

# THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. CONRADO LAGMAY Y GARCES ALIAS “JOJO GARCES”, FERNANDO BAETIONG Y CAMPOPOS, AND FRANCISCO O. PADULLANA, ACCUSED, CONRADO LAGMAY Y GA...

*G.R. No. 67973. October 29, 1992*

Ponente: GUTIERREZ, JR., J.

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## GUTIERREZ, JR., J.:

A review of the decision of the Regional Trial Court of Quezon City, Branch LXXXIV is sought by appellants Conrado Lagmay y Garces alias Jojo Garces and Francisco O. Padullana, who are among the three accused convicted of the crime of Robbery with Frustrated Homicide and sentenced to suffer the penalty of reclusion perpetua. The other accused, Fernando Baetiong y Campopos escaped from prison after the prosecution had rested its case and remains at large.

The three accused were initially charged in two separate informations, namely: in Criminal Case No. Q-15192 for Robbery with the Use of Force and Violence against Persons, and Criminal Case No. Q-15193 for Robbery and Frustrated Homicide. The two cases were jointly tried by the same court. In Criminal Case No. Q-15192, all three accused were acquitted.

The information in Criminal Case No. Q-15193 alleged:

“That on or about the 20th day of July, 1980, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with, and mutually helping one another, with intent of gain, with the use of force, violence and intimidation against persons, did, then and there willfully, unlawfully and feloniously, rob the following offended parties of their personal properties, to wit:

1. Adela Alfonso y Marquez:

One Lady's wrist watch

with calculator valued

at .....P385.00

Ace Shoulder bag, valued

at..... 40.00

P425.00

2. Maria L. Jesus:

One college ring valued

at..... P500.00

One gold ring with stone valued

at..... P250.00

One lady's Citizen watch

valued at..... P600.00

P1350.00

3. Edgar Fulleros:

One Seiko chronograph

valued at..... P600.00

4. Victoriano Madrigal:

Cash money representing

his earnings as driver of

the jeepney robbed

(in different

denominations)..... P180.00

5. Pat. Casiano Pedrana (should be Pedrano)

Cash money in different

Denominations..... P 14.00

One pistol, caliber

.45 colt, SN No.

1638482 with seven

rounds of ammunition Undetermined

amount

in the following manner, to wit: the said accused, pursuant to their conspiracy, rode in a passenger jeepney driven by the offended party Victoriano Madrigal at Blumentritt Street, Manila bound for Novaliches, and when said passenger jeepney was near 11th Avenue, A. Bonifacio Street, this City, said accused brought out their unlicensed firearm and bladed weapons and told the passengers that it was a hold-up and threatened said passengers with death if they resisted or cried for help and thereafter with intent of gain, take, rob and carry away the personal properties of the offended parties mentioned above and when Pat. Casiano Pedrano resisted, said accused with intent to kill, stab (sic) him on different parts of his body and fired at him with their firearm thereby inflicting upon Pat. Casiano Pedrano serious and mortal wounds which could have produced his death were it not for the timely intervention of medical science to the damage and prejudice of offended parties in the aforesaid sum indicated above and in such other amount as may be awarded to them under the provisions of the Civil Code.” (Rollo, pp. 6-7)

After trial, the court rendered a conviction, the dispositive portion of which reads:

“In Criminal Case No. Q-15193, the Court finds the accused Conrado Lagmay y Garces, Fernando Baetiong y

Campopos and Francisco O. Padollana (should be Padullana) GUILTY as principals and beyond reasonable doubt of the crime of Robbery with Frustrated Homicide under Section 2, Article 294 of the Revised Penal Code with the attending aggravating circumstance of use of an unlicensed firearm and no attending mitigating circumstance and hereby sentences all three of them to suffer the penalty of life imprisonment (reclusion perpetua) together with all the accessories attendant thereto. Since the articles subject of the offense appear to have been recovered, no civil indemnity is imposed for the value thereof. However, they are sentenced to indemnify jointly and severally Pat. Casiano Pedrano in the amount of P36,000.00. Also, they are sentenced to pay jointly the costs of the proceedings.” (Rollo, p. 10)

The evidence on which the conviction was based is summarized in the decision as follows:

“In Criminal Case No. Q-15193, the case for the prosecution was testified to by two of the passengers; Pat. Casiano Pedrano and Adela Alfonso.

