

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL MATEO, JR., ESMERALDO CRUZ, EMMANUEL CAGANAP, GENER FILOTEO, MANUEL MENDOZA, ROLANDO REYES, DANNY TOSCO, RENATO MENDOZA...

G.R. Nos. 53926-29. November 13, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

For having allegedly robbed the American Express Bank Branch located inside the United States Naval Base in Sangley Point, Cavite City and killed a U.S. marine officer on the occasion thereof, Manuel Mateo, Jr., Esmeraldo Cruz, Roberto Martinez @ Ruben Martinez, and Enrique Concepcion, members of the Cavite City police department, and Emmanuel Caganap, Gener Filoteo, Manuel Mendoza, Rolando Reyes, Danny Tosco, Renato Mendoza, Melanio Mendoza, and seven (7) persons whose identities have remained unknown, were charged before the Circuit Criminal Court of Pasig, Rizal, with the crime of Robbery in Band with Homicide, and three (3) separate crimes of Robbery in Band, docketed therein as CCC-VII-843-Cavite City to CCC-VII-846-Cavite City, inclusive, committed as follows:

1. CCC-VII-843-Cavite City:

"That on or about the 4th day of June, 1971, in Cavite City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and helping one another, and with intent of gain and against the will of the owner thereof, armed with firearms, by means of force, violence, and intimidation did, then and there wilfully, unlawfully and feloniously rob, take and carry away from the American Express Bank Branch, a private firm duly represented by Antonio Laforteza, resident special agent, of the amount of \$41,120.79 and P96,532.38, to the damage and prejudice of the latter in the aforesaid amount of \$41,120.79 and P96,532.38; that as a consequence of an encounter during said Robbery in Band, the person of First Lt. James Plumpowski, USMC, who at that time responded to the alarm flashed by the bank personnel, sustained serious wounds on the vital parts of his body which caused his death.

"The aggravating circumstances attendant thereto are the following:

- "1. Use of Motor Vehicle;
2. Taking advantage of superior strength;
3. Committed in band, all being armed;
4. Committed with the aid of persons who insure or afford impunity;
5. Committed with evident premeditation; and
6. That craft, fraud, or disguise was employed."[1]

2. CCC-VII-844-Cavite City:

"That on or about the 4th day of June 1971, in Cavite City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and helping one another, with intent of gain and against the will of the owner thereof, armed with firearms, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously rob, take and carry away from Antonio Araquel, the following articles, to wit:

"Man's wrist watch 'Wiseman'

valued at

P50.00

Shoes valued at

21.00

Cash money in the amount of

15.00

Gate pass (unestimated amount)

P86.00

to the damage and prejudice of the latter in the aforementioned amount of P86.00.

"The aggravating circumstances attendant thereto are the following:

1. Use of motor vehicle;
2. Taking advantage of superior strength;
3. Committed in band, all being armed;
4. Committed with the aid of persons who insure or afford impunity;
5. That craft, fraud or disguise was employed."[2]

3. CCC-VII-845-Cavite City:

That on or about the 4th day of June 1971, in Noveleta, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating and helping one another, with intent of gain and against the will of the owner thereof, armed with firearms, by means of force, violence and intimidation did, then and there wilfully, unlawfully and feloniously rob, take and carry away from the Aguinaldo Development Corporation (Goody-Goody Bakery), a delivery truck with Plate No. 42-24xx, Manila 1971, valued at \$1,500.00 which Aguinaldo Development Corporation is duly represented by Atty. Carlos, to the damage and prejudice of the latter corporation in the aforeamount of \$1,500.00

"The aggravating circumstances attendant thereto are the following:

1. Use of Motor Vehicle;
2. Taking advantage of superior strength;
3. Committed in band, all being armed;
4. Committed with the aid of persons who insure or afford impunity;

5. Committed with evident premeditation; and
6. That craft, fraud or disguise was employed."[3]

4. CCC-VII-846-Cavite City:

"That on or about the 4th day of June, 1971, in Cavite City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating and helping one another, with intent of gain and against the will of the owner thereof, armed with firearms, by means of force, violence and intimidation did, then and there wilfully, unlawfully and feloniously rob, take and carry away from Rodrigo Estrebillo his Driver's License valued at P6.00, to the damage and prejudice of the afore-said driver in the amount of P6.00.

"The aggravating circumstances attendant thereto are the following:

1. Use of Motor Vehicle;
2. Taking advantage of superior strength;
3. Committed in Band, all being armed
4. Committed with the aid of persons who insure or afford impunity; and
5. That craft, fraud or disguise was employed."[4]

When arraigned, the accused entered pleas of NOT GUILTY, except for Emmanuel Caganap who pleaded GUILTY to the charges and was accordingly sentenced, in Crim. Case No. CCC-VII-843-Cavite City, to suffer the penalty of reclusion perpetua; to indemnify the heirs of the deceased Lt. James Plumpowski in the amount of P12,000.00; to pay the American Express Bank Branch, thru Antonio Laforteza, the amounts of \$41,120.79 and P96,532.38; to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages, and to pay the costs; and in CCC-VII-844-Cavite City, CCC-VII-845-Cavite City and CCC-VII-846-Cavite City, to suffer the penalty of from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to four (4) years and two (2) months of prision correccional, as maximum, in each of the aforesaid cases; and to indemnify the complainants Antonio Araquel, in the amount of P86.00; the Aguinaldo Development Corporation, in the amount of \$1,500.00; and Rodrigo Estrebillo, in the amount of P6.00; and to pay the costs.[5]

