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SECOND DIVISION

[G.R. No. L-42666. March 13, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERMINIO BARUT, ALEJO RAMISCAL and ERNESTO QUEBRAL,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; REQUIREMENT FOR VALIDITY.** — Where the trial in its decision summarized the evidence of the prosecution and the defense, and synthesized its findings and concisely narrated how the crime was perpetrated by the accused, it was held that the trial court's decision conformed with the requirement that judgment should contain clearly and distinctly a statement of facts proven or admitted by the accused and upon which it is based (Sec. 2, Rule 120, Rules of Court; Sec. 12, Art. VIII, 1935 Constitution; Sec. 9, Art. X, 1973 Constitution).

2. **ID.; ID.; PROSECUTION OF OFFENSES; "PEACE OFFICER"; INCLUDES MEMBER OF THE CONSTABULARY.** — The term "peace officer" in section 2, Rule 110 of the Rules of Court, which enumerates the persons who are competent to file a criminal complaint includes members of the Constabulary. They are directly charged with the preservation of peace, law and order. It is their duty to investigate crimes and being criminal offenders to justice (Secs. 825, 826, 831, 848, Revised Administrative Code). Generally, they are more competent and experienced than policemen to investigate crimes.

3. **ID.; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED.** — Appellant's uncorroborated alibis have no exculpatory value. Alibis cannot destroy the positive identification made by the prosecution witness who had no motive for fabricating evidence against them.

4. **CRIMINAL LAW; ROBBERY WITH HOMICIDE; VICTIM KILLED MAY BE AN INNOCENT BYSTANDER.** — There is *robo con homicidio* even if the victim was as innocent bystander and not the person robbed. The law does not require that the victim

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of the robbery be also the victim of the homicide. Although the killing of a member of the rescue party was perpetrated after the consummation of the robbery and after the robbers had left the victim's house, the homicide is still integrated with the robbery or is regarded as having been committed "by reason on the occasion" thereof, as contemplated in Article 294(1) of the Revised Penal Code.

5. ID.; ID.; **WHEN HOMICIDE IS CONNECTED WITH THE ROBBERY.** — Where the robbery spawned a fight between the robbers and the neighbors of the victim of the robbery, the killing of one of the victim's neighbors which resulted from that fight is connected with the robbery.

6. ID.; **CONSPIRACY; LIABILITY OF CONSPIRATORS.** — Where there is conspiracy, all the conspirators are responsible for the homicide. In the absence of any modifying circumstance, the penalty of *reclusion perpetua* imposed by the trial court is in conformity with Articles 63(2) and 294(1) of the Revised Penal Code.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Vicente V. Mendoza and *Solicitor Roberto A. Abad* for plaintiff-appellee.

Antonio F. Dasalla for accused-appellants.

D E C I S I O N

AQUINO, *J.*:

Herminio Barut (Barot), Alejo Ramiscal and Ernesto Quebral appealed from the decision of the Court of First Instance of Isabela, convicting them of robbery with homicide, sentencing each of them to *reclusion perpetua* and ordering them to pay solidarily the heirs of Evaristo Tuvera (Tobera) an indemnity of ₱12,000. The trial court also ordered the return to Francisco Lazaro of the articles taken from him which were recovered near the scene of the robbery after the accused had fled (Criminal Case No. IV-202-'74).

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According to the prosecution, shortly after sundown, on June 15, 1969, while Marcelino Grospe was pasturing his carabao in his farm at Sitio Basilio, Barrio San Jose, Roxas, Isabela (p. 4, Record), he saw Herminio Barut, Alejo Ramiscal, Ernesto Quebral, Juan Agustin and Castor Acson, persons known to him, going towards the hut or *camarin* of Francisco Lazaro, an octogenarian. Acson was armed with a carbine. Sensing that the group had evil intentions, Grospe rode on his carabao, crossed the Siffu River and informed his neighbors that Lazaro was in trouble.

