

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX SABELLANO, ACCUSED-APPELLANT.

G.R. No. L-40115. April 27, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

Felix Sabellano appealed from the decision of the Court of First Instance of Misamis Occidental, convicting him of robbery with homicide, sentencing him to reclusion perpetua and ordering him to pay the heirs of the deceased Patricio Panoy the sum of two hundred pesos as the amount taken during the robbery and an indemnity of twelve thousand pesos for the victim's death (Criminal Case No. OZ-497).

According to the prosecution's evidence consisting of the testimonies of the eyewitnesses, Carmelita Cañete Vda . de Panoy, 38, and her five-year-old son, Nelson, at about four o'clock in the afternoon of January 12, 1973, while she, together with Teofilo Sandalan and Mauricio Gumapon (non-Christians), was weeding grass in the yard of her house located at Barrio Bagong Clarin, town of Clarin, Misamis Occidental, Felix Sabellano y Tolero, armed with a knife or dagger, and a companion, armed with a homemade gun(pali-untod), arrived at her place.

The two intruders approached her husband, Patricio, 40, who with their two small children named Romeo and Nelson, were at the porch of their house preparing the feed for their pigs. Sabellano wore a cream shirt with blue stripes while his companion wore khaki pants and shirt.

They twisted Patricio's hands and loosened his grip on his bolo. Sabellano's companion pointed his shotgun at Patricio and told him to surrender while Sabellano poked his knife at Patricio's abdomen. Patricio raised his hands. One of the malefactors said that they were Constabulary soldiers and that they were sent by Lorenzo Alegrado to get the papers of Patricio's land. They warned Patricio that if he did not surrender them he would be liquidated.

Patricio pleaded with his tormentors not to kill him. He offered them the sum of two hundred pesos which he had received from the sale of coffee. They ordered Patricio to call his wife, Carmelita. Patricio did as he was bidden. He called Carmelita, telling her that the investigators wanted to get the papers of their land.

While she was walking towards her husband, Sabellano's companion pointed his shotgun at Carmelita. Terrified, she took cover behind the stump of a tree. She heard her husband saying that he would not deliver the titles of his land because it was the only property that he could bequeath to his children.

Enraged by that refusal, Sabellano stabbed Patricio in the abdomen. His companion hit Patricio in the head with the butt of his gun. The blows felled Patricio. He was sprawled on the yard. The two malefactors went up the house, ransacked it and took the two hundred pesos, some clothes and the title deeds to the land.

They inquired from the two boys where their mother was hiding. When they refused to disclose her hiding place, Sabellano kicked Nelson in the abdomen and his companion kicked Romeo in the eye, inflicting a serious injury which nearly caused his blindness.

The two malefactors approached Patricio and both of them told him to forgive them because they were ordered by Alegrado to eliminate him. They took the logging trail leading to the Malindang Mountain.

Carmelita directed her son and nephew to report the incident to the barrio captain. She approached her husband who was on the threshold of death. He told her not to surrender their land in Molave to Alegrado and to defend it even at the cost of her own life. He advised her to ask the help of the police at Barrio Cagumahan, Tambulig, Zamboanga del Sur about four kilometers away. She could not report the incident to the police at the town of Clarin because to go to that place one has to take a bus to Molave, then to Ozamiz City, and from there to Clarin.

Instead, she went to Molave where she hired a jeep and three Constabulary soldiers accompanied her to Bagong Clarin. When they arrived there, her husband was already dead (Exh. A).

He had wounds in the abdomen, on the left side of his body and on the breast and his head had been smashed with the butt of a gun. He sustained seven wounds in all. (53 tsn .)

It may be reasonably inferred from Carmelita's testimony that Alegrado had something to do with the commission of the robbery with homicide. She testified that Alegrado, a resident of Zamora Street, Molave, filed a forcible entry case against her husband. She and her husband were not heard in that case.

Without any notice, their house on Zamora Street was demolished by the sheriff and the coconuts and other plants were destroyed. Her husband complained to President Marcos, General Encarnacion and the Land Registration Commission. But before a prober could investigate his complaint, Alegrado allegedly hired someone to kill her husband (5-7 tsn).

Four days after the incident, or on January 16, 1973, Carmelita and her two sons rode in a weapons carrier bound for Molave, Zamboanga del Sur, in order to telegraph her in-laws and relatives that her husband was killed by robbers. At Barrio Panagaan, Mahayag, the weapons carrier had a flat tire and the passengers alighted from the bus.