“Pat. Casiano Pedrano is a member of the Manila Police Department. On July 20, 1980, at 11:30 o'clock p.m., he was aboard a passenger jeepney bound for Novaliches, Quezon City and was seated in the back at the right side. A hold-up was staged by three (3) persons whom he identified as the accused herein. The accused Baetiong stabbed him in the chest while the accused Lagmay shot him on the right and left thighs with a .22 caliber revolver. His service gun (Exh. “D”), his wallet (Exh. “E”), his badge (Exhs. “E-1”), his cash money consisting of 2 5-peso bills (Exhs. “F” & “F-1”) and 2 2-peso bills (Exhs. “F-2” & “F-4”), and his shoulder bag (Exh. “G”) were taken from him by the robbers. He was then dropped on the highway. He was brought to and treated at the MCU-FDT Medical Foundation Hospital (Exh. “A”) and incurred an expense of about P36,000.00.

“Adela Alfonso was a passenger of that same jeepney with her sister Lydia, cousin Maria Rosal de Jesus, and Restituto Rivera. As the jeepney traveled along, the man beside her was always pressing his body towards hers. Along A. Bonifacio St. near 11th Avenue in Quezon City, a passenger whom she identified as the accused Lagmay drew a gun and announced: ‘This is a hold-up.’ There were three (3) robbers. Baetiong hit Rivera with a gun in the mouth while Lagmay slapped her. They took from her Casio calculator watch worth P385.00 and her bag worth P50.00. It was accused Lagmay who got the things from her. The accused Padollana was the one who took and collected the jewelries of the other passengers. Lagmay stood up and boxed her and by reason of the force of the blow, she fell from the jeepney. She suffered a dislocation in the right shoulder and was treated at the National Orthopedic Hospital (Exh. “C”). She was investigated by the police on the following morning and she gave a written statement (Exh. “B”).

“In addition to the foregoing, the prosecution presented the extrajudicial admissions of the accused Lagmay (Exhs. “H” & “H-1”) and of accused Padollana (Exhs. “I” & “I-1”)” (Rollo, pp. 7-8)

The accused interposed their respective defenses denying their alleged participation in the hold-up.

Conrado Lagmay alleged that on July 20, 1980 at about 11:00 in the evening in Blumentritt Street, he was alone as he boarded a jeepney bound for Novaliches. Of all the passengers inside that jeepney, only Francisco Baetiong was known to him. He did not reach his destination because of a trouble that occurred while the vehicle was running in which Fernando Baetiong stabbed another male passenger for reasons he did not know. He jumped out from the back exit of the vehicle after that stabbing incident but was arrested by a security guard. He however admitted having blood on his clothes which he explained to have been due to injury on his forearm caused by his jumping out and rolling on the ground. (TSN, April 19, 1983, pp. 7-8) He said that there was one female passenger who fell from the jeep but that he did not come to her aid. He also said that he did not confront his co-accused Baetiong who insisted that it was he (Conrado Lagmay) who shot and wounded the latter on his right foot. (Ibid, p. 9) The accused likewise said that he did not know nor did he see Padullana.