The accused Rolando Reyes subsequently withdrew his plea of NOT GUILTY and pleaded GUILTY to the charges. He was consequently sentenced, in Crim. Case No. CCC-VII-843-Cavite City, to suffer the penalty of reclusion perpetua; to indemnify the heirs of the deceased Lt. James Plumpowski in the amount of P12,000.00; to pay the American Express Bank Branch, thru Antonio Laforteza, the amounts of \$41,120.79 and P96,532.38; to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages; and to pay the costs; and in Crim. Cases Nos. CCC-VII-844-Cavite City, CCC-VII-845-Cavite City and CCC-VII-846-Cavite City, to suffer the penalty of from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to four (4) years and two (2) months of prision correccional, as maximum, in each of the aforesaid cases; and to indemnify the complainants Antonio Araquel, in the amount of P86.00, the Aguinaldo Development Corporation, in the amount of \$1,500.00, and Rodrigo Estrebillo, in the amount of P6.00; and to pay the costs.[6]

On 5 November 1973, upon motion of the City Fiscal, the charges against the accused Manuel Mendoza were dismissed.[7]

After a joint trial of the cases and an assessment of the evidence presented by the parties, judgment was rendered by the court a quo on 5 November 1979, as follows:

"WHEREFORE, in Criminal Case No. CCC-VII-843-Cavite City, the Court finds the accused Manuel Mateo, Jr., Esmeraldo Cruz, Gener Filoteo, Renato Mendoza, Melanio Mendoza, Roberto Martinez @ Ruben Martinez and Enrique Concepcion GUILTY beyond reasonable doubt of the crime of Robbery in Band with Homicide, as defined in paragraph 1, Article 294 of the Revised Penal Code, as charged in the Amended Information; and the Court hereby sentences all of the said accused to suffer the penalty of RECLUSION PERPETUA, with accessory penalties prescribed by law; ordering them to indemnify jointly and severally the heirs of the offended party, Lt. James Plumpowski, in the amount of Twelve Thousand Pesos (P12,000.00); ordering them to pay jointly and severally the American Express Bank Branch, thru Antonio Laforteza, the amount of Forty-one Thousand One Hundred Twenty Dollars and Seventy-nine Cents (\$41,120.79), or its equivalent in Philippine Currency, and the amount of Ninety-six Thousand Five Hundred Thirty-two Pesos and Thirty-eight Centavos (P96,532.38); and to pay their proportionate share of the costs.

"In Criminal Case No. CCC-VII-844-Cavite City, the Court finds the accused Manuel Mateo, Jr., Esmeraldo Cruz, Gener Filoteo, Renato Mendoza, Melanio Mendoza, Roberto Martinez @ Ruben Martinez, and Enrique Concepcion GUILTY beyond reasonable doubt of the crime of Robbery in Band, as defined in paragraph 5, Article 294 of the Revised Penal Code, as charged in the Amended Information; and the Court hereby sentences all of the said accused to suffer imprisonment of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY, as minimum, to SIX (6) YEARS, as maximum, with accessory penalties prescribed by law; ordering them to indemnify jointly and severally the offended party, Antonio Araquel, in the amount of Eighty-six Pesos (P86.00); and to pay their proportionate share of the costs.

"In Criminal Case No. CCC-VII-845-Cavite City, the Court finds the accused Manuel Mateo, Jr., Esmeraldo Cruz, Gener Filoteo, Renato Mendoza, Melanio Mendoza, Roberto Martinez @ Ruben Martinez, and Enrique Concepcion GUILTY beyond reasonable doubt of the crime of Robbery in Band, as defined in paragraph 5, Article 294 of the Revised Penal Code, as charged in the Amended Information; and the Court hereby sentences all of the said accused to suffer imprisonment of FOUR (4) YEARS, TWO (2) MONTHS, and ONE (1) DAY, as minimum, to SIX (6) YEARS, as maximum, with accessory penalties prescribed by law; and to pay their proportionate share of the costs.

"In Criminal Case No. CCC-VII-846-Cavite City, the Court finds the accused Manuel Mateo, Jr., Esmeraldo Cruz, Gener Filoteo, Renato Mendoza, Melanio Mendoza, Roberto Martinez @ Ruben Martinez, and Enrique Concepcion GUILTY beyond reasonable doubt of the crime of Robbery in Band, as defined in paragraph 5, Article 294 of the Revised Penal Code, as charged in the Amended Information, and the Court hereby sentences all of the said accused to suffer imprisonment of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY, as minimum, to SIX (6) YEARS, as maximum, with accessory penalties prescribed by law; ordering them to indemnify jointly and severally the offended party, Rodrigo Estrebillo, in the amount of Six Pesos (P6.00); and to pay their proportionate share of the costs.

"In the service of the sentence, all of the said accused are entitled to Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127.

