

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.DANILO SINOC, Y SUMAYLO, ACCUSED-APPELLANT.*G.R. Nos. 113511-12. July 11, 1997*

Ponente: NARVASA, C.J.

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In a decision handed down on October 7, 1993 by Branch 30 of the Regional Trial Court of Surigao City, Danilo Sinoc was found guilty beyond reasonable doubt in two cases jointly tried:[1] one, of the special complex crime of kidnapping with murder (under Article 267 in relation to Articles 248[2] and 48[3] of the Revised Penal Code) -- in Criminal Case No. 3564; and the other, of the complex crime of kidnapping with frustrated murder (under Articles 267, 248, 6,[4] and 48 of the same Code) -- in Criminal Case No. 3565. In each case, the penalty of reclusion perpetua was imposed on him.[5]

The amended informations under which Sinoc was tried and convicted, both dated January 23, 1992, included five (5) other accused, namely: Vicente Salon @ “Dodong,” Benjamin Espinosa @ “Benji,” Jaime Jornales @ “James,” Victorino Delegencia @ “Jun-Gren,” and one Roger Doe @ “Ram” (at-large).[6] However, only Sinoc and Vicente Salon were arraigned, on July 14, 1992, the other accused being then at large, as they still appear to be to this day. Assisted by their respective counsel, both Sinoc and Salon entered pleas of not guilty and were thereafter jointly tried. The joint trial resulted in Salon’s acquittal in both cases. The court agreed with him that “none of the witnesses presented by the prosecution remotely implicate** (him in) the crimes charged,” and that “(i)ndeed, the only piece of evidence pointing to ** (him[Salon]) as the mastermind is contained in the affidavit of confession of accused Danilo Sinoc,” hence, conspiracy not having been proved, the case against Salon “has to be dismissed.” Only Sinoc, therefore, is concerned in the appeal at bar.

Respecting the essential facts constituting the corpus delicti, there appears to be no serious dispute. It appears that on September 20, 1991, at about 6 o’clock in the morning, Isidoro Viacrusis, manager of Taganito Mining Corporation, was motoring from the company compound (at Taganito, Claver, Surigao del Norte) to Surigao City. He was riding on a company vehicle, a Mitsubishi Pajero (with Plate No. DFX-397), driven by Tarcisio Guijapon. As Viacrusis and Guijapon were approaching the public cemetery of Claver, they were stopped by several armed men. The latter, identifying themselves as members of the New People’s Army (NPA), boarded the Pajero and ordered Guijapon to proceed. When they reached Barobo, Surigao del Norte, the armed men ordered Viacrusis and Guijapon to alight, led them, their hands bound behind their back, to a coconut grove some six meters from the road, and after making them lie face down on the ground, shot them several times. Viacrusis miraculously survived. The driver, Guijapon, was not as lucky; he died on the spot.

These facts set forth in, among others, a sworn statement given to the police by Sinoc, *infra*, and an affidavit executed and sworn to by Viacrusis on October 17, 1991, about a month later.[7] In that affidavit, Viacrusis described the armed men who had kidnapped and shot him and Guijapon. The only malefactor he was able to identify by name, however, was Danilo Sinoc who, he said, had “curly hair, (was) known as ‘Colot’ (Danilo Sinoc), (and was known to) driver Tarcing **.”

Two prosecution witnesses gave germane testimony at the trial of the consolidated cases: Marlyn Legaspi a resident of San Vicente, Barobo, Surigao del Sur; and Barangay Captain Terencio Jamero, also of Barangay San Vicente.

Marlyn testified that she was startled by the sound of gunshots that morning of September 20, 1991. She ran towards the direction of the gunfire and as she neared the place, heard the moaning of a man. She moved quickly to the highway and saw a blue “Pajero” parked at the barangay road, its engine idling; and moments later, she saw the same vehicle running fast towards San Francisco, Agusan del Sur. She lost no time in reporting the incident to Brangay Councilor Terencio Jamero.

