

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE ASTOR, RENATO DAET AND HERCULES DEL ROSARIO, ACCUSED, RENATO DAET AND HERCULES DEL ROSARIO, ACCUSED-APPELLANTS.

G.R. Nos. 71765- 66. April 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Legazpi City, Branch IX, finding the accused-appellants, Renato Daet and Hercules del Rosario guilty beyond reasonable doubt of the crimes of robbery and serious illegal detention and sentencing each of them as follows:

"a) In Crim. Case No. 537, for Robbery, to suffer an indeterminate imprisonment of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum, and to indemnify CHUA SAN the sum of FIVE THOUSAND, SEVEN HUNDRED PESOS, (P5,700.00), Philippine Currency, as actual damages; and

"b) In Crim. Case No. 642, for Serious Illegal Detention, to suffer the penalty of reclusion perpetua. With costs against the accused in both cases. The .45 caliber automatic pistol, Colt, with SN-228033; two (2) hand grenades with SN-3-19 and SN-045; the magazine for .45 caliber automatic pistol; and the bullets for .45 caliber and .22 caliber revolver are hereby confiscated and forfeited in favor of the State."

The information filed against the appellants alleged:

"CRIM. CASE NO. 537

That on or about and within the period from August 27 to August 28, 1979, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with intent of gain and by means of violence against or intimidation of persons, did then and there wilfully, unlawfully and feloniously take and carry away P5,700.00 and an additional amount of P10,000.00 from Miki (noodle) factory owned and managed by one CHUA SAN, against the will and consent of the latter, and in the course of the commission of said robbery, said accused, used personal violence upon immediate member of the family of the said Chua San by pointing guns at them, threatening them with the use of explosives and were hogtied, to the damage and prejudice of said CHUA SAN and the other victims.

X X X X X X X X

CRIM. CASE NO. 642

"That on or about and within the period from August 27 to August 28, 1979, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another for a common purpose, did then and there wilfully, unlawfully and feloniously and by force, take THOI MUI CHI and TWENTY (20) other persons as hostages while they were in the Miki Factory, whom said accused detained in the salt-room of the said factory owned by

said THOI MUI CHI, from August 27 to August 28, 1979 or a period of TWENTY TWO (22) hours, under restraint and against the will of said hostages, and said accused did, during said period of detention, hogtied and threatened by pointing guns at them and refused to release said hostages until the following articles which were demanded by the accused from the military authorities were met, to wit:

Cash amount of P50,000.00

Three (3) Caliber .45 pistols
hand-cuffs

A get-away car."

The lower court found that clear and convincing evidence had been adduced by the prosecution as follows:

"(T)hat at 7: 00 p.m. on August 27, 1979, the herein accused, led by certain Dante Astor, barged inside the Legazpi Miki Factory with pulled handguns and grenades. Upon gaining entry, they closed the door and threatened all the twenty one innocent and unsuspecting people caught inside, some of whom were females and twelve were males. They also hogtied Thoi Mui Chi, the wife of the factory owner, and forcibly ordered her to open the cash register and give them the money. Trembling in fear, and under the watchful eyes of these armed men, she opened the drawer and gave them all its contents of P5,700.00.

"Unfortunately for the accused, they failed to act with precision, facility and speed in the perpetration of this daring offense. They overlooked the important element of time. Their failure must only lend credence to the truism that 'crime does not pay'. Before they could leave the premises after the commission of the robbery, the police authorities were already at the scene of the crime. There was no way out for the robbers. All possible exits were blocked. In the face of these circumstances, however, the accused displayed more boldness and daring.