"As regards the accused Danilo Tosco @ Danny Tosco, this Court finds the evidence against him insufficient to warrant his conviction beyond reasonable doubt for all the crimes charged in Criminal Cases Nos. CCC-VII-843, 844, 845 and 846-Cavite, and hereby ACQUITS said accused."[8]

From this judgment, the accused Manuel Mateo, Jr., Esmeraldo Cruz, and Enrique Concepcion appealed. Manuel Mateo, Jr. and Esmeraldo Cruz, however, subsequently withdrew their appeals.[9]

The incriminatory facts of these cases, as contained in the People's Brief, are as follows:

"At about 4:45 o'clock in the morning of June 4, 1971, Rodrigo Estrebillo was driving the Goody-Goody delivery truck of the Aguinaldo, Inc., coming from its bakery at V. Mapa, Manila to deliver bread at the then U.S. Naval Base at Sangley Point, Cavite City. With Estrebillo in the truck was Antonio Araquel a helper. At

approximately 7:00 o'clock of the same morning of June 4, 1971, while the Goody-Goody truck was travelling at the Lido Beach Resort and upon reaching a curve near Long Beach, a passenger jeep with armed men on board suddenly cut across the way of the Goody-Goody truck. Estrebillo immediately stopped the truck. Three armed men alighted from the jeep and one of them poked a gun at Estrebillo, shoved him to the side and took over the wheels of the Goody-Goody truck. The second armed man likewise poked a gun at Antonio Araquel and ordered him to alight from the truck and to go inside the passenger jeep. The third man blindfolded Estrebillo with an undershirt and sat in front of the truck sandwiching Estre-billo between him and the other armed man. Estrebillo identified the armed man who poked a gun at him as Roberto or Ruben Martinez. Araquel identi-fied the man who pointed a gun at him and ordered him to go to the passenger jeep as Gener Filoteo. The man who took over the driver's seat from Estrebillo was identified as Emmanuel Caganap. There-after, the passenger jeep proceeded to Bay Court Hotel in Cavite City near the police checkpoint. Following the passenger jeep was the Goody-Goody truck driven by Emmanuel Caganap.

"At the Bay Court Hotel, Estrebillo and Araquel were brought inside a room. Estrebillo's blindfold was removed. Martinez asked Araquel how to use the gate pass to enter Sangley Point and the latter informed Martinez that the receipt for the bread should be stamped by a doctor before actual delivery. Martinez took the gate pass and the receipt for the bread from Araquel, as well as Estrebillo's driver's license. Araquel was stripped of his watch worth P50.00, shoes worth P20.00 and cash money of P15.00. Estrebillo and Araquel were warned by Martinez that they would be killed and be seen floating in the sea should they tell anyone what happened.

"Aside from Martinez and Filoteo, who were identified by Estrebillo and Araquel, other armed men were identified by Marilyn Tordecillas Orendain, wife of the Assistant Manager of the Bay Court Hotel, Gin Moe alias Lee. Mrs. Orendain was at the hotel at 6:00 o'clock in the morning of June 4, 1971. She saw Roberto Martinez and Enrique Concepcion arrive. She also saw Esmeraldo Cruz come in when Martinez asked for a drink. Concepcion sat in front of Mrs. Orendain a little away from the counter. At past seven o'clock of the same morning, she saw a passenger jeep arrive with armed men followed by a Goody-Goody truck. The jeep parked near the second house in the house compound, while the Goody-Goody truck went straight to the fourth house and then returned to the second house where the jeep was parked. Also among the group were Manuel Mateo, Jr., or June Mateo, the brothers Melanio and Renato Mendoza, a certain Doming, Didong, Lando and Eddie Mata.

"It was at the Bay Court Hotel where Martinez spelled out the details of the plan to rob the American Express Bank inside Sangley Point. At about 10:00 a.m., after Martinez had acquired the necessary information as to how the entrance to the U.S. Naval Base at Sangley Point could be effected, the Goody-Goody truck, driven by Emmanuel Caganap, left the Bay Court Hotel and proceeded to the base. Beside Caganap in front of the truck was Gender Filoteo. Inside the truck were Rolando Reyes, Renato and Melanio Mendoza, Doming and Didong. The rest of the group comprising Martinez, Mateo, Cruz, Concepcion and Eddie Mata rode in a jeep in going to Sangley Point.

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"Martinez also gave out last-minute instructions. He told the men in the Goody-Goody truck that his group composed of himself, Mateo, Concepcion, Cruz, Eddie Mata and Lando, would be outside the base and would fire to confuse the Americans. Martinez further said that if there be any danger, hostages would have to be taken.

"And so, at about ten o'clock in the morning of June 4, 1971, in furtherance of the conspiracy, with Caganap driving, with Filoteo beside him, and with Reyes, Melanio and Renato Mendoza, Doming and Didong inside the Goody-Goody truck, the group proceeded towards the American Express Bank inside Sangley Point. While still away from the bank, Gener Filoteo and Renato Mendoza alighted from the Goody-Goody truck and walked to the bank. On the pretext that they were looking for the Administra-tion Building, they asked a U.S.

Marine on guard posted at the bank where the Administration Building is located. However, the marine did not understand the question, so he did not answer. Filoteo and Renato Mendoza then asked a Filipino who was there at the moment, and the Filipino pointed to the Administration Building. Filoteo and Mendoza proceeded to cross the street towards the Administration Building. At the moment, the Goody-Goody truck arrived. Immediately, Filoteo and Mendoza returned to the bank pointed their guns at the marine on guard, Para Guadalupe, handcuffed him at the railings of the stairs in front of the bank and took the marine's shotgun and radio. Almost simultaneously, the armed men inside the Goody-Goody truck alighted and proceeded inside the bank. Filoteo and Renato Mendoza followed but not until after Filoteo had ordered two of the 'cuadra' boys to stand guard outside the bank near the handcuffed marine, Para Guadalupe. The latter, recognized from the picture, Exhibit 'G-3', the man wearing a cap, and identified him as Gener Filoteo, as one of the two armed men who approached him, handcuffed him and took his shotgun and radio. According to him, the two armed men standing outside the bank near the place where he was handcuffed, fired shots in the air to scare people.