Acson held up Lazaro and at gunpoint got his money amounting to twenty-three pesos. Acson's companions went up the hut, ransacked it and took his carpentry tools worth one hundred pesos and parts of a carbine. These articles were later recovered and presented as evidence (Exh. B to F).

Grospe and his neighbors, Lorenzo Soriano, Saturnino Sales, Maximo Saludares, Alejandro Tuvera and Evaristo Tuvera, armed with guns and bolos, constituted themselves as a rescue party and repaired to the vicinity of Lazaro's hut. They deployed behind the banana plants. There was a brief exchange of fire between the two groups. Acson was killed while in Grospe's group Evaristo Tuvera was the lone fatality. The malefactors fled from the scene of the fight. Alejandro Tuvera saw them running away (54 tsn June 28, 1974).

Evaristo sustained an entrance gunshot wound in the chest. The bullet penetrated his heart and right lung and exited in the right scapular region or shoulder blade (Exh. A).

The incident was investigated by the Constabulary. The affidavits of Grospe, Lazaro, Alejandro Tuvera (son of Evaristo) and Lorenzo Soriano were taken and sworn to before the municipal judge of Roxas on June 23, 1969. On the basis of those affidavits, a complaint for robbery in band with homicide was filed against Barut, Ramiscal, Quebral and Agustin in the municipal court of Roxas by a Constabulary investigator on July 7, 1969.

At the preliminary examination on July 16 and 17, 1969, the municipal judge interrogated Lazaro, Grospe, Soriano, Consolacion Cabutaje, the widow of the deceased Evaristo Tuvera, and Doctor

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Luis R. Tamayo who conducted the autopsy on the body of the deceased Evaristo Tuvera.

However, the warrant of arrest dated July 17, 1969 was served upon Barut, Quebral and Ramiscal a few years later or only on December 30, 1972, August 27, 1973 and December 31, 1973, respectively (p. 3, CFI Record).

The municipal judge conducted the second stage of the preliminary investigation and took Quebral's statement on December 10, 1973. He took the statements of Barut and Ramiscal on December 31, 1973.

The case was elevated to the Court of First Instance only on January 9, 1974. The fiscal filed against the same accused an information for robbery in band with homicide dated February 19, 1974. As already stated, the trial court convicted them (except Agustin who is at large in Mindoro) of robbery with homicide.

Appellants Barut, Ramiscal and Quebral contend that the trial court's decision does not state the ultimate facts on which the judgment of conviction was based. That contention is devoid of merit. After meticulously summarizing the evidence of the prosecution and the defense, the trial court synthesized its findings and concisely narrated how the robbery with homicide was perpetrated by the accused. Then, it rationalized its conclusion that the *robo con homicidio* was not committed by a band. It justified its view that the alibis interposed by the accused are not worthy of credence.

The trial court's decision conforms with the requirement that the judgment should contain and distinctly a statement of the facts proven or admitted by the accused and upon which it is based (Sec. 2, Rule 120, Rules of Court, Sec. 12, Art. VIII, 1935 Constitution; Sec. 9, Art. X, 1973 Constitution).

The appellants argue that the case should have been investigated by the police and not by the Constabulary soldiers. That is a baseless or flimsy argument. The term "peace officer" in Section 2, Rule 110 of the Rules of Court, which enumerates the persons who are competent to file a criminal complaint, includes member of the Constabulary. They are directly charged

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with the preservation of peace, law and order. It is their duty to investigate crimes and bring criminal offenders to justice. (See Sec. 825, 826, 831 and 848, Revised Administrative Code.) Generally, they are more competent and experienced than policemen to investigate crimes.

Appellants' other assignments of error, which deal with the credibility of the prosecution witnesses, do not merit any serious consideration. Appellants' arguments as to the discrepancies in the prosecution's evidence are fully answered in the prosecution's brief.

Appellants' uncorroborated alibis have no exculpatory value. When the robbery with homicide was committed, appellant Barut was allegedly in Barrio Malbog, Tagkawayan, Quezon Province where he was working on a farm owned by his uncle; appellant Quebral was at Barrio Baua, Gonzaga, Cagayan, while appellant Ramiscal was at Barrio Salindingan, Ilagan, Isabela. The three appellants allegedly stayed in those places for four years.