Meanwhile, Francisco Padullana narrated that he is a provinciano who came from Tacloban, Leyte eleven (11)

days before the alleged incident took place, to look for a job in Manila. He said that after being taught by his aunt on how to commute from his cousin's place in Tondo to Blumentritt, and from Blumentritt to his aunt's house in Caloocan, he took a jeepney alone on the night of June 20, 1980 from Blumentritt but failed to arrive at his destination. While the jeepney was running, he saw two men quarrelling with each other. He was later threatened by one of the men (referring to Fernando Baetiong) who pointed a bladed instrument at his (Padullana's) side, to go with him by a taxicab to a house of a friend or relative in Tondo. In that house, Baetiong ate and slept but Padullana did not. He did not leave that house because he did not know the way from there to his aunt's place in Caloocan.

According to him, police officers arrested him and Fernando Baetiong in that house after some hours and held them for questioning. He said that despite his insistence that he was not involved in the hold-up, the police even mauled him and forced him to sign a statement. (TSN, May 24, 1983, pp. 7-13) Padullana said that he did not know his co-accused Conrado Lagmay (Ibid, 1983, p. 4)

Finding the denials of the accused to be weak and not credible the trial court convicted all three of them.

Only the accused Lagmay and Padullana appealed the decision to this Court and assigned the following errors:

#### I

THE TRIAL COURT ERRED IN FINDING THAT CONSPIRACY EXISTS IN THIS INSTANT CASE.

#### II

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE CONSTITUTIONAL RIGHTS OF THE APPELLANTS TO REMAIN SILENT AND TO COUNSEL DURING CUSTODIAL INVESTIGATION HAD BEEN VIOLATED.

#### III

THE COURT A QUO COMMITTED REVERSIBLE ERROR IN ADMITTING IN EVIDENCE THE EXTRA JUDICIAL CONFESSIONS OF THE ACCUSED WHICH WERE EXTRACTED THROUGH FORCE, DURESS, THREATS AND INTIMIDATION.

#### IV

THE TRIAL COURT ERRED IN FINDING THAT THE GUILT OF APPELLANTS HAD BEEN ESTABLISHED BEYOND REASONABLE DOUBT. (Appellant's Brief, p. 1 in Rollo, p. 25)

It is argued that there can be no conspiracy among the three accused in the present case because there was no proof that all three of them were known to each other and that there was no sufficient proof of a preconceived agreement to commit the robbery.

The accused-appellants Lagmay and Padullana testified that they do not know each other and that they did not see each other inside the jeepney. They likewise admit that both of them knew Fernando Baetiong. Padullana, however, makes the qualification that he knew Baetiong only because he was threatened by the latter to go to a house in Tondo.

We emphasize that conspiracy which determines criminal culpability need not entail a close personal association or at least an acquaintance between or among the participants to a crime. Moreover, evidence of a previous agreement or plan to commit a crime is not essential to establish conspiracy. (People v. Maranion, 199 SCRA 421 [1991]; People v. Dionisio, 200 SCRA 207 [1991]) Conspiracy is established by evidence of unity of purpose at

the time of the commission of the offense and unity in its execution. (People v. Bravante, 150 SCRA 569 [1987]; People v. Cantuba, 183 SCRA 289 [1990]) What is important is that in the performance of the specific acts necessary to achieve their goal, there was “such closeness and coordination that would indicate a common purpose or design.” (People v. Petenia, 143 SCRA 361 [1986]; People v. Francisco, 182 SCRA 305 [1990])

In the present case, conspiracy was established by conclusive evidence. It was shown to exist as clearly as the commission of the crime itself. (De la Concepcion v. People, 173 SCRA 253 [1989]) There is evidence of participatory acts of each of the three accused. Contrary to what the counsel for the accused-appellants suggests, the Court finds that Padullana is not spared a finding of conspiracy since the evidence positively manifests the same intent on his part to take things against the will of the complainants and other passengers. The accused-appellant Padullana was found to have cooperated and given material aid in the consummation of the crime.

The Solicitor General aptly describes the manner in which the crime was committed.

