

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSALIO LAGUARDIA, DANTE BARTULAY, BALTAZAR BERAN, AND
RAYMUNDO BARTULAY, ACCUSED-APPELLANTS.**

G.R. No. 63243, February 27, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

In this automatic review of the death sentence imposed upon the lone accused-appellant, we are asked to determine if, while concededly guilty of robbery, he should also be held for the killing of the victim notwithstanding that this was actually done by another person. The Solicitor General says the judgment should be affirmed because of the proven conspiracy between the accused-appellant and the actual killer. The defense, on the other hand, impliedly admits the conspiracy only with respect to the robbery but not as regards the murder which it claims was not part of the original plan.

The facts, as derived by the lower court from the evidence adduced at the trial, are briefly narrated as follows:

On September 6, 1979, at about 10:30 o'clock in the evening, Dante Bartulay and Baltazar Beran, the herein accused-appellant, signaled to a stop a truck owned by Fortune Tobacco Corporation then being driven by Miguel Chua on the zigzag road in Kilometer 36 inside the Iwahig Penal Colony at Puerto Princesa in Palawan City. Beran approached one side of the truck and pretended to borrow a screwdriver and while Chua looked for the tool Bartulay shouted from the other side of the truck, "This is a hold-up!" With guns drawn, the two men ordered Chua and his three companions, Benigno Caca, Frank Morante, and Eduardo Aniar, to alight. Bartulay forced Chua to lie face down on the ground about 3 meters away from his companions. Bartulay was pointing a gun at Chua's head. On orders of Bartulay, Beran got the wallets and watches of the four. Bartulay asked about the money they were carrying and Chua pointed to its location. Beran got it and gave it to Bartulay. The money amounted to about P100,000.00. Then, again on orders of Bartulay, Beran herded the three companions inside the panel where they were locked. It was while they were still inside the panel that Beran and the others heard two gunshots. When Beran got off the truck, he saw Chua still lying on the ground but now bleeding in the head. Thereafter, Beran drove the truck from the scene of the crime while Bartulay followed in a motorcycle. Somehow, Caca and Morante managed to escape by jumping from the truck through a secret exit of the panel. They subsequently reported the occurrence to the law-enforcement authorities who, returning to the scene of the crime the following day, found Chua already dead.[1] Beran was arrested on September 8, 1979, with the amount of P4,500.00 in his possession and upon questioning pointed to the place where he had hidden the pistol he had used during the hold-up.[2] Further investigation disclosed that the motorcycle and guns used by Bartulay and Beran were owned by Rosalio Laguardia, who was identified by Beran as the mastermind of the crime.[3] The money stolen was supposed to have been divided in the house of Raymundo Bartulay, Dante's brother.[4]

Dante Bartulay could not be tried at the time because he was at large. Baltazar Beran was found guilty of robbery with homicide and sentenced to death. Rosalio Laguardia was convicted (presumably as a principal by

inducement) and sentenced to life imprisonment. Raymundo Bartulay was acquitted for insufficient evidence.[5]

This case involves Baltazar Beran only as Laguardia later withdrew his appeal.

In finding Beran guilty and sentencing him to death, the trial court made the following conclusion:

"x x x. It is undisputed that the crime committed by the accused was robbery with homicide, and the killing of the victim was done with the use of a gun. The heinous act was preceded by taking of the wallets, the watches and the money from the victim of the robbery. Whenever a homicide has been committed as a consequence, or on the occasion, of a robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide (Pp v. Darwin Veloso y Militante, alias Carlito Villareal, accused-appellant, G.R. No. 32900, Feb. 25, 1982). In the case at bar, evidence is strong and clear that Baltazar Beran did not endeavor to prevent the homicide of the killing (sic) of Mike Chua by Dante Bartulay x x x." [6]

The accused-appellant now faults the trial court for holding inter alia that Beran should be held guilty of the homicide committed on the occasion of the robbery notwithstanding that he was not the one who actually killed Chua; that he should have tried to prevent the killing of Chua but did not; and that the aggravating circumstances of treachery, evident premeditation, nighttime and use of a motor vehicle should not have been appreciated against him.