The three appellants are admittedly close friends (15-16 tsn September 25, 1974). Together with Acson and Agustin, they were all residents of Barrio Masigun, Roxas. The probability is that immediately after the occurrence of the incident in question they fled from Barrio Masigun and stayed for more than three years in those aforementioned places as fugitives from justice in order to avoid arrest and prosecution. They then utilized their stay in those places as the basis of their alibis.

As has been repeatedly observed in case of similar nature, appellants' alibis cannot destroy the positive identification made by the prosecution witness, Marcelino Grospe, who is acquainted with the appellants and who had no motive for fabricating evidence against them.

The robbery was proven beyond reasonable doubt. After the exchange of fire between the rescue party and the five malefactors, the latter in their excitement and confusion left the objects of the robbery at the scene of the encounter. Those articles were recovered and presented as evidence in court (Exh. B to F).

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Although the killing of Evaristo Tuvera was perpetrated after the consummation of the robbery and after the robbers had left the victim's house, the homicide is still integrated with the robbery or is regarded as having been committed "by reason or on the occasion" thereof, as contemplated in Article 294(1) of the Revised Penal Code.

In the controlling Spanish version of Article 294, it is provided that there is robbery with homicide "*cuando con motivo o con ocasión del robo resultare homicidio.*" "*Basta que entre aquél éste exista una relación meramente ocasional. No se requiere que el homicidio se cometa como medio de ejecución del robo, ni que el culpable tenga intención de matar, el delito existe según constante jurisprudencia, aun cuando no concurra ánimo homicida, incluso si la muerte sobreviniere por mero accidente, siempre que el homicidio se produzca con motivo o con ocasión del robo, siendo indiferente que la muerte sea anterior, coetánea o posterior a éste*" (2 Cuello Calon, *Derecho Penal*, 1975 14th Ed. p. 872).

There is *robo con homicidio* even if the victim killed was an innocent bystander and not the person robbed. The law does not require that the victim of the robbery be also the victim of the homicide (*People vs. Moro Disimban*, 88 Phil. 120; *People vs. Salamuddin No. 1*, 52 Phil. 670; *People vs. Gardon*, 104 Phil. 371).

In the instant case, the robbery spawned a fight between the robbers and the neighbors of Lazaro, the robbery victim. The killing of Evaristo Tuvera resulted from that fight. Hence, it was connected with the robbery.

The three appellants, together with Agustin and Acson, were co-conspirators. They are all responsible for the homicide. There being no modifying circumstances, the penalty of *reclusion perpetua* imposed by the trial court is in conformity with Articles 63(2) and 294(1) of the Revised Penal Code. Band is not aggravating because it was not proven that four of the five malefactors were armed.

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WHEREFORE, the trial court's judgment is affirmed with the slight modification that the appellants should pay solidarily to Francisco Lazaro the sum of twenty-three pesos (₱23) which was taken from him by one of the robbers. Costs against the appellants.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-49247. March 13, 1979]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HON. WENCESLAO M. POLO, Presiding Judge, Court *of First Instance of Samar, Branch V (Calbayog City);* BASILIO ROSALES, TRINIDAD D. ENRIQUEZ, JOSE ROÑO, CESAR DEAN, MARIA S. QUESADA, AURORA SOLIMAN, JAIME ROCO and HERMINIGILDO ROSALES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SERVICE; SERVICE OF DECISION ON THE CITY FISCAL, NOT A SERVICE UPON THE SOLICITOR GENERAL.** — In a land registration case where it appears that although the Solicitor General requested the city fiscal to represent him in the trial court, he, nevertheless made his own separate appearance as counsel for the State and indicated in his notice of appearance that "only notices of orders, resolutions and decisions served on him will bind" the Government, it was held that the thirty-day period to perfect appeal shall be counted from the date when the Solicitor General received a copy of the decision