

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERIBERTO YABUT Y PALINGO, ACCUSED-APPELLANT.

G.R. No. 85472. September 27, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

Three persons were originally charged with the crime of robbery with multiple homicide and serious physical injuries in the Regional Trial Court of Pasig.[1] Renato Teodoro was acquitted for lack of evidence.[2] Angeles San Antonio and Eriberto Yabut were convicted as charged.[3] Both questioned their conviction, but San Antonio eventually withdrew his appeal.[4] Eriberto Yabut thus remains the lone appellant in this case.

Judge Alfredo C. Flores found that on October 31, 1982, at about 10 o'clock in the evening, Angeles San Antonio, a member of the Teresa Rizal Police Station, and Eriberto Yabut, a meat dealer, arrived at the residence of Gen. Amado Santiago, at Valle Verde, Pasig, Metro Manila, and pretended to be looking for Renato Teodoro, the family driver. Thelma Cruz, the general's sister-in-law, said Teodoro was not there. San Antonio then asked for coffee, which was served by two maids, Joaquina Ege and Lydia Catarig, upon Thelma's instruction.[5]

To their surprise, the maids saw guns pointed at them, a .45 caliber pistol by San Antonio and an armalite by Yabut. The intruders announced a robbery, eliciting cries of alarm from the two maids as they were forced into the library. Thelma, who heard the maids shouting, rushed to the room of Santiago upstairs. Meantime, the other persons in the house, namely, the spouses Dario and Rosario Enero, who were then visiting, and Alfredo Bultron, the house caretaker, were rounded up to join the two maids. When Santiago came down, San Antonio also took him to the library, where his hands were tied by Bultron upon Yabut's orders.[6]

San Antonio then ransacked the rooms upstairs while Yabut stood guard in the library. Thelma had hidden under a sofa, but was asked to come out by Santiago upon prodding from San Antonio and Yabut. The two got from her the amount of P800.00, the cash sale of Santiago's store for that day. They also took several pieces of jewelry with a total cost of P545,000.00 as itemized in the information.[7]

The two men had started to leave when San Antonio, as if by afterthought, grabbed Yabut's armalite and fired at their captives in cold blood. Joaquina Ege, Lydia Catarig, the spouses Rosario, and Dario Enero died on the spot. Santiago and Alfredo Bultron suffered physical injuries.[8]

San Antonio was arrested the next day by the Pasig police.[9] Yabut was voluntarily surrendered by his mother.[10] The loot, together with the armalite and the .45 caliber pistol, was recovered in San Antonio's house.[11] A paraffin test conducted on San Antonio found him to be positive of gun powder residue.[12] A similar test on Yabut yielded negative results.[13]

At the trial, both San Antonio and Yabut admitted their participation in the crime charged. Yabut, however, offered to enter a plea of guilty only to the lesser offense of simple robbery, saying he had no part in the killings.[14] San Antonio tried to exculpate himself with the explanation that at the time of the commission of the

offense, he was under the influence of drugs.[15]

The trial court rejected these manifestations and found both accused equally guilty as charged. The dispositive portion of the decision read as follows:

WHEREFORE, judgment is hereby rendered sentencing accused Angeles San Antonio and Eriberto Yabut to a penalty of reclusion perpetua, to indemnify jointly and solidarily the heirs of the victims, Joaquina Egre, Lydia Catarig, Dario Enero and Rosario Enero, in the sum of P30,000.00 each; the sum of P15,000.00 to Alfredo Bultron; the sum of P200,000.00 to Gen. Amado Santiago and the further sum of P545,000.00 by way of damages to the spouses Amado and Eleanor Santiago. With costs.

The bail bond filed by accused Renato Teodoro is hereby cancelled.

SO ORDERED.

In this appeal, Yabut contends that the trial court erred in finding the existence of conspiracy between him and San Antonio; in not holding him guilty only of robbery; and in considering nighttime and the killings and serious physical injuries as aggravating circumstances.[16]

Yabut's conviction will be sustained.

The well-settled doctrine is that conspiracy need not be proved by direct evidence of prior agreement to commit the crime; only rarely would such a prior agreement be demonstrable since in the nature of things criminal undertakings are only rarely documented by agreements in writing.[17] Thus, conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that the several accused had acted in concert or in unison with each other, evincing a common purpose or design.[18]

In the case at bar, the evidence shows that Yabut and San Antonio were together when they borrowed the car they used to get the armalite in Yabut's house.[19] San Antonio admitted they brought the armalite to Santiago's residence with robbery aforethought.[20] Both San Antonio and Yabut, brandishing their weapons, herded the occupants of the house into the library.[21] Yabut ordered Bultron to tie the hands of Santiago.[22] While San Antonio was ransacking the rooms, Yabut stood guard with his armalite, ready to react to any resistance on discovery.[23] All these acts showed unity of purpose between Yabut and San Antonio in the execution of the robbery and the killings and physical injuries that followed.

Where conspiracy is shown, the acts of one conspirator and the precise extent or modality of participation of each of the conspirators in the crime become secondary.[24] The act of one conspirator is the act of the other conspirators, and each of them is equally guilty of the crime committed.[25] Hence, Yabut, as a conspirator, cannot be held guilty only of the lesser offense of robbery but must also answer for the shooting of the captives.