"Ismael Bob Pittman, a U.S. marine assigned at the U.S. Naval Base, Sangley Point, was inside the barracks when he heard the bank alarm. Responding to the alarm, Pittman and several other U.S. marines, among whom were Capt. Taylor, S/Sgt. Mc Daniel, Sgt. Greene, Cpl. Mitchell, Pfc. Thompson, boarded a marine truck and proceeded to the direction of the bank. There was an exchange of gunfire between the marines and the armed men in the bank. Pittman hid behind a tree, but could not return fire as he left his firearm in the marine vehicle. In the ensuing gunbattle Pittman and Para Guadalupe saw Lt. James Plumpowski fatally shot.

"Inside the American Express Bank, the employees were performing their usual duties. Helena Parcero was secretary and assistant vault custodian. Nicanor Obtera was senior teller and senior custodian of the bank. Other employees were Lucila Santos, teller No. 5; Edgardo Moncal, teller No. 2; and Angelina Basto. The Bank Manager, Robert Gilman, was in his office. When the four or five armed men entered the bank, one of them shouted, 'Everybody, do not move; this is a hold-up,' and asked for the Manager. Nicanor Obtera pointed to the Bank Manager, who came out from his office. Upon orders from the armed men, Gilman told Obtera to open the vault. Obtera and Parcero then opened the vault, with two armed men behind them. After the two safes in the vault were opened, the armed man holding a sack ordered Obtera and Parcero to take the pesos from one safe and the dollars from the other safe and to place them in the sack.

"During the shooting that ensued, the man armed with a rifle was hit in the head. The bleeding man sat near the grill door of the vault, took off his shirt and tied it around his head. This man was identified as Renato Mendoza. Another gunman was shot and who was later identified as Emmanuel Caganap. One of the gunmen, known as Doming, was killed.

"Meanwhile, Daniel Luchyz, a U.S. navyman who was standing in front of the American Express Bank at the time the Goody-Goody truck passed, was ordered by the armed man carrying a rifle to go inside the bank, and there he was told by the man carrying .45 caliber pistol and with a gun slung across his shoulder, to carry the sack of money outside the bank. The other armed men took hostages with them, rushed out of the bank towards a parked marine truck, boarded the vehicle, sped towards the west gate and made their exit at the portion of the gate where the wire fence was cut two days before the incident. A group of armed men waited outside the fence for their companions and they all made their escape with the bank loot.

"Almost at the same time that the bank heist was happening, another scene was transpiring at the main gate of the U.S. Naval Base at Sangley Point. John L. Tori, Jr. a U.S. marine stationed at Sangley Point, was at the main gate of the base at about ten o'clock in the morning of June 4, 1971 with his wife Joselita Tori to shop at the base commissary. When he heard the alarm, he went back to the gate to close it. Tori heard four shots outside the gate and saw a woman running towards the gate. Tori also saw a man running towards Post No. 3 holding and firing a .45 caliber pistol. Tori identified him as Manuel Mateo Jr., Tori also saw another armed man who fired his weapon. A jeep with motor still running was parked outside the fence of the base about a yard from the tower post. Tori identified Esmeraldo Cruz as the one seated inside the jeep with another man with his back turned. After helping to safety a woman and a child inside the gate, Tori ran towards Post No. 3,

where marine Elliot J. Grey was on guard duty, positioned at the tower located at the fence along the street.

"Elliot saw a jeep pass the tower three times and at the fourth time, the jeep pulled off in a corner and two men got out of the jeep, who started firing inside the base, one with .45 caliber pistol and the other with a Thompson submachinegun. As the two men fired, they ran down the street behind the jeep which turned to the corner. Elliot then got out of the tower and ran to the main gate, met Tori and helped move people for cover. About two to three minutes after the men fired from outside the base, Elliot heard firing from the direction of the American Express Bank. Elliot proceeded to the bank and had an argument with the wife of the Bank Manager, who wanted to go to the bank to see her husband, but Elliot brought her to safety inside a house. Elliot identified Mateo as the gunman who fired the .45 caliber pistol and Martinez as the man who fired the Thompson submachinegun.

"Merle Dyer is a journalist of the U.S. Navy, Subic Naval Base. On June 4 1971, he was assigned to the U.S. Naval Base at Sangley Point as a photographer. Dyer had no actual knowledge that a robbery was being committed at the American Express Bank, but he had a feeling that something was happening from what he saw and heard. He loaded 20 films in his Nikkon 35mm camera, with 105 mm. lens. He positioned himself at the glass of the window in an office about 75 meters away from the scene. In kneeling position, Dyer took several pictures, using 19 of the 20 films in his camera. The films were processed by a technician and photograph officer at the base laboratory. While the films were being processed, Dyer was outside the door of the laboratory. Among the films developed, the following are the significant ones:

"Exhibit 'C' depicts an American holding a gun crouched near a panel truck. In the background is the building housing the American Express Bank inside the U.S. Naval Base at Sangley Point. Exhibit 'C-1-a' depicts an armed man in prone position near a tree with a motorcycle nearby. Exhibit 'C-2-a' shows an armed man emerging from the bank building which is a sequence to Exhibit 'C-1'. Exhibit 'C-3-a' shows a dead man near a tree, one of the armed robbers. Exhibit 'C-4-a' shows the American hostage, Daniel Luchyz, carrying the sack of money and behind him is the gunman later identified as accused Gener Filoteo. This is a sequence to Exhibit 'C'. Exhibit 'C-5' is blow-up of Exhibit 'C-4' in which the marine hostage Daniel Luchyz and the gunman accused Gener Filoteo, Exhibit 'G-5-b', are depicted. Exhibit 'C-6' shows another gunman herding hostages, Exhibit 'C-6-a'. Exhibit 'C-7' shows accused Filoteo at the back of the American hostage Daniel Luchyz, Exhibit 'C-7-b' with Goody-Goody truck, Exhibit 'C-7-a', clearly visible. Exhibits 'C-8', 'C-9' and 'C-10' depict accused Renato Mendoza with bandaged head at the back of the Manager of the American Express Bank. Exhibit 'C-11' clearly shows accused Gener Filoteo, Exhibit 'C-11-c', pointing a gun at the American hostage Daniel Luchyz, Exhibit 'C-11-b', who was carrying the sack of money near the Goody-Goody truck, Exhibit 'C-11-a'. Exhibits 'C-12' and 'C-13' show accused Renato Mendoza with bandaged head, holding a gun behind the Bank Manager with raised hands and the American hostage Daniel Luchyz. Exhibit 'C-12-a-1', Exhibit 'C-13-b-1', carrying the sack of money near the Goody-Goody truck. Exhibit 'C-14' clearly shows the accused Renato Mendoza, with bandaged head behind Bank Managers Rolando Reyes, Exhibit 'C-14-1', and Melanio Mendoza, Exhibit 'G-3'. Exhibits 'C-15' and 'C-16' show the persons being herded by a gunman in front of the bank.

"Dr. William Hunter, Jr., a physician of the U.S. Naval Command Institution at San Miguel Zambales was working at the dispensary of the U.S. Naval Base at Sangley Point on June 4, 1971. At about 10:50 a.m. the body of the slain Lt. James Plumpowski was brought into the dispensary. Together with two other doctors, Dr. Hunter examined the body of Lt. Plumpowski, found two large wounds on the left side of the chest (Exhibits 'B-1-a' and 'B-1-b') and a small wound on the left arm (Exhibit 'B-1-c'). The marine officer was dead on arrival at the dispensary (Exhibit 'B') Cause of death was external and internal hemorrhage due to gunshot wounds.

"Meanwhile at the Bay Court Hotel where the armed group left Rodrigo Estrebillon and Antonio Araquel, driver and helper of the Goody-Goody truck, respectively, it was about 2:30 o'clock in the afternoon of June 4, 1971 that the two left the hotel. They went towards the police checkpoint in front thereof and boarded a Saulog bus to Manila. Stopping at Baclaran, Estrebillon and Araquel took the JD transit bound for Monumento, alighting at

Mandaluyong and from there proceeded towards Quiapo dropping at the Aguinaldo, Inc. office at V. Mapa, Manila. After Estrebillo reported the incident, he was accompanied to the NBI office by Atty. Fernandez, lawyer of the Aguinaldo, Inc., and there Estrebillo narrated what happened to him and Antonio Araquel. Atty. Rogelio M. Carlos, Assistant Chief Legal Counsel of the Aguinaldo, Inc., identified the Goody-Goody truck as one of the properties of the Aguinaldo, Inc. (Exhibits 'H' and 'H-1') valued at \$1,500.00 (Exhibit 'H-2'). Incidentally, the Goody-Goody truck was released to its owner on July 5, 1971 by the Cavite PC Command at Imus, Cavite.

"After the robbery, Antonio Laforteza, agent of the American Express Company, conducted an investigation on June 4, 1971, together with the company travelling auditor. The investigation revealed that the loss sustained by the American Express Bank as a result of the armed robbery amounted to P96,532.38 and \$41,120.79 (Exhibit 'M').

"Immediately after the robbery of the American Express Bank, PC forces under Col. Daniel G. Lira, PC Cavite Provincial Commander, captured Emmanuel Caganap, one of the wounded gunmen, in a house in Cavite City. Interviewed by M/Sgt. Prospero B. Gapas of the Cavite PC Command, Caganap confessed and admitted his participation in the Sangley Point holdup and named as his companions, Ruben Martinez, Enrique Concepcion, Manuel Mateo, Jr., Rolando Reyes, and Renato Mendoza. Caganap also stated in the interview which was reduced into writing by Sgt. Gapas (Exhibit 'A') that Ruben Martinez supplied them with three .45 caliber pistols, two carbines, and three M-16 armalites.