The accused-appellant suggests that the case[7] cited by the lower court in convicting him is not applicable because the crime involved therein was robbery with homicide committed by a band whereas the robbery in the instant case was perpetrated only by two persons. The trial judge did err in this respect. Nevertheless, as the Solicitor General correctly points out, the offense, while not covered by Article 296 of the Revised Penal Code, still comes under Article 294(1) which may also impose the death penalty "when by reason or on occasion of the robbery, the crime of homicide shall have been committed" even if cuadrilla is not present.

Under this provision, it is enough to show conspiracy among the participants in the crime of robbery to render each and every one of them liable for any homicide that may be committed by reason or on the occasion of such robbery. And in the instant case, evidence of such conspiracy is not lacking. Indeed, it is not disputed that Bartulay and Beran together went to the scene of the crime and lay in wait for Chua's truck; that they together pretended to borrow a screwdriver from the victim; that while Bartulay pointed a gun at Chua and his companions, Beran divested them of their cash and watches; that Beran got the bag containing P100,000.00 on orders of Bartulay; that also on the latter's orders, Beran locked up Chua's three companions in the panel; that Beran drove the stolen truck away from the scene of the crime while Bartulay followed in the motorcycle; and that Beran later got P4,500.00 as his share of the stolen money.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through the physical volition of one or all, proceeding severally or collectively.[8] It is also a settled rule that conspiracies need not be established by direct evidence of acts charged but may and generally must be proved by a number of indefinite acts, conditions, and circumstances which vary according to the purpose accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of an apparent criminal or unlawful purpose in common between them. The existence of the agreement, or joint assent of the minds, need not be proved directly.[9]

Confronted with the established fact of conspiracy to commit the robbery, the accused-appellant cannot plead that he should not be held responsible for the murder on the ground that he did not conspire to commit it or that he had no opportunity to prevent its commission.

"The rule is that where the conspiracy to commit robbery was conclusively shown by the concurrent and coordinate acts of the accused, and homicide was committed as a consequence or on the occasion of the robbery, all the accused are guilty of robo con homicidio whether or not they actually participated in the killing." [10]

That rule was applied in *People v. Puno*, [11] where the accused and confederate Tenarife, in pursuance of a preconceived plan, boarded a jeep and held up its passengers, with Tenarife killing one of them after divesting him of his wallet and his watch. Puno himself robbed another passenger but did not participate in the shooting of the deceased victim. Nonetheless he was held guilty of robbery with homicide as the killing was committed by Tenarife in connection with the robbery which Puno and Tenarife had conspired to commit.

"Generally, when robo con homicidio has been proven, all those who had taken part in the robbery are guilty of the complex crime unless it appears that they endeavored to prevent the homicide (*U.S. v. Macalalad*, 9 Phil. 1; Decisions of Supreme Court of Spain dated Feb. 23 and April 30, 1972 and June 19, 1890; 3 Viada, *Codigo Penal*, 347, 354, 358)." [12]

"It may be observed that, although Puno did not actually take part in the killing of Oyong by Tenarife, his presence in the jeepney was a crucial factor that emboldened his confederate in perpetrating that homicidal act with impunity." [13]

In *People v. Veloso*, [14] this Court held:

"x x x. Well entrenched is the rule that whenever a homicide has been committed as a consequence, or on the occasion, of a robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide."

That decision cited the earlier case of *People v. Mangulabnan*, [15] where it was categorically declared:

"x x x in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (Decision of Supreme Court of Spain of Nov. 26, 1892, and Jan. 7, 1878, quoted in 2 Hidalgo's *Penal Code*, p. 267, and 259-260, respectively). This High Tribunal, speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident (Decision of Sept. 9, 1886, Oct. 22, 1907, April 30, 1910 and July 14, 1917), provided that the homicide be produced by reason or on the occasion of robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration (Decision of Jan. 12, 1889 — see Cuello Calón's *Codigo Penal*, pp. 501-502; *Italics supplied*)."

It is futile therefore for the accused-appellant to argue that he was inside the panel with the companions of Chua when the latter was killed by Bartulay and could not have stopped the shooting. The undisputed fact is that the killing was committed on the occasion of the robbery which Beran and Bartulay plotted and were carrying out together. In the absence of clear evidence that he endeavored to prevent it, Beran is as guilty of the homicide as Bartulay although it was Bartulay who pulled the trigger.

