

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE BARTULAY, ACCUSED-APPELLANT.

G.R. No. 83696. December 21, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Subject of this appeal is the decision of the Regional Trial Court, Branch 49, Puerto Princesa City, in Criminal Case No. 3042 entitled "People vs. Dante Bartulay" convicting appellant Dante Bartulay of the crime of robbery with homicide under an amended information which reads:

"The undersigned accuses ROSALIO LAGUARDIA alias "ROLLY", DANTE BARTULAY alias "TOTOY", BALTAZAR BERAN alias "BOY BUNGAL", as principals, and RAYMUNDO BARTULAY alias "MANDING", as accessory, of the crime of "ILLEGAL POSSESSION OF FIREARM WITH ROBBERY WITH HOMICIDE", committed as follows:

‘That on or about the 6th day of September, 1979, and for sometime prior thereto, in Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, accused Rosalio Laguardia, Dante Bartulay and Baltazar Beran, conspiring and confederating together and mutually, helping one another, did then and there wilfully, unlawfully and feloniously have in their possession, custody and control the following firearm(s), to wit: One (1) .380 cal., automatic pistol and One (1) 22 cal. revolver with Serial No. 64618, without having the necessary license and/or permit from the proper authorities; that while in possession of aforescribed firearms at the aforementioned place and date, the said accused conspiring and confederating together and mutually helping one another, with intent of gain and without the consent and against the will of the owners, by means of force, violence and intimidation and with the use of aforementioned firearms and motor vehicle, did then and there wilfully, unlawfully and feloniously take, steal and carry away from one MIGUEL 'MIKE' CHUA the amount of P50,000.00 cash, more or less, and P37,000.00 in checks, more or less and a panel truck worth P100,000.00 in the total value of P187,000.00 more or less, belonging to said MIGUEL 'MIKE' CHUA and the FORTUNE TOBACCO CORPORATION, to the damage and prejudice of the latter (sic) in the aforesaid amount; that on the occasion of said robbery and for the purpose of enabling them to take said amount and panel truck the said accused, in pursuance of their conspiracy, with treachery, evident premeditation, taking advantage of nighttime, with the use of a motor vehicle and with intent to kill, did then and there wilfully, unlawfully, and feloniously assault, attack and shoot one MIGUEL 'MIKE' CHUA, thereby inflicting upon the latter mortal gunshot wounds which were the direct and immediate cause of his death; that accused Raymundo Bartulay, having full knowledge of the commission of the aforementioned robbery with homicide and without having participated therein either as principal or accomplice, take part subsequent to its commission by then and there profiting himself and/or assisting the above-named principal accused to profit by the effects of the crime and also by concealing and hiding the cash money and checks taken from said Miguel 'Mike' Chua in order to prevent its discovery by the authorities.’

"CONTRARY TO LAW with the aggravating circumstances of evident premeditation, treachery, use of a motor

vehicle and nighttime." (pp. 1-2, Original Records)

Since appellant evaded arrest, his co-conspirators Rosalio Laguardia and Baltazar Beran, were convicted ahead of him and are now serving sentence at the National Penitentiary, Muntinlupa, Metro Manila. On April 28, 1985, appellant was arrested at Agno St., Tatalon, Quezon City by elements of the Manila Police Force (pp. 6-7; 293, Ibid.).

At the arraignment, appellant with the assistance of Attys. Gregorio Austria and Ma Buen Consejo, pleaded GUILTY to the crime of robbery; NOT GUILTY to homicide; hence, a conditional plea of NOT GUILTY was entered into the records (p. 28, Ibid.)

The facts as gleaned from the records are as follows:

Benjamin Caca, driver of Fortune Tobacco Corporation and principal witness for the prosecution, testified that: On September 6, 1979, at about 10:00 in the evening, the victim, Miguel 'Mike' Chua, salesman of the Fortune Tobacco Corporation, was driving a panel truck, together with him, helper Edgardo Aniar and friend Frank Morante, passing along kilometer 36, southroad, a zigzag road inside the Iwahig Penal Colony, on their way to Puerto Princesa City. The group had come from Brooke's Point, Palawan where they delivered cigarettes and collected payments for previous sales amounting to more or less P100,000.00. At a distance of five (5) meters, from the approaching truck, appellant Dante Bartulay and Baltazar Beran, co-accused, motioned to Mike Chua to stop. When the truck stopped at the middle of the road, co-accused Beran approached the victim at the pretext of borrowing a screw driver. The victim told Beran to wait as he will park the truck on the side of the road. At this point, appellant and Beran pulled out their guns and announced a holdup. They ordered the four persons to alight from the truck. Beran directed him, Edgardo Aniar and Frank Morante to stay at the right side of the road some five (5) meters away from the truck while appellant separately led the victim about two meters away from them on the same side of the road. The four of them were ordered to lie down facing the ground. Appellant with one foot, stepped on the shoulder of the victim while pointing a gun at him. Beran then divested him and Frank Morante of their watches and wallets while appellant took Chua's watch and wallet. Appellant asked the victim where his collection was. The latter told appellant that the money is placed at the back of the driver's seat. Appellant then ordered Beran to get the money. The latter did and gave the money contained in a paper bag to appellant. Thereafter, Beran demanded the keys of the truck from the victim, who gave them to appellant, who in turn gave them to Beran. Beran then ordered the companions of the victim to go inside the panel truck. Some twenty five (25) seconds after they were locked up inside the truck, two successive shots were fired. The truck then started to move and while in motion, he opened the secret exit door of the panel and was able to jump out, rolling on the ground until he reached the canal. He was able to hitch a ride up to Narra, Palawan where he reported the incident to the police authorities (Hearing of Sept. 13, 1985; TSN, pp. 5-20). The next day, September 7, 1979, the cadaver of Miguel Chua was examined by Dr. Rufino Ynzon, the City Health Officer of Puerto Princesa City. His findings were contained in a necropsy report as follows:

"POSTMORTEM-FINDINGS

"1. Wound, gunshot, (entrance) roughly circular hole, 8-9 mm. in diameter, surrounded by a contuso-abraded collar, located at the occipital region, 3 inches above from the occipital protuberance.

"2. (a) Wound, gunshot, (exit) hole which is irregular in shape, about 1 inch long, located at the left frontal bone, 2 1/2 inches above left superior orbital ridge.

(b) Wound, gunshot, (exit) hole which is irregular in shape, about 3/4 inch. long, 1 1/2 inches above wound of exit-(a).

"3. Wound, punctured-lacerated, about 1/3 inch in diameter, located at the left inferior orbital ridge.

"4. Contusion with hematoma, located at the left superior orbital portion.

"5. Contusion with hematoma, located at the right superior orbital portion.

"6. Abrasions, located at the left arm, medial third, anterior portion.

"7. Abrasions, located at the left elbow, posterior portion.

CAUSE OF DEATH:

HEMORRHAGE, MASSIVE, INTRA-EXTRA CRANIAL, SECONDARY TO GUNSHOT WOUND." (Exhibit "B", Folder of Exhibits)

Appellant took the PAL second flight in Puerto Princesa to Manila in the morning of September 7, 1979 (TSN, p. 127; Hearing of July 21, 1986; Ibid., p. 198, Hearing of October 30, 1987).

M/Sgt. Eugenio Enriquez, head of the Intelligence and Operations of the Palawan Constabulary Command, stated that the police authorities were able to investigate Anthony Padiapco who informed them of the presence of one "Boy Bungal" at the scene of the crime as he even borrowed some tools from him that night. After ascertaining that "Boy Bungal" was Baltazar Beran, police authorities traced his whereabouts and arrested him on September 8, 1979. Recovered from him was P4,500.00 which he admitted was part of his share from the booty (Exhibits "F" and "F-1", "G" and "G-1" and "H" and "H-1" Folder of Exhibits). Beran executed a confession before the police authorities on the day he was arrested (Exhibits "P" and "Q", Ibid.) and another statement on September 9, 1979 (Exhibit "Q", Ibid.) Based on said confessions, the police authorities were able to recover from the roof of the kitchen of one Rosalio Laguardia, the revolver he used during the holdup, the motorcycle owned by Laguardia, which was used as a getaway vehicle, and some part of the share of appellant from the loot entrusted by him to his brother Raymundo Bartulay who, upon investigation by the police, voluntarily informed them of the place where it was hidden (Exhibits "I" - "N", Ibid.; TSN, pp. 55-76, Hearing of Sept. 24, 1985; Ibid., pp. 86-98, Hearing of Feb. 14, 1985).