"At about 5:30 p.m. of the same day, June 4, 1971, the military authorities under Col. Lira received information that Martinez, Concepcion and Mateo were at the residence of Fiscal Dante Filoteo at 535 Guzman Street, Caridad, Cavite City. The house was cordoned and guarded to prevent escape. At 6:00 p.m., Col. Lira met Fiscal Filoteo two or three blocks away from his house. Fiscal Filoteo was informed that the three suspects in the robbery (Martinez, Concepcion and Mateo) were in his house and that he should help facilitate their surrender, but Fiscal Filoteo refused. At about 8:00 p.m., Col. Lira met Mayor Dones of Cavite City, Governor Montano and Fiscal Filoteo at the Pagoda Restaurant. Montano and Dones joined in convincing Filoteo to help in the surrender of the three suspects. Again Filoteo declined and said he was afraid to go to his house because there might be shooting. Finally, at one o'clock in the morning of June 5, 1971 when Fiscal Filoteo learned that the Chief of the Philippine Constabulary would not countermand Col. Lira's order, Fiscal Filoteo relented and accompanied by Police Chief Del Rosario of the Cavite City Police, Fiscal Filoteo went to his house. Thereafter, Fiscal Filoteo came out with Martinez, Mateo and Concepcion. Confiscated were an armalite from Concepcion (Exhibit '0-1') and a carbine from Martinez (Exhibit '0-2'). The three suspects were brought to Camp Crame immediately for investigation. However, only Martinez gave a statement (Exhibit 'U'), while Mateo and Concepcion refused.

"On September 30, 1971, elements of the PC-CIS arrested Rolando Reyes in barrio Pugad, Hagonoy, Bulacan. Taken to the CIS office at Camp Crame, Reyes was investigated by T/Sgt. Marcial Admana on October 1, 1971 in the presence of CIS Senior Agent Berlin Castillo and Investigating Agent Cesar Catibog. In an extra-judicial confession (Exhibit 'P'), Rolando Reyes narrated in detail the circum-stances surrounding the bank robbery in Sangley Point, Cavite City and he named his co-accused herein as participants in the said robbery.

"On December 9, 1972, Gener Filoteo was arrested by CIS agents in his place of work in Cavite City. On December 11, 1972, he gave a statement to the CIS before Sgt. Jacinto Astrero which corroborated in substantial detail the confession of Rolando Reyes. Filoteo's extrajudicial confession appears in Exhibit 'Q', 'Q-1' to 'Q-7' and identified himself, Rolando Reyes, Renato and Melanio Mendoza in the pictures (Exhibits 'Q-8' and 'Q-9').

"On December 16, 1972, the brothers Renato and Melanio Mendoza, accompanied by their mother and former Vice-Mayor of Imus Francisco Herrera, went to see Gen. Cicero Campos at U.P. Village to surrender. As Gen.

Campos was not at home, they were told by an aid to proceed to the CIS at Camp Crame. Before Sgt. Astrero, Melanio Mendoza executed an extra-judicial confession (Exhibits 'R', 'R-1', 'R-3'), describing in detail the armed robbery at the American Express Bank at Sangley Point on June 4, 1971. Melanio Mendoza corroborated in material points the confession of Rolando Reyes and Gener Filoteo. On the other hand, Renato Mendoza executed and signed a statement (Exhibits 'S' and 'S-1') affirming the truth of his brother Melanio's confession."^[10]

The appellant, Enrique Concepcion, denied having participated in the commission of the crimes charged and interposed the defense of alibi. The trial court summarized his evidence, as follows:

"Accused Enrique Concepcion was a police sergeant of Cavite City on June 4, 1971, in-charge of the mobile patrol with tour of duty from 8:00 p.m. to 4:00 a.m. According to Concepcion, he went home after his tour of duty was finished, took his snack, and was about to sleep when policeman Esmeraldo Cruz arrived at about past 5:00 a.m. Cruz told him that Vice-Mayor Eduardo de Guzman would like to talk to him about the suspected killer of the brother of the Vice-Mayor. Concepcion told Cruz that he would follow. Cruz rode in the mobile car, while Concepcion took his jeep.

At Salem Restaurant Concepcion talked to Vice-Mayor De Guzman who told him to go to the checkpoint to prevent the escape of the killer of his brother. It was past 5:00 a.m. when Concepcion and Cruz left the restaurant. Cruz parked the mobile car at his house and rode with Concepcion in the latter's service jeep to the check-point, arriving there at 6:00 a.m.

Cpl. Felix Tiongco was at the checkpoint. Tiongco asked Concepcion and Cruz why they came and he was told that Vice-Mayor De Guzman ordered them to be on the look-out for the killer of the Vice-Mayor's brother, a certain Roberto Javitan. Pat Manuel Mateo, Jr., also arrived at the checkpoint. At about 9:30 a.m., Cpl. Tiongco received a call from the Vice-Mayor and he told him that Concepcion and Cruz may go home already. Tiongco relayed the message of the Vice-Mayor to Concepcion and Cruz.

At the same moment, a spare-parts dealer from Pasay City, Benigno Medina, arrived at the checkpoint in a jeep containing spare parts for a jeep that Concepcion was then assembling. Medina met Concepcion at the checkpoint and they went together in Medina's jeep to Concepcion's house at Makisig Street, San Antonio, Cavite City, to deliver the spare parts. After unloading the spare parts, while Concepcion and Medina were having snack, Concepcion's wife arrived from the market at about 11:00 a.m. She told Concepcion that there was a robbery at Sangley Point. Immediately, Concepcion went to the police headquarters taking Medina's jeep. He carried with him an armalite and a .38 Cal. revolver. Concepcion asked the Desk Officer Pfc. Virgilio Salazar (now dead) about the Sangley Point incident, and he was told by Salazar that he was a suspect with a shoot-to-kill order for him and that he better see the Police Chief Del Rosario.

