

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME RODRIGUEZ ALIAS JIMMY ALIAS WILFRED DE LARA Y MEDRANO AND RICO LOPEZ, ACCUSED-APPELLANTS.

G.R. No. 60100, March 20, 1985

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PER CURIAM:

Appellants Jaime Rodriguez alias Jimmy alias Wilfred de Lara y Medrano, Rico Lopez, Davio Reyes alias Dario Dece Raymundo y Elausa and Peter Ponce y Bulaybulay alias Peter Powe were charged of the crime of piracy in an information filed before the then Court of First Instance of Sulu and Tawi-Tawi, which reads:

"That on or about 3:15 in the morning of August 31, 1981, at the vicinity of Muligin Island and within the territorial waters of the Municipality of Cagayan de Tawi-Tawi, Province of Tawi-Tawi, and within the jurisdiction of this Honorable Court, the above-named accused Wilfred de Lara y Medrano, alias Jaime Rodriguez (Jimmy); Dario Dece Raymundo y Elausa; Rico Lopez y Fernandez and Peter Ponce y Bulaybulay alias Peter Powe, being crew members of the M/V Noria 767, a barter trade vessel of Philippine registry, conspiring and confederating together and mutually helping one another and armed with bladed weapons and high caliber firearms, to wit: three (3) daggers, two (2) M-14, one (1) garand and one (1) Browning Automatic Rifle, with intent of gain and by means of violence and intimidation upon persons, did then and there willfully and unlawfully, and feloniously take, steal and carry away against the consent of the owners thereof, the equipments and other personal properties belonging to the crew members and passengers of the said M/V Noria 767, consisting of cash money amounting to Three Million Five Hundred Seventeen Thousand Three Hundred Pesos (P3,517,300.00), personal belongings of passengers and crew amounting to One Hundred Thirty Thousand Pesos (P130,000.00), the vessel's compass, navigational charts and instruments amounting to Forty Thousand Pesos (P40,000.00) to the damage and prejudice of the aforementioned owners in the total amount of THREE MILLION SIX HUNDRED EIGHTY SEVEN THOUSAND THREE HUNDRED PESOS (P3,687,300.00) Philippine Currency; that by reason of and on the occasion of the said piracy and for the purpose of enabling the above-named accused to take, steal and carry away the properties above-mentioned, the herein accused in pursuance to their conspiracy, did then and there willfully, unlawfully and feloniously with intent to kill and with evident premeditation, treacherously attack, assault, stab, shot and, taking advantage of superior strength, use personal violence upon the persons of Abduador Sumihag Vicente America, Perhan Tan, Marcos Que, Ismael Turabin, Mabur Abdurahman, Wadi Aduk, Rasdi Alfad, Kashmir Tan, Peter Paul Chiong, Juaini Husini, Ismael Ombra, Sabturani Ulug, Mutalib Sarahadil, Bajubar Adam, Quillermo Wee, Reuben Segovia Ho, Michael Lao, Yusop Abubakar, Hahji Hussin Kulavan, Amjad Quezon, Reuban Majid, Edgar Tan, Abdurasul Alialam, Federico Canizares, Omar Tahil, Gilbert Que, Arajul Salialam, Masihul, Bandahala, Asola Mohammaddin, Batoto Sulpicio, Sakirani Bassal, Ibrahim Jamil, Saupi Malang and Gulam Sahiddan, thereby inflicting upon them multiple gunshot wounds which caused their instantaneous death and likewise causing physical injuries upon the persons of Inggal Issao, Abduhasan Indasan, Hadji Yusop H. Alfad and Hadji Mahalail Alfad, thus performing all acts of execution which could have produced the death of said persons, but nevertheless did not produce it by reason or cause independent of the will of said accused, that is, by the timely and able medical assistance rendered to said victims which prevented death.

"CONTRARY TO LAW, with the aggravating circumstances of treachery, evident premeditation, night time

and the use of superior strength." (pp. 97-98, Rollo of 61069)

Upon arraignment on February 25, 1982, Jaime Rodriguez and Rico Lopez, assisted by their counsel, pleaded guilty to the charge, were convicted on March 5, 1982 and sentenced each "to suffer the extreme penalty of death."

Dario Dece Raymundo, upon arraignment, interposed a plea of not guilty. However, he withdrew his plea and substituted it with that of guilty. On March 10, 1982 he was convicted of the crime charged and sentenced "to suffer the extreme penalty of death."

Peter Ponce y Bulaybulay entered the plea of not guilty. After trial, he was found guilty and was also sentenced "to suffer the extreme penalty of death."

No pronouncement was made with respect to the civil liabilities of the four defendants because "there was a separate civil action for breach of contract and damages filed with the same trial court in Civil Case No. N-85 against the several defendants, including the four accused aforementioned." (p. 26, L-61069)

The case of the four convicted defendants is now before Us on automatic review.