At the trial, appellant admitted that he and Beran only agreed to stage a holdup. He portrayed himself as the one who guarded the companions of Miguel Chua and that he was instructed by Beran to get the money from behind the driver's seat. He stated that upon finding the bag containing the money, he heard two successive shots; he even resented why Baltazar Beran had to kill Miguel Chua as they merely planned to rob him; he was responsible in saving the lives of the three passengers by pleading to Baltazar Beran to spare them (TSN, pp. 178-184, Hearing of Oct. 29, 1987)

On March 8, 1988, the trial court rendered its decision convicting appellant of the crime of robbery with homicide, the dispositive portion of which states:

"WHEREFORE, the Court find (sic) and so finds (sic) Dante Bartulay guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294 (1) of the Revised Penal Code, as principal by direct participation, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, with all accessories provided for by law, to indemnify the heirs of Miguel Chua the amount of Seven Hundred Twenty Thousand (P720,000.00) Pesos for the expected earnings, Ten Thousand (P10,000.00) Pesos for moral damages and Ten Thousand (P10,000.00) Pesos for exemplary damages and to pay the costs." (p. 55, Rollo).

In seeking the reversal of his conviction, appellant claims that the trial court erred: (1) in its findings that he was the one who shot Miguel Chua; (2) in finding him guilty of the complex crime of robbery with homicide despite lack of evidence; and (3) in failing to appreciate that he endeavored and in fact was successful in preventing

Baltazar Beran from killing the three companions of Miguel Chua. Appellant admits participation in the commission of robbery but vehemently and specifically denies any participation in the killing of Miguel Chua (pp. 63-64, Rollo).

The evidence indubitably shows that appellant and co-accused Beran agreed to commit robbery at Km. 36, Zigzag Road, Iwahig Penal Colony, Puerto Princesa City, two (2) weeks prior to the incident. On September 6, 1979, both appellant and Beran succeeded in robbing Miguel Chua of P87,000.00 and the victim was shot to death 25 seconds subsequent to his three companions' entry into the van. There was no eyewitness to the killing of the said victim. Neither was there a showing that appellant endeavored to prevent the killing of Chua. A conspiracy in the statutory language exists when two or more persons avow to an agreement concerning the commission of a felony and decide to commit it (*People v. Taaca*, G.R. No. 35652, September 29, 1989).

Appellant tries to exculpate himself of criminal liability by pointing to co-accused Beran as the one who fired the shots and killed Chua. When the conspiracy to commit the crime of robbery was conclusively shown by the concerted acts of the accused and homicide was committed as a consequence thereof, all those who participated are liable as principals in the robbery with homicide, although they did not actually take part in the homicide, unless it appears that they attempted to prevent the killing. The question as to who actually robbed or who actually killed is of no moment since all of them would be held accountable for the crime of robbery with homicide (*People v. Salvador*, G.R. No. 77964, July 26, 1988, 163 SCRA 574 [1988]). (Underscoring supplied).

Moreover, the following actuations of appellant after the shots were fired clearly show that he is a co-conspirator: (a) immediately after the firing of the shots, he followed the truck driven by Baltazar Beran in the motorcycle; (b) when they reached Montible, Baltazar Beran abandoned the truck, rode in the motorcycle with appellant and proceeded to the house of appellant's brother in Puerto Princesa City where they divided the loot (TSN, pp. 184, 196-199, Hearing of Oct. 30, 1987) Where conspiracy has been established, a showing as to who inflicted the fatal blow is not required. (*People v. Alvarez*, G.R. No. 70446, January 31, 1989, 169 SCRA 730).

Finally, appellant admitted that when he heard the news that he was being hunted by police authorities in connection with the crime, he immediately bought a plane ticket at the PAL office in Puerto Princesa City and took the second flight to Manila in the morning of September 7, 1979. His sudden departure is indicative of guilt. The guilty flee when no man pursueth but the innocent are as bold as a lion (*People v. Espinosa*, G.R. No. 72883, December 20, 1989).

As correctly found by the trial court, the use of motor vehicle by the appellant and his co-conspirator aggravated the commission of the offense since the vehicle was used to facilitate their escape from the scene of the crime.

The penalty of robbery with homicide prescribed in Article 294 of the Revised Penal Code is reclusion perpetua to death. Since only one aggravating circumstance attended the commission of the offense, the greater penalty that is death shall be applied pursuant to Article 63 of the Revised Penal Code. However, this penalty cannot be imposed presently in view of the 1987 Constitution. Hence, the penalty of reclusion perpetua was correctly imposed by the trial court upon the appellant.