Concepcion, went to Del Rosario's residence and was waiting for more than an hour, when Fiscal Dante Filoteo arrived. Concepcion told Fiscal Filoteo that he was a suspect in the Sangley Point case and that there was a shoot-to-kill order for him by the PC. Filoteo told Concepcion that he would contact the PC Commander about it. Concepcion stayed until about 1:00 p.m. at the house of the Chief of Police, but he left when the Police Department called the Chief's house that he could not come home. Concepcion then proceeded to Fiscal Filoteo's house. At about 2:00 p.m., Mateo and Martinez arrived at the Fiscal's house and told Concepcion that they too were suspects in the Sangley Point robbery; that they also went to the residence of Chief of Police, but did not see him; that they were told that Concepcion went to the residence of Fiscal Filoteo; and that they followed to seek the aid of the Fiscal to surrender.

At past midnight of June 5, 1971, Fiscal Filoteo arrived at his house, which was then surrounded by soldiers. Concepcion recognized Fiscal Filoteo and told him to come in. Filoteo led the three - Concepcion, Martinez and Mateo - outside and surrendered them to Col. Lira, the Provincial Commander. According to Concepcion, a .38 caliber revolver was grabbed from his waist by a PC soldier. No receipt was issued to him for the

revolver because according to him, there was a commotion when the PC Soldiers disarmed Fiscal Filoteo of his firearm. At past 1:00 a.m., Concepcion, Martinez and Mateo were brought to the CIS, Camp Crame, where they were investigated and charged with illegal possession of firearms. However, they were acquitted of the offense (Exhibit '3-Concepcion')."[11]

This appeal involves the determination of the question of whether or not the accused-appellant Enrique Concepcion conspired with his co-accused in the commission of the crimes charged. Counsel for the appellant contends that there is no iota of proof that the appellant actually participated in the commission of the offenses charged and/or in the furtherance of a conspiracy to rob the American Express Bank at the U.S. Naval Base in Sangley Point, Cavite.

The contention is devoid of merit. Conspiracy need not be proved by direct evidence. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole. If it is proved that two or more persons aimed, by their acts, at the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert ways and means is proved.[12]

In the instant cases, the accused Emmanuel Caganap, Rolando Reyes, Gener Filoteo, Melanio Mendoza and Renato Mendoza stated in their extra-judicial confessions given to PC investigators soon after their arrest,[13] that the appellant, Enrique Concepcion, was their companion in robbing the American Express Bank Branch in the U.S. Naval Base in Sangley Point on 4 June 1971. Rolando Reyes and Gener Filoteo also stated that the appellant was one of those who acted as "look-outs" outside the base and waited for them outside the hole they had previously made in the wire fence to facilitate their exit from the naval base. Melanio Mendoza and Gener Filoteo further stated that they saw the appellant inside the Bay Court Hotel talking to Ruben Martinez. These extra-judicial confessions were given when the presumption of law was in favor of spontaneity and voluntariness of a confession and it was incumbent upon the accused to destroy that presumption;[14] and yet, no evidence had been presented to overcome that presumption except the retracting testimonies of Gener Filoteo, Melanio Mendoza, and Renato Mendoza to the effect that they did not give the implicative statements. However, the accused Emmanuel Caganap and Rolando Reyes, who both pleaded guilty, did not recant their statements.[15] Besides, the recitals therein reflect spontaneity and coherence and are replete with details that only the confessants could have known and supplied.

The appellant claims, however, that the said extra-judicial confessions of his co-accused should not be taken against him following the rule of *res inter alios acta*.

The cited rule is not absolute. In the case of *People v. Ty Sui Wong*,[16] the Court said:

"Since *People vs. Badilla*, the rule which has been reiterated by this Court in various cases is that extrajudicial confessions, independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime.

"Inasmuch as there is no proof of collusion among the declarants, their confessions should, therefore, be read together to form a complete picture of the commission of the crime and considered collectively as corroborative or confirmatory of the evidence apart from the confessions themselves."

There is no evidence of collusion and the extra-judicial confessions of appellant's co-accused are corroborated by

Marilyn Tordecillas Orendain, wife of the Assistant Manager of the Bay Court Hotel, who declared that she saw the appellant, Enrique Concepcion, at a little past 6:00 o'clock in the morning of 4 June 1971 in the Bay Court Hotel together with the accused Roberto Martinez and five (5) armed men who rode in a jeep and escorted the Goody-Goody truck to the hotel premises and left the hotel together at about 9:00 o'clock that morning.

Conspiracy can also be inferred from the fact that after the commission of the robbery in the U.S. naval base, the accused-appellant and his co-accused, Manuel Mateo, Jr. and Roberto Martinez, fled together to the house of Fiscal Dante Filoteo, where they "holed out" until they were persuaded to surrender to the authorities in the early morning of 5 June 1971.

Besides, the alibi of the appellant is not convincing. His claim that he was in his house at about the time the robbery was perpetrated in Sangley Point, Cavite, looking over the spare parts which were delivered to him by one Benigno Medina, appears to be an afterthought. No record of the alleged transaction was presented in court and the jeep he was supposed to assemble for one Danny Abarro could not be traced. He reasoned that Abarro, who is now living abroad, had allegedly sold the jeep to one Penny Lalana who is now deceased.