“a. As soon as accused Baetiong announced that they were staging a hold-up in the passenger jeepney on July 20, 1980, both he (referring to Baetiong) and accused-appellant Lagmay took turns in hitting victims Casiano Pedrano and Adela Alfonso who resisted in handing their valuables to the former (TSN, July 13, 1981, p. 2; TSN, August 26, 1981, p. 6). Once certain that the other jeepney passengers would provide no resistance for fear of their life and limb, accused-appellant Padollana took the jewelries of passengers Marylou de Jesus and Restituto Rivera (TSN, August 26, 1981, p. 7). His acts, if nothing else, indicate criminal intent to deprive others of their property in accordance with a common plan as agreed upon with his co-accused Baetiong and Lagmay.” (Appellee's Brief, p. 15)

The above observations are based on the testimonies of the prosecution witnesses.

The appellant's counsel, however, asks us to believe that the prosecution witnesses testified on the lack of participation of accused-appellant Padullana. There is no basis for this opinion. The Court notes and views with disfavor the manner by which desired portions of the testimonies were lifted and the more important ones left out just to convince us that the prosecution in fact proved the innocence of Padullana. The witnesses Adela Alfonso and Pat. Casiano Pedrano who were victims of the crime at first answered in the negative in their respective direct examinations regarding the participation of Padullana, but after further questioning and more lucid recollection of events as the inquiries progressed, they answered differently and particularly attested to Padullana's presence and act of collecting the items with intent to rob the passengers.

The testimony of each of the prosecution witnesses is shown to be characterized by candor that normally accompanies an unrehearsed and honest delivery of facts personally and vividly known to a witness. Minor discrepancies caused by the needed deeper reflection do not affect the veracity of a testimony for as long as the fact of participation was duly established. The credibility of the witnesses are even reinforced. (People v. Lucille Sendon, G.R. No. 95903-05, June 8, 1992; People v. Bautista 147 SCRA 500 [1987]; People v. Alfredo Hoble y Leonardo, G.R. No. 96091, July 22, 1992)

The pertinent portion of the testimony of Adela Alfonso, the victim who was slapped by accused-appellant Lagmay and who fell from the jeepney, is as follows:

x x x x x x x x

Q. Now you said there were three persons involved in the robbery hold-up. You mentioned Fernando Baetiong, you identified Conrado Lagmay as the person who took your calculator, watch and shoulder bag. Now could you recognize that 3rd person if you see him again?

A. Yes, sir. (Witness pointing to Francisco Padollana)

Q. What did Francisco Padollana do?

A. He did not do anything.

Q. What was he doing all the while from the start that this Lagmay drew his gun, slapped and got your calculator and shoulder bag?

A. He was the one who got the jewelries of my companions.

Q. Who is that companions (sic) of yours?

A. (Witness pointing to Marylou de Jesus and Restituto Rivera)

(TSN, August 26, 1981, p. 7; Underscoring ours)

Pat. Casiano Pedrano, the victim who was stabbed, shot and seriously wounded testified:

Q. How about the accused Francisco Padollana, did you observe if there was anything in his possession at that time?

A. There was none.

Q. While this robbery was going on what was Padollana doing?

A. (No answer)

COURT:

Do you want to impress to the Honorable Court that all the wound sustained in your body were inflicted by accused Baetiong?

A. Yes, sir.

FISCAL:

While you were being stabbed by Baetiong do you still recall what the other passengers were doing?

A. The other passengers cannot move because Padollana has a gun.

(TSN, July 13, 1981, p. 3; Underscoring ours)

It can be seen that the prosecution witnesses were able to positively identify Padullana as one of the three men responsible for the robbery. The mere presence of accused-appellant Padullana instilled fear among the passengers. Moreover, his act in collecting the personal belongings against the will of the owners makes him a co-conspirator to the unlawful taking of property. Hence, the allegations that he was a provinciano from Leyte who came here several days before the robbery took place to look for a job, and that he was forcibly asked by accused Baetiong to go to a house in Tondo are mere denials which do not overturn the strength of the prosecution evidence.