The trial court correctly convicted accused of robbery with homicide only despite the fact that the amended information charged all the four accused namely, Rosalio Laguardia, Dante Bartulay and Baltazar Beran of the crime of illegal possession of firearm with robbery with homicide. The information alleges that the four accused by conspiring and confederating together, unlawfully have in their possession one .380 cal. automatic pistol and one 22 cal. revolver with Serial No. 64618 without the necessary license or permit from the proper authorities and that while in the possession of said firearms, the four accused, by conspiring together, committed robbery with homicide.

The information herein is violative of Section 13 Rule 110 of the Rules on Criminal Procedure which states that a complaint or information must charge but one offense except in certain cases. The four accused are charged with two separate offenses of illegal possession of firearms and robbery with homicide. When each one of two offenses committed is punishable by two different laws, they cannot be charged in one information as a complex crime but must be regarded as two separate and distinct offenses, each one to be the subject of separate informations. When duplicity of offenses exists in an information the accused must present his objection by filing a motion to quash the information on the ground of duplicity of offenses. If the accused fails to object and goes to trial under the information which contains a description of more than one offense, the general rule is he thereby waives the objection and may be found guilty of and should be sentenced for, as many offenses as are charged in the information and proved during trial (*People v. Medina* 59 Phil. 134; *People v. Miana* 50 Phil. 771). This rule however shall apply only if the accused is formally arraigned and required to plead on all the offenses as are charged in the information. Otherwise, the accused cannot be convicted of the offenses with respect to which he was not properly arraigned.

In the case at bar, the accused was not formally arraigned as to the offense of illegal possession of firearm. The information wrongly complexed the robbery with homicide with the special offense of illegal possession of firearm. In effect, the accused is charged with two distinct offenses. He should therefore be arraigned and required to plead to the two offenses. Records show that during the arraignment, the accused pleaded guilty to robbery and not guilty to homicide. Hence, the trial court entered a conditional plea of not guilty for him to the offense of robbery with homicide, without requiring the accused to enter his plea to the illegal possession of firearms (p. 28, Records). And in the rendition of judgment, the trial court convicted him only of robbery with homicide as there was no proper arraignment of the accused concerning the other offense. In one case, this Court held that where the defendant is charged with three separate offenses, and he pleaded guilty to the two offenses without pleading to the third offense charged, the court cannot render judgment of conviction on the third offense without requiring him to plead (*US v. Sobrevinas* 35 Phil 2). This is based on the principle that a defendant is legally placed on trial only when issue upon the information which charges such an offense has been joined after arraignment by his plea of not guilty thereto (*People v. Ylagan* 58 Phil. 851).

We shall sustain the monetary award, consisting of loss of earnings, made by the trial court in favor of the heirs of the victim as this matter was not raised in issue in this appeal. Further, this Court grants the amount of P50,000.00 as death indemnity to be paid by the appellant to the heirs of the victim, in accordance with the new policy of this Court laid down in the Resolution of this Court en banc dated August 30, 1990 and in *People v. Daniel Sison*, G.R. 86455, September 14, 1990, in addition to the moral and exemplary damages awarded by the trial court.

ACCORDINGLY, except for the above mentioned modification, the decision appealed from convicting the accused appellant of the crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua with all the accessories provided for by law is **AFFIRMED**.

SO ORDERED.

Cruz, Gancayco, and Grino-Aquino, JJ., concur.
Narvasa, J., (Chairman), see separate opinion.

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CONCURRING OPINION

NARVASA, J.:

I agree entirely with the findings and basic conclusions of the ponencia of Mr. Justice Medialdea. I write this separate opinion merely with reference to the disquisition therein (actually obiter dictum since it has no bearing on the affirmance, with modification, of the petitioner's conviction) relative to the duplicitous character of the information filed by the fiscal against the appellant, which charged him not only with robbery with homicide -- for which he was properly convicted by the Trial Court -- but also with illegal possession of firearm. I want to prevent the discussion on the point from engendering the belief that this Court is here laying down the proposition that where an indictment is indeed duplicitous because charging more than one crime, it is the Trial Court's affirmative obligation to inform the accused of this defect and require him to plead separately to each of said offenses.

The provisions of the Rules of Court in force at the time material to this inquiry^[1] required that an accused must be arraigned before the court where the complaint or information has been filed or assigned for trial (unless the cause shall have been transferred elsewhere for trial). The arraignment is made in open court by the judge or clerk by ?