The appellant's claim that he went to the house of the chief of police to seek protection after having been told by the desk sergeant that there was a shoot-to-kill order out for him and that he then transferred to the house of Fiscal Dante Filoteo in order to get the fiscal's help in surrendering to the police authorities, is incredible. To begin with, the desk sergeant, one Salazar, who is now conveniently deceased, could not have told the appellant at 11:00 o'clock in the morning of 4 June 1971 of an alleged shoot-to-kill order as a result of the robbery in Sangley Point, because his co-accused Emmanuel Caganap, who implicated the appellant in the bank robbery, was investigated only at about 1:35 o'clock in the afternoon of 4 June 1971.

And, if his purpose in going to the house of Fiscal Dante Filoteo was to seek the latter's help in order to surrender, why did he not surrender to Fiscal Filoteo earlier when they met at the house of the chief of police? Again, there was no point in going to Fiscal Filoteo in order to surrender when he was already at the police station and all he had to do was to give up to the desk sergeant. It is unfortunate that the said desk sergeant is already dead and cannot answer the appellant's charge that he was remiss in the performance of his duty to arrest the appellant, pursuant to the shoot-to-kill order.

Moreover, the Court has held in a great number of cases that for alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed, but it must be also shown that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[17]

The appellant was in Cavite City when the robbery was committed and his then proximity to the scene of the crime does not rule out the possibility that he could be at the scene of the crime at the time it was committed. In fact, the trial court found that the "flimsiness of the defense of alibi is exposed by the nearness of the accused to the scene of the crime." [18]

The trial court found the appellant guilty of the crime of Robbery in Band with Homicide. This is not correct. In the case of *People vs. Pedroso*, [19] the Court said:

"x x x There is no special complex crime of robbery in band with double homicide and/or serious, less serious or slight physical injuries under the present Code, as amended by Republic Act No. 373. If robbery with homicide (or with the other crimes enumerated above) is committed by a band, the indictable offence would still be denominated as 'robbery with homicide' under Article 294(1), but the circumstance that it was committed by a band is not an element of the crime but is merely a generic aggravating circumstance which may be offset by mitigating circumstances. The homicides or murders and physical injuries, irrespective of their numbers, committed on the occasion or by reason of the robbery are merged in the composite crime of

‘robbery with homicide.’ x x x” (Emphasis Supplied)

Accordingly, the appellant should be found guilty of the crime of "Robbery with Homicide." The penalty of reclusion perpetua imposed by the trial court is correct. But, the amount to be paid to the heirs of the slain marine officer should be increased to P30,000.00 in line with the recent decisions of the Court.

We also find that the penalty imposed upon the appellant, Enrique Concepcion, in Crim. Cases Nos. CCC-VII--844, CCC-VII-845, and CCC-VII-846-Cavite City, is not in accord with law. The penalty provided for the offense under Article 294, No. 5, of the Revised Penal Code, as amended, is prision correccional in its maximum period to prision mayor in its medium period, or from four (4) years, two (2) months and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum period to be imposed should be within the range of the penalty next lower in degree, which is arresto mayor in its maximum period to prision correccional in its medium period, or from four (4) months and one (1) day to four (4) years and two (2) months. The minimum of the period imposed by the trial court, which is four (4) years, two (2) months and one (1) day, is obviously beyond the period provided for by law. It should be reduced accordingly.

With respect to the maximum period, there being two (2) aggravating circumstances and no mitigating circumstance, the maximum of the period, which is ten (10) years, should be imposed. The correct penalty to be imposed upon the appellant, Enrique Concepcion, in each of the three (3) aforementioned cases (CCC-VII-844, CCC-VII-845, CCC-VII-846-Cavite City) should, therefore, be imprisonment of from four (4) years and two (2) months, as minimum, to ten (10) years, as maximum.

WHEREFORE, with the modifications above-indicated, the judgment appealed from is hereby AFFIRMED. With costs.

SO ORDERED.

Paras, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

[1] Original Record of CCC-VII-843-Cavite City, p. 5

[2] Original Record of CCC-VII-844-Cavite City, pp. 1-2

[3] Original Record of CCC-VII-845-Cavite City, pp. 1-2

[4] Original Record of CCC-VII-846-Cavite City, pp. 1-2

[5] Original Record, p. 22

[6] Id., p. 659

[7] Id., p. 418

[8] Brief for defendant-appellant, pp. 97-100, Rollo, p. 74

[9] Rollo, p. 85; Original Record, p. 1410

[10] Brief of the appellee, pp. 5-20, Rollo, p. 86

[11] Brief for the appellee, pp. 21-24, Rollo, p. 86

[12] People vs. Carbonell, 48 Phil. 868

[13] Exhibits A, P, Q, R, and S

[14] *People vs. Legaspi*, G.R. Nos. 55103-04, August 18, 1988 164 SCRA 481, 488, citing *People vs. Garcia*, 101 Phil. 616.

[15] See tsn of July 12, 1971, pp. 6-27 and tsn of February 5, 1972, p. 11

[16] G.R. No. L-32529, May 12, 1978, 83 SCRA 125, 163

[17] *People vs. Mercado*, G.R. Nos. L-39511-13, April 28, 1980, 97 SCRA 232, 247

[18] Brief for defendant-appellant, p. 86, Rollo, p. 74

[19] G.R. No. L-32997, July 30, 1982, 115 SCRA 599, 608-609

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