Jamero testified that on receiving Marlyn's report, he and another Councilor, Alberto Saliling, at once proceeded to the place indicated. There they came upon the slain driver, and Isidoro Viacrusis, lying on the ground, sorely wounded, crying out for help. With the assistance of policemen of Barobo, they brought Viacrusis to the Agusan del Sur Provincial Hospital at Patin-ay. Timely medical attention enabled Viacrusis to recover from his grievous wounds.

The evidence of the prosecution further establishes that in the morning of the following day, September 21, 1991, at about 7 o'clock, a secret informant (known as a “civilian asset”) named Boyet reported to the Police Station at Monkayo, Davao del Norte that the stolen (“carnapped”) “Pajero” was parked behind the apartment of a certain Paulino Overa at the Bliss Housing Project at Poblacion, Monkayo. On instructions of the Station Commander, a police team^[8] went to the place. They saw the “Pajero” and, their initial inquiries having yielded the information that the man who had brought it there would return that morning, posted themselves in such a manner as to keep it in view. Some three hours later, at about 10:30 o'clock, they saw a man approach the “Pajero” who, on seeing them, tried to run away. They stopped him. They found out that the man, identified as Danilo Sinoc, of Surigao del Norte,^[9] had the key of the “Pajero,” and was acting under instruction of certain companions who were waiting for him at the Star Lodge at Tagum, Davao del Norte. Riding on the recovered “Pajero”, the police officers brought Sinoc to the Star Lodge only to discover that his companions were no longer there. They later turned over Sinoc to the 459(th) Mobile Force, together with the “Pajero”.

Four months afterwards, in the afternoon of January 21, 1993, SPO1 Roger A. Basadre and two other officers (of the CIS) brought Danilo Sinoc to the Public Attorneys' Office at Curato Street Butuan City. They asked one of the attorneys there, Atty. Alfredo Jalad, for permission to take Sinoc's statement in writing in his office. Sinoc asked Jalad to assist him because he wished to make an “affidavit of confession.”

Atty. Jalad told Sinoc that he had the right to choose his own counsel, and to remain silent. Sinoc said he wanted to make the affidavit nonetheless, and be assisted by Jalad in doing so. The latter then had Sinoc narrate the occurrence in question in “Cebuano/Visayan,” a dialect with which Sinoc was familiar. That done, Jalad asked Sinoc if the CIS had promised him anything for the affidavit he would execute. Sinoc said no. Only then did the CIS officers commence to take Sinoc's statement, typing their questions and Sinoc's answer -- as well as the initial appraisal of his constitutional rights -- on a typewriter in Atty. Jalad's office.

In his sworn statement,^[10] Sinoc declared that he knew the victims, Isidoro Viacrusis and Tarcisio Guijapon because he was “formerly working at Taganito Mining Company” (TAMICO); that in June, 1991, he learned that Benjamin Espinosa (@ Benji), Jaime Jornales (@ James), Victorino Delegencio (@ Jun-Gren), and a certain “Ram” had been monitoring the activities of TAMICO Manager Viacrusis whom they planned to kidnap and rob of his “Pajero”, and make it appear to be an act of the NPA; that the criminal undertaking was planned by a certain Vicente Salon (@ Dodong), who made available the needed funds and two (2) hand guns; that in September, 1991, at a meeting of the group at the boarding house of “Jun-Gren” to which he (Sinoc) was invited,