Evidence shows that on August 29, 1981, at about 7:30 in the evening, the vessel M/V Noria 767, owned and registered in the name of Hadji Noria Indasan, left Jolo wharf for Cagayan de Tawi-Tawi. It arrived at the port of Cagayan de Tawi-Tawi the following day, August 30, 1981, at around 2:00 in the afternoon. In the evening of the same date, the vessel left for Labuan. On board the vessel were several traders and crew members. Two or three hours after its departure, while sailing about 25 miles from Cagayan de Tawi-Tawi, a commotion occurred in one of the cabins of the vessel.

Three witnesses testified on what they saw and heard.

Mr. Clyde Que, a passenger, heard noises inside a cabin and, after awhile, he heard shots being fired. He rushed to the motor launch to hide and on his way through the engine room, he saw appellant Peter Ponce. Then appellants Jaime Rodriguez, Dario Dece and Rico Lopez, all armed with rifles, started firing towards Que's companions after which they brought Que to the pilot's house to handle the steering wheel. He was substituted by Usman, another passenger, while Que and the other crew members were ordered to throw overboard sacks of copra and the dead bodies of Peter Chiong, Michael Lao, Casmin Tan and Vicente America. At the time, appellant Peter Ponce, armed with a M-14 rifle, stood guard.

Hadji Mahalail Alfad, another passenger, heard commotions from the motor launch, followed by gunfire. He hid by laying down among the sacks of copra. He saw appellants Peter Ponce, Jaime Rodriguez, Rico Lopez and Dario Dece coming down the stairs as they were firing shots until Fred Canizares and Guilbert Que were hit, their bodies falling upon him. When he tried to move, he realized that he was also hit on the right side of his stomach. Thereafter, he pretended to be dead till daytime.

Emil Macasaet, Jr., the skipper of the vessel heard the commotion from one of the cabins. He ordered his men to open the door but it could not be opened. After awhile, the door opened and he saw a gun pointed at them. Whereupon, he hid behind the bags of copra until appellant Jaime Rodriguez came and fired at him. Luckily, he was not hit. He and some of his men crawled and they took cover in the bodega of copra. While in hiding there were gunfires coming from Dario Dece and Peter Ponce. About four (4) hours later, his Chief Mate Usman persuaded him to come out otherwise something worse would happen. He saw Jaime Rodriguez who ordered him to direct his men to throw the copras as well as the dead bodies overboard.

About ten o'clock in the morning of the same day, the vessel reached an island where the four appellants were

able to secure pumpboats. Macasaet was ordered to load in one of the pumpboats nine (9) attache cases which were full of money. Rico Lopez and Jaime Rodriguez boarded one pumpboat, while Peter Ponce and Dario Dece boarded another, bringing with them: dressed chicken, softdrinks, durian, boxes of ammunitions, gallons of water and some meat, as well as rifles.

Municipal Health Officer Leopoldo Lao went aboard the vessel M/VNoria when it arrived at Cagayan de Tawi-Tawi on September 2, 1981 and saw at the wharf ten dead bodies, all victims of the sea-jacking, namely: Gulam Sahiddan, Arajul Naran Salialam, Mallang Saupi, Guilbert Que, Frederico Canizares, Masihul Bandahala, Ribowan Majid, Edgar Tan, Omar Sabdani Tahir and Abdurasul Salialam.

In their brief, appellants Jaime Rodriguez, Rico Lopez and Dario Dece claim that the trial court erred (1) in imposing the death penalty to the accused-appellants Jaime Rodriguez alias Wilfred de Lara, Rico Lopez y Fernandez and Davio de Reyes, alias Dario Dece Raymundo y Elausa despite their plea of guilty; (2) in giving weight to the alleged sworn statements of Peter Ponce y Bulaybulay, identified as Exhibits "C" to "C-10" and Exhibits "I to I-5", as evidence against Peter Ponce y Bulaybulay; (3) in holding that accused-appellant Peter Ponce y Bulaybulay is guilty of the crime of piracy; (4) in holding that the defense of Peter Ponce y Bulaybulay was merely a denial; and, (5) in holding that Peter Ponce y Bulaybulay entrusted the P1,700.00 which was his personal money to Atty. Efren Capulong of the National Bureau of Investigation.

There is no merit in this appeal of the three named defendants, namely: Jaime Rodriguez and Rico Lopez in G. R. No. L-60100, and Dario Dece in G. R. No. L-60768.

Anent the first assigned error, suffice it to say that Presidential Decree No. 532, otherwise known as the Anti-Piracy Law, amending Article 134 of the Revised Penal Code and which took effect on August 8, 1974, provides:

"SEC. 3. Penalties. -Any person who commits piracy or highway robbery/brigandage as herein defined, shall, upon conviction by competent court be punished by:

"a) Piracy. - The penalty of reclusion temporal in its medium and maximum periods shall be imposed. If physical injuries or other crimes are committed as a result or on the occasion thereof, the penalty of reclusion perpetua shall be imposed. If rape, murder or homicide is committed as a result or on the occasion of piracy, or when the offenders abandoned the victims without means of saving themselves, or when the seizure is accomplished by firing upon or boarding a vessel, the mandatory penalty of death shall be imposed. (Underscoring supplied)