Carmelita noticed that one of the passengers who alighted was Sabellano. Her two children asked her permission to defecate in a secluded place. Carmelita bought rice cakes. Sabellano also bought rice cakes and saw Carmelita. He asked her why she was in mourning. Instinctively, she dissembled and replied that she was in mourning because her mother had died of hypertension.

When her sons returned, Sabellano saw Nelson who was wearing the same shirt that he wore when his father was stabbed by Sabellano. Fearful that he would be recognized, Sabellano fled to the Panagaan creek. Carmelita asked Boy Dumon, the owner of the weapons, carrier, to help her chase Sabellano who had robbed and killed her husband. But Dumon said that the flat tire had not been fixed because the reserve tire had not yet arrived. Carmelita hailed a logging truck which happened to pass by intending to board it so that she could pursue Sabellano. But the truck did not stop.

Just then a jeep came into view. Coincidentally, it was the same jeep that she had hired in the evening of January 12, 1973 when her husband was killed. She rehired it. After it had traversed a short distance, she saw Sabellano running after the logging truck and was able to overtake it and ride in it.

However, at Barrio Colo, Molave, the truck, like the weapons carrier, had a flat tire. As the jeep passed it, Carmelita saw Sabellano in the driver's seat. She instructed the jeep driver to go to the police station at Molave so that she could fetch policemen to arrest Sabellano.

Two Constabularymen, the chief of police, a sergeant (Virgilio Sintos) and a policeman accompanied her to Colo where the logging truck had stalled.

When Sabellano saw Carmelita and the peace officers, he jumped out of the truck and tried to hide near the driver who was under the truck fixing the flat tire. He was arrested and brought to the municipal building. His body was searched.

The peace officers found a handkerchief in his pocket which when spread out contained two pesos and fifty centavos and which was identified by Carmelita as the handkerchief of her husband which he had used in wrapping the two hundred pesos. She described the handkerchief as having a hole or tear in one corner. The description was correct (Exh. B).

The chief of police filed against Sabellano a complaint for robbery with homicide. Carmelita testified that while Sabellano was confined in the municipal jail of Clarin, to which he was brought later, he was visited there by Alegrado and Judge Frisco N. Pabatao of Molave. Alegrado and Judge Pabatao did not rebut that testimony.

At the second stage of the preliminary investigation, Sabellano and his two witnesses, Alberto Capute and Cirilo Barcelona, testified on his defense of alibi. They declared that Sabellano was engaged in cooperative or bayanihan plowing in the farm of Francisco Luna at Barrio Dimoroc, Molave on January 12, 1973 when the robbery with homicide was committed.

The municipal judge of Clarin rejected that defense. He ruled that Sabellano's alibi could not prevail over the positive identification made by Carmelita. The record was elevated to the Court of First Instance where the fiscal filed an information for robbery with homicide against Sabellano.

While the case was pending in the municipal court, Eulalia Tolero, Sabellano's mother, approached Carmelita, who was then in the house of Tatong Cañete in Laman, Ozamiz City because her son Romeo was sick of chickenpox. Eulalia requested that the complaint against Sabellano be withdrawn. She assured Carmelita that Sabellano would testify in her favor and against Lorenzo Alegrado as the instigator of the killing of her husband (31-33 tsn). Carmelita did not accede to Eulalia's request because she was convinced that Sabellano killed her husband.

As already stated, after trial, the lower court convicted Sabellano of robo con homicidio and sentenced him to reclusion perpetua, a judgment whose affirmation is recommended by the Solicitor General.

In this appeal, appellant's counsel de parte contends that the trial court erred in giving credence to the testimonies of Mrs. Panoy and her son Nelson and in not accepting his defense of alibi.

On the other hand, Raoul B. Agrava, who was appointed counsel de oficio when Placidtrank B. Osorio had delayed the filing of appellant's brief and after appellant requested that a counsel de oficio be appointed for him, and who submitted a well-written brief, concluded that the judgment of conviction should be affirmed.

Sabellano, 21, a farmer who finished Grade six, testified that he was a resident of Barrio Pisaan, Bonifacio, Misamis Occidental. In October, 1972 he went to Barrio Dimoroc, Molave, Zamboanga del Sur to work on a two-hectare land belonging to Francisco Luna whose wife is his first cousin. He stayed there up to January, 1973. His companions in plowing the field of Luna were Rudy Balayong, Cipriano Fuentes, Cirilo Barcelona, Maximiano Sabellano and Alberto Capute. The arrangement was known as hunglos or bayanihan farming.

