

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO VERAS, JR. ALIAS PLONGPLONG, SILVANO SANDIG, JR., ARNULFO MUNDAS, AND ARTEMIO PETALLO, DEFENDANTS. SILVANO SANDIG, JR....

G.R. No. 86727. September 13, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Convicted of the crime of robbery with homicide and sentenced to serve the penalty of reclusion perpetua by the Regional Trial Court of Bislig, Surigao del Sur in Criminal Case No. 299, accused Silvano Sandig, Jr. has interposed this appeal.

In an information filed by the Assistant Provincial Fiscal of Surigao del Sur, Silvano Sandig, Jr., Ernesto Veras, Jr., alias Plongplong, Arnulfo Mundas, Artemio Petallo, Warlito Basigsig, John Doe, Peter Doe and Paul Doe were charged with the crime of homicide committed as follows:

"That on the 16[th] day of November, 1986 at about and between 10:30 o'clock in the evening and 12:00 midnight, in Sitio Tuboran of Barangay Carpenito, Tagbina, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, said accused ERNESTO VERAS, JR. alias PLONGPLONG, SILVANO SANDIG, JR., ARNULFO MUNDAS, ARTEMIO PETALLO, WARLITO SANGUINA, OSIAS BASIGSIG, JOHN DOE, PETER DOE and PAUL DOE, armed with a short firearm or revolver and knives, conspiring and confederating together and helping one another, by means of violence and with intent to gain, did then and there wilfully, unlawfully and feloniously enter the house of spouses ALBERTO and ANACORITA SAGUISA, and while there, take and carry away the air rifle fairly valued at P1,500.00 and the wallet of Alberto Saguisa containing cash in the sum of P1,300.00, then downstairs take and carry away again two dogs valued at P200.00 each or a total of P400.00 and the male "bombay" breeder goat valued at P700.00, eating thereafter one dozen of durian fruits, all belonging to, and against the consent of, said spouses, therefore, to their damage and prejudice the aggregate sum of P3,900.00 and, on that same occasion, in pursuance of their conspiracy, with evident premeditation and taking advantage of their superior [ity] in number and strength, with intent to kill with the use of personal violence, did then and there wilfully, unlawfully and feloniously attack, assault and stab treacherously and brutally ALBERTO SAGUISA, thereby inflicting twenty-nine (29) stab wounds on various parts of his body which caused his death, to the damage and prejudice likewise of his heirs in the following amounts:

P30,000 as indemnity to the life of said deceased;

P15,000 for moral damages; and

P10,000 for exemplary damages." (p. 16, Rollo.)

When arraigned, Silvano Sandig, Jr., Ernesto Veras, Jr., Arnulfo Mundas and Artemio Petallo separately entered a plea of not guilty. The other five accused remained at large. Sandig escaped from detention on May 17, 1987, but

was tried in absentia.

While on trial and before the prosecution rested its case, the accused, Arnulfo Mundas, signed an Affidavit on June 19, 1987 implicating all the accused. The prosecution, with leave of court, utilized him as a state witness and discharged him from the information.

The evidence on record shows that at about 10:30 o'clock in the evening of November 16, 1986, in the remote sitio of Tuburan, Barangay Carpenito, Surigao del Sur, the spouses Alberto and Anacorito Saguia, together with their two daughters, were about to sleep when they heard knocks on the door of their house. From outside, some men shouted "Nong Albert, open the door for us, we are NPA's." (p. 42, Rollo.) Alberto was lying on the kitchen floor suffering from a bout with asthma. Afraid and undecided, his wife and children did not open the door. The callers, later identified as the accused, Ernesto Veras, Jr., Artemio Petallo, Arnulfo Mundas and Osias Basigsig, forced their way into the house by kicking the shutters and destroying the door railings. Once inside, the accused, who were armed with hunting knives, ordered Alberto to get up and give them durian fruits. The accused Warlito Sanguina gave some of the durian to their five other companions who had positioned themselves around the house and in different parts of the yard. Ernesto Veras then ordered Alberto to kill his dog which was tied near the kitchen, as well as that belonging to Alberto's son, Alejandro, who lived only five meters away. Alberto meekly obeyed. With the help of Petallo, they placed the butchered dogs in sacks and Arnulfo Mundas brought them to the roadside. They took Alberto's wallet containing P1,300, as well as his rifle which had been hanging on the wall. Thereafter, they brought Alberto downstairs. Silvano Sandig greeted him "good evening" and as Alberto acknowledged the greeting, Sandig suddenly thrust his knife into Alberto's chest. Alberto tried to run away, but the other accused chased him and overtook him some fifty meters away. They ganged up on him and stabbed him in different parts of the body. When he was lifeless, they fled from the scene towards the neighboring sitio of Roxas, Hinatuan. Alberto's corpse with twenty-nine (29) stab wounds, was found on the roadside the next day.

During the trial, the prosecution witnesses positively identified the culprits. Veras and Petallo admitted their presence in Alberto's house on the night of the murder but they denied having stabbed Alberto. They imputed the killing to the other accused.