Sinoc was offered P20,000.00 to join in the “kidnapping and carnapping” operation; that he agreed “because of poverty;” that in the morning of September 20, 1991, at about 6:30 o’clock, he, “Ram” and Benjamin Espinosa stopped the “Pajero” driven by Tarcisio Guijapon in which Viacrusis was riding, brandishing two .35 caliber revolvers, and a piece of wood shaped like a rifle; that they boarded the vehicle, identifying themselves as NPA (soldiers of the New People’s Army) and had the driver proceed towards Surigao City; that at the bridge of Tres de Mayor, they had the “Pajero” stop to pick-up two other companions, “James” (Jaime Jorales) and “Jun-Gren” (Victor Delegencia); that “Ram” took over the wheel and drove towards Butuan City; that at San Vicente, Barobo, “Ram” turned into a feeder road and stopped about seven (7) meters from the highway; that there, Viacrusis and Guijapon, whose hands had been tied behind their back, were made to get down; that “James” Jorales shot Viacrusis four times after which “Jun-Gren” Delegencia, Jr. fired at Guijapon four times, too; that when Sinoc remonstrated at the shootings, he was told it was on Dodong Salon’s orders; that the malefactors then proceeded to the “Bliss” Housing Project at Monkayo where they left the “Pajero,” this being the place where the mastermind, Vicente Salon, was supposed to get the vehicle and pay Sinoc the promised sum of P20,000.00; that they then all went to Tagum; that on the following day, Sinoc was instructed by Jun-gren and James to return to Monkayo with the key of the “Pajero” and deliver it to “Ram,” and that when he arrived at the place at about 9 o’ clock in the morning, he was apprehended by soldiers and brought to the “459(th) PNP Mobile Company.”

During the entire period of Sinoc’s interrogation, which commenced at about 3:00 P.M., Atty. Jalad remained seated beside him; and at its conclusion, Jalad read to Sinoc the contents of his statement from beginning to end. The statement was thereafter signed by Sinoc and by Jalad, the latter being described as “witness to signature.”[11]

Sinoc was next brought to the home of Butuan City Prosecutor Ernesto M. Brocoy so that he might take oath on his statement. This was about 7:00 P.M. After going over the statement, City Fiscal Brocoy told Sinoc that it was “very damaging,” briefly discussing the contents thereof in Cebuano. The latter stood by his answers, however, averring that they have been voluntarily given. Evidently satisfied of the authenticity and voluntariness of the statement, Brocoy administered the oath to Sinoc, and signed the certification typed at the left hand margin of page 4 thereof, reading: “SUBSCRIBED AND SWORN to before me this 21st day of January 1992, at Butuan City, Philippines. I hereby certify that I personally examined the herein affiant and that I am satisfied that he voluntarily executed and understood his statement.” He also initialed every page of the statement.[12]

While under detention at the Provincial Jail, awaiting trial, Sinoc wrote two (2) letters to the Trial Judge dated June and July, 1992, in both of which he asked that he be transferred to the City Jail because he had heard that Vicente Salon, who had been arrested on the strength of his sworn statement, had made plans to kill him. He sent the Judge a third letter -- dated August 11, 1993, consisting of four (4) pages -- which is described by His Honor as “substantially a repetition of the contents of his affidavit of confession.” All the letters were handwritten in block letters in the Cebuano dialect.[13]

Sinoc proffered the defense of alibi. His claim, as summarized by his counsel, was that “on September 19, 1991, he was in Sibagat, Agusan del Sur together with his wife and prepared on that early morning to sell tableya (native chocolate) in Tagum, Davao del Norte. On the same day they reached Tagum and they sold tableya and on the same day they were not able to sell the tableya; on September 20, 1991 they were again selling tableya in Tagum, Davao del Norte. It was while in Tagum that ** (they met) a certain Darves, they did not know exactly the name, he offered to them the money to accompany the said driver of Darves who is name(d) Ram. He was offered ** money to accompany this Ram in prior (sic) to allegedly get the Pajero vehicle from Moncayo together with Ram, and while in Moncayo he was first apprehended by the police and detained at Moncayo, first ** (by) the 459 Mobile Force of ** Moncayo and on January 14, 1992 to January 24, 1992 he was detained by the CIS

authorities in Butuan City.”

Elaborating, Sinoc testified that he saw Darves with three companions at “a certain restaurant in Tagum;” that Darves introduced himself, and offered to give him P1,000.00) if he would accompany his driver to get a vehicle at Moncayo; that he agreed, and at 6 o’ clock in the morning of September 21, 1991 he went to the Star Lodge where Darves was staying; that there, he was introduced to the latter’s driver, Ram, given P1,000.00, and told to go with Ram; and that he went out of the Star Lodge, gave his wife P800.00, and then went with Ram to Moncayo on board a bus.