Concerning the aggravating circumstances which the accused-appellant insists should not have been taken against him, the Court notes that no specific finding regarding such circumstances was made by the trial judge, who simply meted out the penalties without explanation. The trial judge, notably, did not say why, after finding both Beran and Laguardia guilty, the former should be sentenced to death and the latter only to life imprisonment. If any error has been committed with respect to Laguardia's penalty - and the circumstances so indicate - it is too late to correct it now as the same has long since become final. By withdrawing his appeal, Laguardia may have benefited from the trial judge's carelessness.

The trial court also does not clearly impute to Beran any aggravating circumstance and merely hints at nighttime and use of motor vehicle almost in passing. This is another censurable flaw in the decision. It is no wonder that the Court itself is perplexed over the accused-appellant's assignment of error that the trial court had taken the said several aggravating circumstances against him.

In any event, it is clear that, as alleged in the amended information, the crime committed by Beran was aggravated by desoblado and justified the imposition on him of the death penalty as prescribed by Article 294 of the Revised Penal Code. The evidence shows that the accused lay in wait for the truck being driven by Chua at an isolated portion of Highway 36, choosing that particular spot where they could commit the crime they were planning without disturbance or discovery and with easy opportunity for escape.[16] The use of motor vehicles is also appreciated because the conspirators drove away from the scene of the crime to facilitate their escape and also to prevent the other passengers of the truck, whom they took with them, from reporting the offense to the authorities.[17]

Nighttime is rejected, however, because it was not especially sought, as Chua's trip schedule and not the discretion of the culprits determined the time of its commission. Evident premeditation is, of course, inherent in the crime of robbery and was not proved in the commission of the killing. As for treachery, there is no evidence of its employment as none of the witnesses actually saw the shooting of Chua, being all inside the panel when they heard the fatal shots.

Miguel Chua was only 32 years old at the time he was killed and left a wife and three children aged, respectively, 11, 10 and 8, the youngest a daughter. To provide for his family, he was willing to work even at night, not unaware perhaps, given the condition of the times, of the dangers that lurked in the desolate routes he traveled, considering especially the sizable amounts of money he often carried. If he was nonetheless undeterred, it was probably because, like the promising young man that he was, he had a dream for the future. Tragically, that dream died with him on the lonely stretch of road where greed lay in ambush with a gun.

The indemnity for the death of Chua is increased to P30,000.00. Funeral expenses amounted to P16,500.00.[18] As the victim was earning at the time of his death a monthly compensation of P2,500.00,[19] consisting of salary and commission, or P30,000.00 annually, and could have lived about 24 more years,[20] his total earnings for the period would have amounted to P720,000.00. The heirs are also entitled to this amount plus P10,000.00 moral damages and P10,000.00 exemplary damages.[21]

WHEREFORE, the appealed decision is AFFIRMED as MODIFIED but in view of the provisions of the new Constitution, the death penalty is reduced to reclusion perpetua. The accused-appellant shall also pay the civil indemnity specified above, and costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] TSN, pp. 33-36, Sept. 23, 1981; pp. 26-27, Aug. 13, 1981; Sworn statement of Francisco Morante, p. 2, Sept. 10, 1979.

[2] Rollo, p. 67.

[3] Ibid.

[4] Sworn statement of Baltazar Beran, Sept. 10, 1979.

[5] Rollo, pp. 70-71.

[6] Id.

[7] People v. Veloso, G.R. No. L-32900, Feb. 25, 1982.

[8] People v. Monaga, 118 SCRA 466.

[9] People v. Belen, 118 Phil. 880; People v. Pedro, 16 SCRA 57; People v. Palon, 127 SCRA 529.

[10] People v. Lingad, 98 Phil. 5.

[11] 56 SCRA 659.

[12] People v. Puno, 56 SCRA 663-664.

[13] Ibid., p. 664.

[14] 112 SCRA 173.

[15] 99 Phil. 992.

[16] TSN, pp. 9-17, March 31, 1982; People v. Lor, 132 SCRA 41; People v. Ong, 108 SCRA 267.

[17] Ibid, pp. 31-34, March 31, 1982; People v. Espejo, 36 SCRA 400.

[18] Rollo, p. 69.

[19] Ibid., pp. 68-69.

[20] Villa-Rey Transit, Inc. v. Bello, 7 SCRA 735; Merchan v. Mendoza, 24 SCRA 888; Article 2206, par. 1, Civil Code.

[21] Article 2217, Civil Code; Article 2230, Civil Code; People v. Zaganay, 127 SCRA 128; People v. Baylon, 129 SCRA 62.

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