On October 14, 1987, the trial court rendered a decision finding Veras, Sandig, and Petallo guilty beyond reasonable doubt as principals of the crime of robbery with homicide, and imposed on them the penalty of reclusion perpetua. It ordered them to indemnify the heirs of the victim in the sum of P30,000 for his death, P15,000 as moral damages, P10,000 as exemplary damages, and to reimburse the amount of P1,300 which they took from the victim's wallet. The dispositive part of the trial court's decision reads as follows:

"WHEREFORE, finding accused Ernesto Veras, Silvano Sandig and Artemio Petallo guilty beyond reasonable doubt as principals of the crime of robbery with homicide, the court imposes upon them the penalty of reclusion perpetua to be served by them in the National Penitentiary Muntinlupa, Metro Manila, with costs against them.

"The accused are ordered to indemnify the heirs of the victim the amount of P30,000.00 for his death; moral damages in the amount of P15,000.00; P10,000.00 for exemplary damages; to reimburse the amount of P1,300.00 the cash they got from the wallet of the victim.

"The accused being detention prisoners shall be credited in the service of their sentence consisting of the deprivation of liberty, with the full time during which they had undergone preventive imprisonment if they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise four-fifths (4/5) thereof. (Article 29 of the Revised Penal Code)." (p. 46, Rollo.)

Sandig appealed the decision, alleging that the lower court committed a reversible error in convicting him and his

co-accused of robbery with homicide in spite of the fact that conspiracy was not established. He contends that, not having participated in the robbery, he should be convicted of homicide only.

The appeal is devoid of merit.

The evidence is clear that after robbing the Saguisa spouses, the accused killed Alberto to eliminate him as a witness. The killing and felonious taking of property were not isolated acts. Each was part of the criminal design of the accused to rob and kill Saguisa. Since the killing of Alberto occurred on the occasion of the robbery in which the appellant Sandig admittedly participated, he is equally guilty with his co-accused of the special complex crime of robbery with homicide.

"In a prosecution for robbery with homicide, where conspiracy is present, it does not matter that the prosecution had failed to show who as between the two (2) accused actually stabbed the victim. Both accused are liable as co-conspirators since the act of a co-conspirator is the act of the other regardless of the precise degree of participation in the act." (People vs. Newman, 163 SCRA 496.)

"When the conspiracy to commit the crime of robbery is conclusively shown by the concerted acts of the accused, and homicide is committed as a consequence thereof, all those who took part as principals in the robbery would also be held liable as principals in the complex crime of robbery with homicide although they did not take part in the homicide unless it appears that they attempted to prevent the killing." (People vs. Salvador, 163 SCRA 574.)

The conspiracy was proven by the testimony of Arnulfo Mundas that before the group left Roxas, they had agreed to rob and kill Alberto and his wife. Upon reaching the house of Saguisa, the accused took different positions around and inside the house to insure the consummation of their criminal plan. Not one in the group endeavored to prevent his companions from pursuing their evil design. After killing and robbing Alberto, they fled together in the same direction from the scene of the crime.

For a conspiracy to be established, it is not necessary that all of the accused commit each and every act constitutive of the offense. "There is conspiracy where several accused, by their acts, aimed at the same object, one performing one part and another performing another part so as to complete it with a view to the attainment of the same object, and their acts, though apparently independent, are in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments" (Antonio vs. Sandiganbayan, 166 SCRA 595, citing People vs. Cabrero, 43 Phil. 64 [1922]; People vs. Geronimo, 53 SCRA 246 [1973]; People vs. Dalusag, 133 SCRA 15 [1984]; and People vs. Petunia, 143 SCRA 361 [1986]).

The question as to who actually robbed or who actually killed Saguisa is of no moment, because all of them are accountable for the crime of robbery with homicide. Each conspirator is the agent of the others. The act of one is the act of all (People vs. Maralit, 165 SCRA 427). The existence of a conspiracy may be inferred from acts tending to show a community of design or purpose (People vs. De la Cruz, G.R. No. 83798, March 29, 1990).

WHEREFORE, the appealed judgment is affirmed, but with modification by increasing to P50,000 the indemnity for the death of Alberto Saguisa. (Supreme Court Resolution en banc dated August 30, 1990; People vs. Sison, G.R. No. 86455, Sept. 14, 1990; People vs. Sazon, G.R. No. 75814, Sept. 24, 1990; People vs. Yeban, G.R. No. 90279, Nov. 26, 1990; People vs. Tesarra, G.R. No. 85531, December 10, 1990; People vs. Bartulay, G.R. No. 83696, Dec. 13, 1990). In addition to the moral and exemplary damages awarded by the trial court, the accused are further ordered to reimburse the victim's heirs for the value of the dogs in the sum of P500; P150 for the durian fruits, and P650 for the air rifle, all duly proven during trial. The liability of the accused for the civil indemnities payable to the legal heirs of the deceased shall be solidary. Costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

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