The Court agrees with the argument of the Solicitor General that if indeed accused-appellant Padullana was forced against his will by the accused Baetiong to accompany him to a house in Tondo, why could he not devise a scheme to escape? (Appellee's Brief, p. 16; Rollo, p. 51)

The second and third assigned errors refer to the propriety of the admission in evidence of the extrajudicial confessions (Exhibits "H" and "I"; Original Records, pp. 208-211) of the two accused-appellants allegedly

obtained in violation of the constitutional right to remain silent and to counsel, and by means of mauling and electrocution administered by policemen in civilian clothes.

We agree with the appellants that the confessions taken without assistance of counsel should not have been considered by the trial court. However, the confessions are not necessary to support the judgment of conviction.

The testimonies of the prosecution witnesses identifying the accused-appellants and linking them to the successful accomplishment of a common plan to rob the passengers of their valuables, constitute strong and convincing evidence to establish the guilt of the accused beyond reasonable doubt. The negative testimonies of the accused-appellants denying their participation cannot prevail over the positive testimonies of the prosecution witnesses. (People v. Joselito Villalobos and Roberto Villalobos, G.R. No. 71526, May 27, 1992) The prosecution witnesses related their first-hand account of the specific involvement of the three accused who, armed with a gun and a bladed knife, were able to overcome the resistance of the passengers to the extent of inflicting injuries, and successfully stashed away the things belonging to the victims. Since in a conspiracy, the act of one is the act of all, every one of the conspirators is equally guilty and must then suffer the same penalty prescribed by law. This, notwithstanding the different modes of participation of each one in the crime. (People v. Quinones, 183 SCRA 747 [1990])

However, the trial court erred in designating the crime committed as robbery with frustrated homicide, in applying Section 2, Article 294 of the Revised Penal Code, and in appreciating the use of an unlicensed firearm as an aggravating circumstance. There is no such crime as robbery with frustrated homicide.

Section 2 of Article 294 which penalizes robbery that is accompanied by rape or intentional mutilation, or on the occasion of or by reason of which any of the physical injuries resulting in insanity, imbecility, impotency or blindness is inflicted, is certainly not applicable to the present case. The records do not show any of such circumstances to be present.

Inasmuch as the prosecution did not establish with absolute certainty the gravity or seriousness of the physical injuries suffered by Patrolman Pedrano, the Court deems it proper that the accused-appellants be held liable under Section 4, Article 294 of the Revised Penal Code which states:

“Art. 294. Robbery with violence against or intimidation of persons. Penalties - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

x x x x x x x x

4. The penalty of prision mayor in its maximum period to reclusion temporal in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or x x x.

Section 4, Article 294 penalizes robbery, in the course of the execution of which, the offender shall have inflicted upon any person not responsible for the commission of robbery, serious physical injuries defined in paragraphs 3 and 4 of Article 263 of the same code.

We note that the offense was committed under at least two (2) of the circumstances mentioned in Article 295. The robbery was consummated by attacking a moving motor vehicle such that the passengers thereof were taken by surprise. It was likewise committed along a street on the regular route taken by the passenger jeepney with the use of a firearm. According to Article 295, the offenders shall be punished by the maximum period of the prescribed penalty in Section 4, Article 294, or reclusion temporal in its medium period.

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, with the modification that the

accused-appellants Conrado Lagmay y Garces and Francisco O. Padullana are held guilty of the offense of robbery defined in Section 4, Article 294, in the course of the execution of which serious physical injuries enumerated in paragraphs 3 and 4 of Article 263 were inflicted and the circumstances mentioned in Article 295 were present. Applying the Indeterminate Sentence Law, the accused-appellants are sentenced to an indeterminate penalty of ten (10) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum. The accused-appellants shall likewise be credited in the service of their sentence with the full time of their preventive imprisonment provided that they previously agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; however, if they did not so abide, then they shall be credited with only four-fifths of the time.

**SO ORDERED.**

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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