The Court also applies the accepted principle that whenever homicide has been committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special crime of robbery with homicide although they did not actually take part in the homicide.[26] The single exception to the rule is when it is clearly shown that they endeavored to prevent the unlawful killing.[27] But there is no such showing here. On the contrary, Yabut actually threatened the lives of the captives, saying he would make "dominoes" out of them, by which he meant he would mow them down one after the other.[28]

The plea for the exoneration of San Antonio on the ground that he acted under the influence of drugs has become irrelevant with the withdrawal of his appeal. It is unacceptable in any case. As for the aggravating circumstance of night-time, there is no showing that it was purposely sought or taken advantage of to facilitate the commission of

the offense or for the purpose of impunity. At any rate, this circumstance cannot affect the penalty prescribed for the offense, for reasons to be given presently.

The designation of the offense is erroneous. The information should have charged the appellant simply with the special complex crime of robbery with homicide under Article 294 of the Revised Penal Code. We have consistently held that the number of the homicides or injuries committed should not change that designation although they could have been considered aggravating circumstances before the modification of the penalty for this offense.[29] The term "homicide" as used in the said provision is to be understood in its generic sense and includes murder and physical injuries committed during the robbery, which are merged in the crime of robbery with homicide.

As we held in *People v. Maranion*:^[30]

x x x it is the nature of the crime of robbery with homicide that the homicides, irrespective of their number, committed on the occasion of or by reason of the robbery, are merged in the composite crime of "robbery with homicide." It is error, therefore, to treat the death of the victims as "double or multiple homicide," for in this special complex crime, the number of persons killed is immaterial and does not increase the penalty prescribed in Article 294 of the Revised Penal Code.

Robbery with homicide is now punishable with the single and indivisible penalty of reclusion perpetua because of the prohibition of the death penalty.^[31] Under the first paragraph of Article 63 of the Revised Penal Code, "In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the court regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed." This is the reason for not appreciating time and the shooting of the victims for the purpose of increasing the penalty.

A witness for the prosecution, Lt. Florencio Reyes, testified that the entire loot, including the jewelry taken, was recovered.^[32] There was therefore no justification for the award of P545,000.00, representing the amount stolen, as actual damage. No evidence having been presented regarding the actual damages sustained by Bultron and Santiago as a result of their respective injuries, the award therefor cannot be allowed either. As we held in *People v. Degoma*,^[33] courts cannot simply assume that damages were sustained by the injured party nor can they rely on speculation or guesswork in determining the fact and amount of damages.

The Court notes with distress that the crime was committed by still another policeman, who by his own admission was under the influence of drugs. This is a dismaying commentary on the image of our men in uniform, to whom the people used to look up as their shield and weapon against the lawless elements. Now many policemen have themselves joined the lawless elements and have become the predators rather than the protectors of the public. It is time to launder the soiled and disheveled khaki and bring back to it the cleanness and the starch that inspired so much respect and confidence before in the men who wore it.

WHEREFORE, the decision of the trial court is **AFFIRMED**, but with these modifications: The civil indemnity for the death of Joaquina Egre, Lydia Catarig, Dario Enero and Rosario Enero, is increased to P50,000.00 for each victim. The award of P545,000.00 as actual damages to the spouses for the things stolen from them is deleted. The award of the amount of P15,000.00 to Bultron and the additional award of P200,000.00 to Santiago for their injuries is also disallowed, no evidence having been presented to support them. Costs against the Appellant.

SO ORDERED.

Davide, Jr., Bellosillo, and Quiason, JJ., concur.
Griño-Aquino, J., on official leave.

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- [1] Information, rollo, p. 8.
- [2] Decision of Regional Trial Court, Branch 167, Pasig, Metro Manila, penned by Judge Alfredo C. Flores, rollo, p. 14.
- [3] Ibid., pp. 14-15.
- [4] Resolution dated January 15, 1992; rollo, p. 91.
- [5] TSN, April 23, 1984, pp. 44-57.
- [6] TSN, July 18, 1984, pp. 13-22.
- [7] Rollo, p. 8.
- [8] TSN, July 18, 1984, pp. 28-29.
- [9] TSN, February 7, 1984, p. 3.
- [10] Ibid.
- [11] TSN, February 7, 1984, pp. 5-6.
- [12] Exhibit 1-Yabut, Records, p. 737
- [13] Ibid.
- [14] February 5, 1984, pp. 3-4.
- [15] TSN, September 10, 1985, pp. 11-21.
- [16] Appellant's Brief, p. 7.
- [17] *Angelo v. Court of Appeals*, 210 SCRA 402.
- [18] Ibid.
- [19] TSN, September 10, 1985, pp. 64-67.
- [20] Ibid., pp. 36-38.
- [21] TSN, July 18, 1984, pp. 18-21.
- [22] Ibid., p. 22.
- [23] TSN, April 23, 1984, pp. 70-71.
- [24] *People v. Degoma*, 209 SCRA 266.
- [25] *People v. Nunag*, 196 SCRA 206.
- [26] Ibid.
- [27] *People v. de los Reyes*, 215 SCRA 63.
- [28] TSN, April 23, 1984, p. 71.
- [29] *People v. Penillos*, 205 SCRA 546; *People v. Maranion*, 199 SCRA 421; *People v. Nunag*, 196 SCRA 206; *People v. Ampo-an*, 187 SCRA 173.

[30] 199 SCRA 421.

[31] *People v. Dapitan*, 197 SCRA 378; Constitution, Article III, Sec. 19(1).

[32] TSN, February 7, 1984, pp. 5-6.

[33] 209 SCRA 266.

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