In Moncayo, they went to where the Pajero was parked. Sinoc went towards the vehicle. Ram lagged behind, having paused to buy some cigarettes. When Sinoc reached the Pajero, five persons suddenly pointed guns at him, searched him, and found on him the key to the “Pajero” which Darves had given to him. The five persons, who were led by Sgt. Michael Aringgo of the PNP, brought him to the Moncayo police station where they investigated him without informing him of his constitutional rights.

In the afternoon of that day, September 21, 1991, he was surrendered to the 459th Mobile Force Company which detained him until January 14, 1992. On this date he was taken by CIS personnel and brought to the CIS Compound at Butuan City, at which place he was confined up to January 24, 1992, and subjected to interrogation without being informed that he had a right to remain silent. He was told, however, that he had the right to counsel, but although he told the investigators that his lawyer was Atty. Gavino Samontina, they never called the latter.

The investigators wish him to sign an affidavit. When he refused, they maltreated him by repeatedly submerging his head in a toilet bowl full of excrement, as well as by tying him on a bed, raising the bed on one end so that his feet were up and his head down, and keeping him in that position for hours.

On January 20, 1992, his wife and Efren Dak-ang came to see him at the CIS Compound. He talked to them and revealed what was being done to him while under investigation.

On January 21, 1992, after having been interrogated the whole night, he finally agreed to sign the affidavit because the CIS officers told him, “(We) will kill you or salvage you.” In fact, the night before, police officers had brought him to an uninhabited place near the bridge and, with guns pointed at his head, commanded him to run. He refused, of course. So, in the afternoon of that day, at around 4 o’ clock, he was brought to the office of Public Attorney Jalad, where the police investigators “hurriedly typed” his affidavit and made him sign it. He denied that Atty. Jalad informed him of his constitutional rights. He asserted that when he told Jalad he had his own lawyer, Jalad merely remarked, “Never mind, all attorneys are just the same as long as it is attorney.” He was next brought to Fiscal Brocoy who, without talking to him, “right away signed that document” (his confession).

Sinoc also explained how he had come to write the letter of August 11, 1992 to the judge some seven months after his confession. That letter -- it will be recited and as is evident from a comparison of both documents -- was described by the latter as “substantially a repetition of the contents of his affidavits of confession,” supra.[14] He said: “(T)here were persons who visited me while at the Provincial Jail and told me to accept the crime ** because if I will not accept the crime my wife and my children (and) my parents, they will liquidate all of them **.”

Sinoc’s wife, Jovita, testified for the defense, and sought to corroborate his testimony. She affirmed that she had seen her husband at the CIS on September 20, 1992, at about 8:30 in the evening, and he had told her to “keep ** silent, not to tell anybody that he will be accompan(ied) by the CIS.” Efren Dak-ang also gave corroborating testimony.

For some undisclosed reason, the surviving victim, Isodoro Viacrusis, did not testify; this, despite the fiscal’s

assurances to the Trial Judge that he was “very interested” in giving evidence. Obviously because of Viacrusis’ failure to testify, his affidavit of October 17, 1991 was not formally offered, being obviously hearsay, although it is attached to the record.

Be this at it may, the Trial Court was satisfied that the evidence actually presented by the Government sufficed to establish Sinoc’s guilt beyond reasonable doubt of the two felonies with which he stood charged.

Sinoc has taken an appeal to this Court and ascribes to the Trial Court the following errors: (1) convicting him of the offenses charged although conspiracy had not been independently proven to exist among him and the other persons named in the indictment; (2) not rejecting the evidence obtained after he had been “arrested without any warrant of arrest,” and (3) not rejecting his confession after he had been illegally arrested and had thereafter been “under custodial investigation ..without a counsel of choice” from September 21, 1991 to January 20, 1992, first by the Monkayo 459th Mobile Force, and later by the C.I.S., Butuan City.