"What followed next unfolds a human drama reminiscent of that award winning movie 'Dog Day Afternoon'. The armed men herded and detained all their twenty one victims, including the females and children, first inside the bodega, and then transferred them in a small office where they were packed like sardines and also detained. The armed men threatened to explode the hand grenades and kill all the hostages. Since the accused knew, or have known, that the authorities have already cordoned the place, Astor picked and singled out from the group an elderly woman, who is prosecution witness Francisca Astillero, to look for a walkie talkie. Astillero informed him that she could not stand up because another hostage was lying on her legs. When she managed to stand up, two shots were fired inside the factory. Fearing that she might be hit, Astillero remained lying down. Astor ordered her to stand up. When she stood up, Astor approached her and placed a grenade on her hand. He ordered her to shout to the people outside, that they were afraid because there were guns and hand grenades which the armed men threatened to explode. Thereafter, the girl Rosario Astillero, who is the child of this woman, pleaded with the accused Daet and del Rosario who were sitting on the steps of the stairs to let them go out of the factory. This irked Astor who shouted: 'All of you are very noisy. I will kill you.' The child then pleaded with Astor if it was possible even to release her mother because she might suffer from heart attack. The plea was rejected and Astor insisted that he should be given a walkie talkie which should be placed near the door. Francisca shouted to the people outside to send a walkie talkie, as demanded by the armed men. Finally, a walkie talkie was placed near the door and it was taken by one of the hostages, Chan Hoc Pin, who gave it to Astor.

"The authorities led by Mayor Gregorio Imperial, Jr., Gen. Racela and Col. Riller, negotiated with the armed robbers for the release of the hostages. The negotiations were carried out through the walkie talkie. The mayor pleaded for the safety of the hostages. As this drama was taking place, food were sent inside the factory for the hostages. The armed men demanded for a getaway vehicle, money, a free passage, and a guarantee from Mayor Imperial, Jr. of their safety during the escape.

"Above and beyond the call of duty, Mayor Imperial offered himself to the armed men in exchange for the release of the twenty one hostages. His offer was refused and the armed men demanded that they should be

accompanied during their escape by three barangay chairmen and others whom they already knew.

"After a briefing with the police authorities, Mayor Imperial, Jr. finally acceded to the demands. Through the help and voluntary contributions of the families of the hostages and other civic spirited citizens, he was able to raise P10,000.00. A Toyota Land Cruiser was also prepared as the getaway car. The getaway car was placed close to the main door of the factory. Sgt. Ojas of the PC was assigned to drive the vehicle. The mayor requested the respective barangay chairmen of the places where the accused reside, as well as the mother of del Rosario and the father of Daet, to ride with the accused in the getaway vehicle. Then the much awaited moment leading to the final rescue of the hostages came. The barangay chairmen fearlessly but cautiously entered the factory in order to fetch the three armed men and escort them to the waiting vehicle. At 5:00 in the afternoon of August 28, 1979, the main door of the factory which has remained closed since the accused entered the place at 7:00 in the evening of August 27, 1979, finally opened. Moments later, the three accused who were tightly secured and surrounded by the barangay chairmen went out of the factory and boarded the waiting getaway vehicle under the helpless eyes of the authorities. Amidst the sight of terror, the families of the hostages were on hand, anxiously waiting for a warm embrace with them. After the vehicle sped away towards Manila, Mayor Imperial, Jr. hurriedly entered the factory. Finally he saw the hostages safe and sound. Like the good father of the family, he comforted them and gave food and medical assistance. At long last, after twenty two terrifying hours of captivity, the hostages were rescued and again saw the outside world."

Judgment was rendered against appellants Daet and del Rosario only, as Dante Astor escaped from detention after their arraignment and remained at large.

The appellants raised the following assignment of errors:

I

IN NOT GIVING CREDENCE TO THEIR DEFENSE.

II

IN FINDING THAT THERE ARE TWO SEPARATE CRIMES COMMITTED, AND

III

IN IMPOSING CAPITAL PENALTY ON THEM.

In the first assigned error, the appellants contend that the lower court erred in not lending credence to their version that their participation in the holdup was under compulsion and fear of Astor.

We agree with the observations of the lower court which noted the following:

x x x x x x x x

"xxx (T)he Court believes and is fully convinced that the meeting of the accused Shangrila was not accidental but prearranged. It was there where they hatched and planned the details for the execution of the crime. Astor was already carrying the bag containing the guns, hand grenades and other paraphernalia to be used in the robbery. If Astor was the lone perpetrator, it is inconceivable why he would arm himself with two guns and two hand grenades, and three masks. The Court cannot also believe that they went to the parking lot only to accompany Astor to take ride in going home and that, when there was no available ride, they accompanied him to the miki factory xxx."