Clearly, the penalty imposable upon persons found guilty of the crime of piracy where rape, murder or homicide is committed is mandatory death penalty. Thus, the lower court committed no error in not considering the plea of the three (3) defendants as a mitigating circumstance. Article 63 of the Revised Penal Code states that:

"ART. 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

With respect to the other assigned errors, We also, find them to be devoid of merit. Appellant Peter Ponce gave a statement (Exhibits "C" to "C-11") to the Malaysian authorities and another statement (Exhibits "I" to "I-15") before the National Bureau of Investigation of Manila. When said statement (Exhibits "C" to "C-11") was offered in evidence by the prosecution, the same was not objected to by the defense, aside from the fact that Peter Ponce, on cross examination, admitted the truthfulness of said declarations, thus:

"Q

And the investigation was reduced into writing is that correct?

A

Yes, sir.

Q

And you were investigated by the police authority of Kudat and Kota Kinabalo, is that right?

A

Yes, sir. Only in Kudat.

Q

And that statement you gave to the authority at Kudat, you have signed that statement, is that correct?

A

Yes, sir.

Q

And what you stated is all the truth before the authority in Kudat?

A

Yes, sir." (pp. 33-34, tsn, May 28, 1982)

Relative to the appeal of appellant Peter Ponce (G.R. No. L-61069), which We likewise declare to be without merit, evidence shows that his participation in the commission of the offense was positively testified to by the master of the vessel, Emil Macasaet, Jr., and a passenger, Hadji Mahalail Alfad. Another witness, passenger Clyde Que also pointed to have seen him (Peter Ponce) armed with an M-14 rifle.

Considering the testimonies of Clyde Que and Emil Macasaet, Jr. who actually saw appellant Peter Ponce firing his weapon indiscriminately at the passengers and crew members in wanton disregard of human lives and the fact that after the looting and killing, appellant Peter Ponce, still armed, joined Dario Dece in one pumpboat, there can be no question that he was in conspiracy with the three other defendants. After his arrest, Ponce gave a statement to the authorities stating therein his participation as well as those of his companions (Exhibits "I" to "I-1").

The four (4) appellants were arrested and detained by the Malaysian authorities. On January 8, 1982, the National Bureau of Investigation authorities fetched and brought them to Manila where they executed their respective statements after Rico Lopez and Peter Ponce delivered to the NBI, P3,700.00 and P1,700.00, respectively, aside

from the P527,595.00 and one Rolex watch which the Malaysian authorities also turned over to the Acting In-Charge of the NBI in Jolo.

The statement of Ponce (Exhibit "I") contains the questions and answers pertinent to Section 20 of the 1973 Constitution, to wit:

"1. QUESTION: Mr. Peter Ponce, we are informing you that you are under investigation here in connection with the robbery committed on the M/V Noria last August 31, 1981, where you are an Assistant Engineer. You have a right to remain silent and to refuse to answer any of our questions here. You have the right to be represented by counsel of your choice in this investigation. Should you decide to be represented by a lawyer but cannot afford one we will provide a lawyer for you free. Should you decide to give a sworn statement, the same shall be voluntary and free from force or intimidation or promise of reward or leniency and anything that you say here maybe used for or against you in any court in the Philippines. Now do you understand all these rights of yours?

ANSWER: Yes, sir.

2. Q: Do you need the services of a lawyer?

A: No, sir.

"3. Q: Are you willing, to affix your signature herein below to signify that you so understand all your rights as above stated and that you do not need the services of a lawyer?

A: Yes, sir." (p. 116, Rollo)

Thus, it is clear that Peter Ponce was fully advised of his constitutional right to remain silent and his right to counsel.

Considering the written statements of all the appellants, (Exhibits "E", "F", "G", "H" and "K"), interlocking as they are with each other as each admits his participation and those of the other co-accused, there is no room for doubt that conspiracy existed among them. The conduct of appellant Peter Ponce before, during and after the commission of the crime is a circumstance showing the presence of conspiracy in the commission of the crime. As a consequence, every one is responsible for the crime committed.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, Cuevas, and Alampay, JJ., concur.

Fernando, C.J., no part.

Teehankee, J., files a brief concurrence.

SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

I concur with the judgment of conviction, there being sufficient direct evidence and positive identification by eyewitnesses.

I take exception, however, to the statement therein that accused Peter Ponce "was fully advised of his

constitutional right to remain silent and his right to counsel." The monosyllabic answers of "Yes" and "No" have been stricken down by the Court as utterly unacceptable as a voluntary and intelligent waiver of the constitutional right to silence and to counsel in *People vs. Caguioa* (95 SCRA 2), in line with my separate concurring and dissenting opinion in the recent case of *People vs. Itlanas* (G.R. No. 60118, prom. February 28, 1985). As therein stated, I subscribe to the Court's requirement in *Morales, Jr. vs. Ponce Enrile* (121 SCRA 538) that "the right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel" in order to assure that it is knowingly, voluntarily and intelligently given.

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