As regards Sinoc’s claim of illegal arrest, the law provides that an arrest without warrant may be licitly effected by a peace officer, inter alia “When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it.”[15]

There is no question that the police officers in this case were aware that an offense had just been committed: i.e., that some twelve hours earlier, a “Pajero” belonging to a private company had been stolen (“carnapped”) and its driver and passenger shot, the former having died and the latter being on the verge of death. Nor is there any doubt that an informer (“asset”) had reported that the stolen “Pajero” was at the Bliss Housing Project at the Moncayo. It was precisely to recover the “Pajero” that a team composed of SPO1 Micheal Aringo and “joint elements of 459 PNP MFC and Monkayo Police Stn. Led by Insptr. Eden T. Ugale,” went to that place and, on taking custody of the “Pajero,” forthwith dispatched a radio message to “Higher Headquarters” advising of that fact.[16]

There is no question either that when SPO1 Aringo and his companions reached the place where the “Pajero” was parked, they were told by Paulino Overa, owner of the apartment behind which the vehicle was parked, that the man who had brought the “Pajero” would be back by 12:00 noon; that the person thus described did in fact show up at about 10:00 A.M., and was immediately identified by Overa as “the one who rode on that car ‘pajero;”[17] just as there is no question that when the police officers accosted him, Sinoc had the key to the stolen “Pajero” and was in the act of moving toward it admittedly to take possession of it (after having arrived by bus from Tagum together with another suspect, “Ram”). Sinoc’s link to the stolen vehicle (and hence to the kidnapping and killing accompanying its asportation) was thus palpable.

The foregoing circumstances left the police officers no alternative save to arrest Sinoc and take possession of the “Pajero.” His arrest without warrant was justified; indeed, it was in the premises the officers’ clear duty to apprehend him; their omission to do so would have been inexcusable.

Sinoc’s assault against the propriety of his interrogation after his warrantless arrest, because conducted without advice to him of his constitutional rights, is pointless. It is true that, as candidly admitted by the arresting officers, their initial interrogation of Sinoc was made without his first being told of his corresponding rights. This is inconsequential, for the prosecution never attempted to prove what he might have said on that occasion.

The confession made by him some time afterwards at the Public Attorney’s Office at Butuan City is altogether a different matter, however. The record adequately shows it to have been executed voluntarily and under applicable safeguards, apart from being confirmed by, or consistent with, other evidence.

Sinoc does not dispute that he was taken to the Public Attorney’s Office; that he spoke to Atty. Alfredo Jalad and

it was in the latter's office that his confession was prepared by the CIS investigator. Nor does he deny that he was then brought to the home of City Prosecutor Ernesto M. Brocoy who certified that the confession had been subscribed and sworn to before him and that he was satisfied that Sinoc had voluntarily executed and understood his statement. Sinoc nonetheless claims that he was under intimidation at that time and never advised of his constitutional rights.

After carefully considering the evidence, this Court is convinced that the Trial Judge was correct in accepting the account of the execution of Sinoc's confession (Exhs. K, K-1 to K-5) narrated by Public Atty. Alfredo Jalad and City Prosecutor Ernesto Brocoy, to the effect that the confession was voluntarily given after he had been duly informed of his constitutional rights. No reason whatever is discernible in the record for these Government officials to give false evidence against Sinoc, or testify otherwise than to the truth.

Sinoc's confession of January 21, 1992 is confirmed by the letter he admittedly wrote to the Trial Judge more than a year later, on August 11, 1993,[18] the contents of which are, as observed by the Trial Judge, substantially identical with those of the confession. In said letter, in which he narrates in no little detail the same story contained in his confession, he apologizes for "bothering you again at this time" (obviously referring to his prior letters to the Judge of June and July 1992), and gives his reasons for writing the latest letter: to ask for the Judge's assistance and take account of his allegation that his agreement with his co-accused was only to stop the "Pajero," that it was poverty that impelled him to join the plotters (Vicente Salon, et al.); to see that Tarcisio Guijapon and Viacrusis be given justice; and to plead that the Judge take pity on him, and not give him too heavy a penalty.