x x x x x x x x

"It is significant to note that after Astor had already jumped out of the getaway vehicle in Naga City, Daet and del Rosario were asked by the barangay chairmen why they committed the crime but they just keep silent. If it

is true, as the defense alleged, that the herein accused merely acted under compulsion or fear of Astor, they would have readily revealed the truth and would have said so to the barangay chairmen, if not to their father or mother. Their silence is a clear indicia that they knew of and had participated in the commission of the crime. If it were true, as they claimed, that they were only threatened by Astor into joining him in committing the crime, it is strange why they did not go with the group in going back to Legazpi City in order to profess their innocence to the authorities. The explanation that they were afraid of the PC soldiers who were trailing them cannot be given credence for the simple reason that they were or would still be accompanied during the trip back to Legazpi City by their parents and the barangay chairmen, and a PC soldier was the one driving the vehicle. It should be noted that these persons went with them during their escape out of the city in order precisely to ensure their safety. Yet, they decided to be left alone in Camarines Norte which exposed them more to the harm they were afraid of. They proceeded to Manila and, in the case of del Rosario, he even proceeded to Olongapo City, without giving themselves up to the authorities. The explanation is clearly illogical and unnatural. The claim that barangay captain Sevillano advised them to go elsewhere until their surrender to Mayor Imperial shall have been arranged is absurd. Their flight is clear evidence of a guilty conscience (Peo. vs. Realon, 99 SCRA 422).

"It is likewise significant to state that the accused offered to plead guilty to the crime of robbery (p. 47, t.s.n., June 14, 1983)."

Conspiracy was therefore properly established by the lower court.

Each of the offenders performed with such closeness and coordination as to indicate a common purpose or design. (See *People v. Tamba*, G.R. No. 71272, January 29, 1987).

In the second assigned error, the appellants contend that the lower court erred in finding them guilty of two separate crimes, namely robbery and serious illegal detention. They allege that they should only be convicted for robbery.

We agree with the appellants' second assigned error, sustained by the Solicitor General, that the trial court erred in penalizing Daet and del Rosario separately under the two informations.

As the Solicitor General stated:

"Explaining the rationale why appellants further continued to detain people despite the accomplishment of their mission to rob, the narrative of the trial court states thus —

"Unfortunately for the accused, they failed to act with precision, facility and speed in the perpetration of this daring offense. They overlooked the important element of time. Their failure must only lend credence to the truism that 'crime does not pay'. Before they could leave the premises after the commission of the robbery, the police authorities were already at the scene of the crime. There was no way out for the robbers. All possible exits were blocked. In the face of these circumstances, however, the accused displayed more boldness and daring.

"What followed next unfolds a human drama reminiscent of that award winning movie 'Dog Day Afternoon. The armed men herded and detained all their twenty one victims, including the females and children, and then transferred them in a small office where they were packed like sardines and also detained x x x.'

"It is evident from the above finding that were appellants themselves not trapped by the early arrival of the police at the scene of the crime, they would have not anymore detained the people inside since they have already completed their job. Obviously, appellants were left with no choice but to resort to detention of these people as security, until arrangements for their safe passage were made. This is not the crime of illegal detention punishable under the penal laws, but an act of restraint in order to delay the pursuit of the criminals by peace officers (*People vs. Sol*, 9 Phil. 265; *People vs. Uday*, 85 Phil. 498; *People vs. Manzanilla*, 43 Phil.

167, cited in the Revised Penal Code, Aquino, Vol. 3, 1976 ed., p. 1337). Where the victims in a robbery case were detained in the course of robbery, the detention is absorbed by the crime of robbery (People vs. Baysa, 92 Phil. 1008, id.). In the case at bar, the detention was only incidental to the main crime of robbery and, although in the course thereof women and children were also held that threats to kill were made, the act should not be considered as a separate offense. Appellants should only be held guilty of robbery."

Contrary to the third assigned error, capital punishment was not imposed by the trial court. Capital punishment is equivalent to the death penalty which incidentally has been abolished in the 1987 Constitution unless specifically reinstated by law for heinous crimes. The lower court sentenced the appellants in Criminal Case No. 642 for serious illegal detention to reclusion perpetua which is commonly referred to as "life imprisonment".

WHEREFORE, the judgment of the court a quo in Criminal Case No. 537 for robbery is AFFIRMED. The judgment in Criminal Case No. 642 for serious illegal detention is REVERSED and SET ASIDE. The accused-appellants are ACQUITTED in the case for serious illegal detention but the judgment of forfeiture is AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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