On January 16, 1973 (four days after the robbery with homicide was committed) his brother Maximiano requested him to fetch his mother at Pisaan because Maximiano wanted to get married to a girl whose name Felix Sabellano did not know. He (Felix) boarded a weapons carrier which had a flat tire when it reached Barrio Panagaan, Mahayag. After alighting from the weapons carrier, he bought rice cakes at a store where he had a conversation with a person named Mameng.

When a logging truck passed by, Sabellano hitchhiked in it but when it reached Barrio Colo, Molave, it also had a flat tire. To his surprise, he was arrested in that place and brought to the Molave police station.

Sabellano further testified that the marriage of his brother did not take place. The handkerchief (Exh . B) was bought by him from Geronimo Alagenio but he also admitted having told the chief of police of Molave that it was given to him by a cousin (Exh. C-1).

He testified on direct examination that he did not know Lorenzo Alegre (23 tsn), the individual, who according to Carmelita C. Panoy, was named by Sabellano as the person interested in Panoy's land. But on cross-examination, Sabellano admitted that he is acquainted with Alegre (28). As previously noted, Carmelita testified that while Sabellano was confined in the jail of Clarin, she saw Alegre with Judge Pabatao of Molave, visiting Sabellano in the jail.

Sabellano's alibi was corroborated by Luna, Cirilo Barcelona and Alberto Capute. To cast reasonable doubt on Sabellano's guilt, the defense presented as witness Romeo Martinez, a resident of Bagong Clarin, who testified that in the evening of January 11, 1973 or the day before the robbery with homicide was committed, two robbers, allegedly prisoners who escaped from the Pagadian City Jail, had supper in his house. Martinez conjectured that they were the robbers who committed robbery in Mrs. Panoy's house.

Tranquilino Cabalong, a barrio councilor of Bagong Clarin, testified that Martinez reported to him on January 12, 1973 that two unidentified persons had supper at his house.

Martinez admitted that Sabellano was a protégé of Acrosendo Lapura, the barrio captain of Bagong Clarin who had a litigation over a parcel of land with Patricio Panoy. Patricio won the case. This was denied by Lapura. Thus, the defense destroyed the credibility of its own oral evidence by presenting conflicting testimonies.

Lapura, who was requested by Sabellano's uncle named Nicolas to testify, declared that some unidentified persons, who were roaming in Bagong Clarin, had committed thefts in that barrio in January, 1973.

Sergeant Sintos testified that Sabellano was not hiding when Sintos arrested him at Barrio Colo.

The trial court, like the municipal court, found that Sabellano was unmistakably identified by the victim's wife. The robbery with homicide was perpetrated at around four o'clock in the afternoon of a clear and cloudless day of the dry season (holaw) in that locality. The sun was still high in the horizon. The robbers did not wear any disguise. They stayed in the premises of the victim's house for about half an hour. Barrio Bagong Clarin is adjacent to Barrio Upper Dimoroc where Sabellano was allegedly working.

Appellant's counsel contends that Mrs. Panoy did not see the face of her husband's assailant and, for that reason, "she did not include in her report to the authorities the description of the man who killed her husband" (p. 6, Appellant's brief).

The fact is that Mrs. Panoy was not asked by the investigators to describe Sabellano's facial features. During her cross-examination, appellant's counsel showed her a photograph and she was asked if it was a picture of Sabellano. She categorically replied that it was not Sabellano's picture and that Sabellano was in the courtroom. It turned out that the photograph was that of an alleged notorious hoodlum resembling Sabellano. Mrs. Panoy was not trapped by means of that question.

The other arguments in appellant's brief do not deserve serious consideration. They are not sufficient to overthrow the testimonies of Mrs. Panoy and her son Nelson as to Sabellano's identity. We have not found any justification for reversing the trial court's judgment.

We agree with the trial court that appellant's guilt was proven beyond reasonable doubt. There being no

modifying circumstances, the penalty of reclusion perpetua imposed by the trial court is in accordance with articles 63(2) and 294(1) of the Revised Penal Code.

WHEREFORE, the trial court's judgment is affirmed. Costs de oficio .

SO ORDERED.

Barredo, (Chairman), De Castro, Ericta, and Escolin, JJ.,concur.

Concepcion, Jr., and Abad Santos, JJ.,no part.

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