The confession is also consistent with Sinoc's testimony at his trial in which he admitted that he had indeed traveled from Tagum to Monkayo where he was arrested; and that he had made the trip, together with his co-accused, "Ram," precisely to get the stolen "Pajero" the key of which he had on his person at the time. It contains details (e.g., the use of two (2) hand guns and a wooden rifle, the bringing of the Pajero from the scene of the killing to Moncayo, the identities of the individual malefactors who shot the victims) which is improbable to think were conjured out of thin air by the police investigators or deduced from other evidence. The confession is consistent, too, with the other proofs, particularly the testimony of Marlyn Legaspi and Barangay Councilor Jamero as regards the time and place of the shooting of the hapless victims.

In any event, the Trial Judge appears to have carefully assessed the demeanor of the witnesses for the prosecution and those for the defense, in relation to the documents on record, and on this basis and from his vantage point, found that the prosecution's proof were more credible than the defense, and that their combined weight established beyond reasonable doubt the appellant's culpable participation in the crimes charged.

It must additionally be pointed out that apart from Sinoc's protestations that his extrajudicial confession was the result of torture and threats, no competent evidence exists on record to substantiate that claim. He made no such claim to either Public Attorney Alfredo Jalad or City Prosecutor Ernesto Brocoy although there is absolutely nothing in the record to indicate any cause for him to distrust either government officer, much less believe they were in conspiracy with the police officers to concoct a case against him. In fact, although he professes to have disclosed his supposed maltreatment to his wife when she visited him at the place of his detention, the latter made no mention of it in her testimony, nor did she ever attempt to have him medically examined to confirm such a revelation, if it had been made. Moreover, the counsel he said he wanted to represent him during his interrogation at Public Attorney Jalad's office, Atty. Gavino Samontina, was never presented to confirm his statement.

While the evidence does show that Sinoc became embroiled in a criminal conspiracy[19] -- he agreed (out of poverty, he says) to join in a crime being planned by certain men named by him and decided to commit it with them -- the agreement, as far as he was concerned, was to waylay Viacrusis, the Manager of the Tagum Mining

Company, and rob him of his “Pajero,” for which his share would be P20,000.00; but it did not include the shooting of Viacrusis or any one else. In fact, he raised a protest when Viacrusis and Guijapon were shot. In other words, as far as Sinoc understood it, and as far as may in fact be deduced from the evidence, the plan was not so much to capture Viacrusis and deprived him of liberty, even less to assassinate him, but to steal his “Pajero” by violent means. The “kidnapping” was not the principal objective; it was merely incidental to the forcible taking of the vehicle. Unfortunately, by reason or on the occasion of the seizure of the “Pajero” -- and (as far as the proofs demonstrate) without foreknowledge on Sinoc’s part -- its driver was killed, and the lone passenger seriously injured.

There was thus no kidnapping as the term is understood in Article 267 of the Revised Penal Code -- the essential object of which is to “kidnap, or detain another, or in any other manner deprive him of his liberty.” The idea of “kidnapping” in this case appears to have been the result of the continuous but uninformed use of that term by the peace officers involved in the investigation, carelessly carried over into the indictments and the record of the trial, and even accepted by His Honor.[20]

The offense actually committed in Criminal Case No. 3564 -- where the killing of Tarcasio Guijapon accompanied the taking of the “Pajero”-- is that defined and penalized by Article 294 of the Criminal Code,[21] viz.:

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

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

*** **

It is germane to observe that even if the intent to deprive of liberty were as important or primordial an objective as the asportation of the “Pajero,” the kidnapping would be absorbed in the robbery with homicide;[22] and that the term, “homicide,” is used in the quoted article in the generic sense-- i.e., as also including murder, the nature of the offense not being altered by the treacherous character, or the number, of the killings in connection with the robbery.[23]

On the other hand, the wrongful acts actually proven to have been committed by the defendants in Criminal Case No. 3565 are: (1) robbery, of course, as above described, and (2) frustrated murder on the occasion thereof -- gunshot wounds having been inflicted on Isidoro Viacrusis, while bound and prostrate on the ground, utterly unable to put up any defense, the wounds being of such a nature as would have resulted in his death were it not for timely medical intervention. Obviously, these acts do not fall within the ambit of article 294, which treats of the special complex crime of robbery with violence against or intimidation of persons, but NOT robbery with attempted or frustrated homicide (or murder), although the law does punish the crime of attempted and frustrated robbery with homicide.[24]