1. reading the complaint or information to the defendant,^[2]
2. delivering to him a copy thereof, including a list of witnesses, and
3. asking him whether he pleads guilty or not guilty as charged.

At the arraignment, the accused must be personally present if the charge is for an offense within the jurisdiction of the Court of First Instance (now Regional Trial Court) and if for a light offense triable by the justice of the peace or any other inferior courts of similar jurisdiction, he may appear by attorney.^[3]

Now, at any time before being arraigned, or entering his plea on arraignment, the accused may move to quash the complaint or information on any of several specified grounds,^[4] one of which is, "That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses."^[5] If the accused does not move to quash on this ground, he shall be deemed to have waived it.^[6]

It is the Court's duty to assure that the accused is fully informed of the charges against him. This is why the information is read to him, and he is also given a copy of the complaint or information. His knowledge of all the facts set out in the indictment, as well as of the circumstance that those facts constitute several offenses, is thus made reasonably certain, specially since the law requires that he be assisted by counsel on arraignment.^[7] No obligation is expressly or implicitly imposed on the judge to point out the duplicitousness (or other defect) of an indictment on which an accused is being arraigned. In truth, that function appears to be ruled out as far as the judge is concerned since it is on the accused that the law reposes the obligation to move to quash on the ground of duplicity (or otherwise), under sanction of waiver and loss of said ground of objection.

These principles should not be deemed to have been altered by the Court's Decision in this case.

In the case at bar, there are positive indications that the accused did not completely understand the charges against him; and these justified a finding that his arraignment was not adequate. When arraigned, "the accused pleaded guilty to robbery and not guilty to homicide," as the decision states; but he made no reference whatever to the offense of illegal possession of firearm, also set out in the information. It thus appears that the accused understood that he was being accused only of robbery and homicide, and had no inkling that another offense was being ascribed to him, too. These circumstances, in the ponente's view, warranted a conclusion similar to that reached in

the early case of *U.S. v. Sobreña*, 35 Phil. 32, where the proceedings were declared by this Court to be fatally defective and irregular upon the following facts set out in the syllabus, viz.:

"The accused, while on the witness stand testifying in his own behalf, broke down and admitted his guilt of the offense with which he was charged in the information upon which he had been brought to trial (Case No. 1290). At the same time he admitted his guilt of ** (two) offenses charged in ** (another information [Case No. 1290]) upon which, however, he had not been brought to trial. The trial court entered judgments convicting and sentencing the accused of the offenses charged in each of these informations, without further proceedings, without bringing the accused to trial, without formal arraignment and without giving the accused an opportunity to enter any of the pleas authorized in General Orders No. 58."

Upon said facts, this Court disposed as follows:

"The judgments entered in the court below convicting and sentencing the defendant and appellant in the cases now under consideration, Nos. 11544 and 11545 of the general register of this court, should, for the reasons stated, be reversed, with the costs in both instances de officio, and the records should be remanded to the court wherein they originated, reserving to the officers of that court the right to bring these cases on again for trial or to dismiss the informations as in their discretion the interests of justice may require. So ordered."

[1] The 1985 and 1988 amendments have not substantially altered the relevant provisions governing arraignment and motions to quash.

[2] Rule 116, Sec. 1. As amended, the reading is required to be "in the language or dialect known to him"

[3] Rule 116, Sec. 2. As amended, the rule now requires the accused to "be present and personally enter his plea," without distinction as to the Court before which he is arraigned, and that if "the accused refuses to plead, or makes a conditional plea of guilty, a plea of not guilty shall be entered for him."

[4] Rule 117, Sec. 1. Originally, the rule was somewhat awkwardly stated as follows: "Upon being arraigned the defendant shall immediately, unless the court grants him further time, either move to quash the complaint or information or plead thereto, or do both. If he moves to quash without pleading, and the motion is withdrawn or overruled, he shall immediately plead." As amended, the rule now simply states that the motion to quash may be filed by an accused "at any time before entering his plea."

[5] *Id.*, Sec. 2 (e). The grounds for quashal have not been altered.

[6] Rule 117, Sec. 10. In truth, the rule is that by failing to move to quash at all, he shall be deemed to have waived all grounds for quashal subject to specified exceptions.

[7] Rule 116, Secs. 3 and 4

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