Supreme Court of Virginia, in *United States vs. Snyder*, supra, said:

"To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances."

The appellant contends that the lower court did not grant him even twenty-four hours to prepare his defense, thereby denying him the right afforded to every accused by section 30 of General Orders, No. 58." We have carefully examined the record and found nothing to convince us that said court had in truth refused to grant him time for said purpose. To be entitled to said time as a matter of right, the interested party must expressly ask for it, inasmuch as the law so prescribes. The truth, however, is that the appellant not only did not ask for it but, after his petition for the return of his effects to him had been denied, he forthwith asked, through his counsel, to be arraigned and to proceed with the trial.

The appellant likewise contends that there was error in the admission of the evidence Exhibits A, B, C and D, alleging that they had been taken from him through force and intimidation. The record shows that before proceeding with the trial in the lower court, the appellant asked for the return of said effects (Exhibits A, B, C, and D) to him on the ground that they were unlawfully taken away from him. Leaving aside the foregoing considerations, his testimony cannot prevail against nor is it sufficient to counteract that of the government witnesses, Lieutenant Jacaria and Sergeant Urangut, who testified that when Lieutenant Jacaria asked him what other things he carried, after having voluntarily placed the two pairs of bracelets, Exhibit A, on the table, and Sergeant Urangut felt his body, he did not show the least opposition. It follows, therefore, that the lower court committed no error in accepting as evidence Exhibits A, B, C and D, not only because the appellant did not object to the taking thereof from him when searched, but also because the effects found in the possession of a person detained or arrested are perfectly admissible as evidence against him, if they constitute the corpus delicti or are pertinent or relevant thereto. (*Adams vs. New York*, 192 U. S., 585; 24 Sup. Ct., 372; 48 Law. ed., 575; *Weeks vs. United States*, supra; *People vs. Mayen*, 205 Pac, 435.) It is certainly repugnant to maintain the opposite view because it would amount to authorizing the return to the accused of the means of conviction seized from him, notwithstanding their being eloquent proofs of his crime, for him to conceal, destroy or otherwise dispose of, in order to assure his impunity.

The appellant attempted to prove that the money found in his possession had been given to him, on different occasions, by the witnesses who testified in his favor, as Kagui Guialal, Kagui Patak, Kakim, Akun or Amay Indo. Kagui Guialal, in truth, testified that he had given the accused P90, two days before the latter's arrest; Kagui Patak, P45, on two occasions, one month, and two weeks, respectively, also prior to his arrest; and Kakim and Akun or Amay Indo, P22.50 and P20, seven and five days, respectively, before the day of the crime. These four witnesses are all relatives of the appellant; and if it were true that the latter had enough money several days prior to the aggression and death of Tan Why, the natural thing to assume is that he would not have redeemed the two

bracelets Exhibit A, precisely on the very morning in question. Furthermore, their testimony did not destroy the unexplained finding in the appellant's possession, of the deceased Tan Why's pocketbook, containing much money, and the latter's personal papers. In the absence of an explanation of how one has come into the possession of stolen effects belonging to a person wounded and treacherously killed, he must necessarily be considered the author of the aggression and death of said person and of the robbery committed on him (U. S. vs. Merin, 2 Phil., 88; U. S. vs. Divino, 18 Phil., 425).

The facts which we consider as having been fully established in view of the foregoing considerations, constitute the crime of robbery with homicide defined and punished with reclusion perpetua to death in article 294, subsection 1, of the Revised Penal Code. Inasmuch as no aggravating circumstance had been proven and the penalty imposed by the lower court is in accordance with law, taking into consideration the rules prescribed in article 63 of said Code, the appealed judgment is hereby affirmed, except that part thereof containing a pronouncement in favor of the Mindanao Rice Industrial Company, a strang party to the case, which should be entirely eliminated; and it is ordered that Exhibits B (pocketbook), C (money), D (memorandum of amounts) and Tan Why's identification card be delivered to the latter's heirs, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Recto, and Laurel, JJ., concur.

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