Neither do the crimes come within the operation of Article 48 of the Criminal Code which, speaking of complex crimes, provides that when “a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the more serious crime shall be imposed, the same to be applied in its maximum period.” Actually in this case, the two crimes of “carnapping” and frustrated murder did not result from a “single act.” Nor was either offense a “necessary means for committing the other.” The shooting of the victim was not necessary to commit the “carnapping;” indeed, at the time the victim was shot,

“the “carnapping” had already been consummated. And, of course, the “cannapping” which, according to the evidence, was the conspirators’ principal objective, was not necessary to perpetrate the shooting.

It follows then that the malefactors’ felonious acts in Criminal Case No. 3565 cannot be regarded as juridically fused into a “complex crime” under Article 48. They should be considered separate offenses, separately punishable.

Now, Sinoc admittedly entered into a conspiracy with his co-accused; but he insists that as far as he was concerned, the conspiracy was to “carnap” the “Pajero,” and did not include any killing or assault against persons. His theory is that the slaying of the driver and passenger might conceivably have been contemplated from the outset by one or some or all his co-conspirators; But Sinoc himself never had that intention. Indeed, he says he had no inkling that the shooting would take place; had no opportunity to prevent it, and could only remonstrate about it after it was done; and he invokes the doctrine that conspirators may only be held accountable for the acts embraced in the criminal agreement; and as regards felonious acts not included, only the author thereof would be liable.[25]

Sinoc’s disclaimer’s notwithstanding, it is this Court’s view that the crime that may properly be ascribed to him in Case No. 3564 is robbery with homicide under Article 294 of the Revised Penal Code. For unfortunately for him, there is no avoiding the fact that a homicide -- although not agreed to or expected by him -- was committed on the occasion of the robbery of the “Pajero;” and he could not but have realized or anticipated the possibility of serious harm, even death, being inflicted on the person or persons in the “Pajero” targeted for robbery, since two of his companions were armed with guns, even if in his mind, to repeat, his agreement with them did not include killing.[26] The most that can be conceded is to credit him with the mitigating circumstance of having “no intention to commit so grave a wrong as that committed.”[27]

Sinoc may not be held liable in Case No. 3565 for the separate offense of frustrated murder as regards Viacrusis, for the reasons already mentioned; in this particular case, the evidence shows that he agreed only to the plan to “carnap” the “Pajero,” but not to any assault or killing.[28] Nor is it logical to convict him twice of robbery of the same property under the same circumstances. Hence, he may not be pronounced responsible for the separate offense of robbery of the same “Pajero,” in addition to being declared guilty of robbery (of that same “Pajero”) with homicide under Article 294.

The penalty imposable on Sinoc is that provided in Article 294 of the Penal Code, which is reclusion perpetua to death. Appreciating in his favor the mitigating circumstance of lack of intention to commit so grave a wrong as that done, the penalty that should be applied to him is reclusion perpetua.

WHEREFORE, in Criminal Case No. 3564, appellant Danilo Sinoc, being guilty beyond reasonable doubt of the offense of robbery with homicide defined and punished by Article 294 of the Revised Penal Code, is sentenced to reclusion perpetua. Criminal Case No. 3565 is DISMISSED as to him.

SO ORDERED.

Davide, Jr., Melo, Francisco, and Panganiban, JJ., concur.

[1] Rollo, p. 68.

[2] ART. 267 deals with "Kidnapping and serious illegal detention" without any reference to robbery of a motor vehicle or other things; ART. 248 treats of murder, also without any connection to robbery. SEE footnotes 20 and 21, *infra*.

[3] ART. 48 governs the so-called complex crimes, i.e., when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other.

[4] ART. 6 defines what are consummated, frustrated and attempted felonies.

[5] *Id.*, pp. 65-75.

[6] *Id.*, pp. 6, 18; see also p. 66.

[7] Original record, p. 26

[8] Composed of: SPO2 Michael Aringo, SPO1 Alexander Crispino, SPO1 Pablo Aquino, SPO1 Camilon Mangigin, and SPO3 Reynaldo Bizar. SPO2 Aringo testified at the trial on October 13, and 14, 1992.

[9] At that time he was a resident of Panatao, Claver, Surigao del Norte.

[10] Presented in evidence as Exhs. K, K-1 to K-5 (Visayan version), and L, L-1 to L-4 (English translation).

[11] Public Atty. Jalad testified on these facts on March 30, 1993.

[12] City Prosecutor Brocoy testified regarding these facts also on March 30, 1993.

[13] All the handwritten letters are attached to the original record. As regards the third letter (of August 11, 1993) SEE footnotes 11 and 15, *infra*.

[14] SEE immediately preceding footnote and related text.

[15] Sec. 5 [b], Rule 113, Rules of Court

[16] Exh. C of the prosecution.

[17] TSN, Oct. 13, 14, 1992, pp. 16-18

[18] SEE footnotes 10 and 11, and related text, *supra*

[19] "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." ART. 8, Revised Penal Code.

[20] SEE footnotes 2, 3 and 4, and related text, *supra*.

[21] Had the crimes in the cases at bar been committed after December 31, 1993 -- the date of effectivity of R.A. No. 7659 (An Act to Impose the Death Penalty on certain Heinous Crimes, Amending for that Purposes) (SEE *Peo. v. Simon*, 234 SCRA 555 [1994]) -- they would have been penalized under SEC. 14 of said R.A. No. 7659, dealing with "Carnapping," viz.: "Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violation or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or rape in the course of the commission of the carnapping or on the occasion thereof."

[22] SEE Aquino, *The Revised Penal Code*, 1977 ed., Vol. III, p. 1445, citing "Sol, 9 Phil. 265; Baysa, 92 Phil. 1008; De la Cruz and Mendoza, 88 Phil. 785; Rogel, 114 Phil. 746 ***".

[23] Aquino, *op. cit.*, pp. 1433-1435, citing inter alia "Mones, 58 Phil. 46, 59; Manuel 44 Phil. 333; Aspalin, 110

Phil. 454; Sawajan, 53 Phil. 689; Lahoylahoy, 38 Phil. 330; Mantawar, 80 Phil. 817; Uday, 85 Phil. 498; Cocoy, 94 Phil. 91. **.”

[24] ART. 297, Revised Penal Code. N.B. The codal provisions themselves give the distinction.

[25] Aquino, op. cit., Vol. 1, pp. 456-457, citing “Palacpac, 49 SCRA 440; Basisten, 47 Phil. 493; Cerdeña, 51 Phil. 93; Daligdid, 89 Phil. 598; Carillo and Raquenio, 85 Phil. 611; Umali, 96 Phil. 185; Hamiana, 89 Phil. 225”

[26] Peo.v. Espejo, 36 SCRA 400; Peo. v. Sumayo y Bersebal, 70 SCRA 488, cited in Reyes, L.B., Criminal Law (The Revised Penal Code), 12th (1981) Ed., Book Two, pp. 628-629

[27] ART. 13(3), Revised Penal Code

[28] The rule is, as already stated, that the special complex crime of robbery with homicide is not to be multiplied with the number of persons killed since all such homicides committed by reason or on the occasion of the robbery are merged in the composite integrated whole (Peo. v. Cabuena, 98 Phil. 919). This concept applies to other crimes committed because or on the occasion of robbery, such as rape (Mongado, 28 SCRA 6425), serious physical injuries (Genoguin, 56 SCRA 183), multiple frustrated homicides (Gatcho, 103 Phil. 209). Formerly, such additional crimes were considered to aggravate liability of the offender under Article 294 (1), but lately, no such pronouncements have been made, especially since the proscription of the death penalty by the 1987 Constitution (recently eliminated as regards heinous crimes).

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