

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUFO PATINGA, ANTONIO CUDIERA @ ANTONIO COLON AND ROBERTO GRANADO @ BOB GRANADO, DEFENDANTS-APPELLANTS.

G.R. No. L-37912. January 18, 1982

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PER CURIAM:

Appeal by RUFO PATINGA from the decision dated December 29, 1972, of the Court of First Instance of Surigao del Norte (Branch II) at Surigao City, in Criminal Case No. 271, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, this Court finds the accused RUFO PATINGA GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, defined and penalized under Article 294, par. 1 of the Revised Penal Code and after taking into consideration the aggravating circumstances of use of superior strength and nighttime, without any mitigating circumstance to offset the same as the plea of guilty entered into during the trial can no longer be considered for not being spontaneous and given at the first opportunity, this Court hereby imposes upon accused RUFO PATINGA, the supreme penalty of death with accessories prescribed by law, to indemnify the heirs of the deceased in the amount of P12,000.00, to pay the sum of P1,700.00 as actual damages and the further sum of P20,000.00 as moral and exemplary damages and to pay one-third (1/3) of the costs of this proceedings."

In the evening of August 12, 1972, the house of the spouses Antonio and Fe Luna at Capangi, Bo. Mati, Surigao City, was invaded by three persons who forcibly asported P1,500.00 in cash, a Seiko wrist watch worth P120.00 and a lady's ring worth P80.00. The house was then occupied by Fe and her two-month old child and Fe's sister Teresita Ocon and her one-year old child for their husbands had gone fishing in a nearby river. In the course of the robbery, Fe was stabbed and the stab wounds on the upper parts of her body caused her death. Teresita was fortunate. Although she was hogtied by the robbers, she succeeded freeing herself and escaped without harm by jumping from the kitchen of the house.

Very early the next morning, the members of the Surigao City Police Force arrested a suspect, Rufo Patinga, at the house of Antonio Anol, his brother-in-law, at Bo. Mati.

After the investigation by the police, Rufo Patinga, together with Antonio Cudiera alias Antonio Colon and Roberto Granado alias Bob Granado were indicted for robbery with homicide before the trial court, in the following information:

"That on or about the 12th day of August, 1972, at 10:00 o'clock in the evening, more or less, at sitio Capangi, Mati, Surigao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to gain and by means of violence, did then and there willfully, unlawfully and feloniously take, steal and carry away the following personal properties, to wit:

Cash

P1,500.00

Men's Wrist Watch worth

120.00

Lady's ring (diamond) worth

80.00

P1,700.00

of the total amount of P1,700.00, owned and belonging to MRS. FE LUNA, against the consent of the owner thereof, to the damage and prejudice of said owner in the aforesaid sum of P1,700.00 pesos, Philippine Currency; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the above-mentioned personal properties, herein accused, in pursuance of their conspiracy did then and there willfully, unlawfully and feloniously, with evident premeditation and taking advantage of their superior strength and with intent to kill, treacherously attack, assault and stab MRS. FE LUNA on the different parts of her body, with the use of their small sharp-pointed bolos whereby inflicting upon her several fatal wounds which caused the direct death of said MRS. FE LUNA."

Being the only accused under arrest, Rufo Patinga was arraigned on December 1, 1972, and he pleaded not guilty.

At the hearing on December 5, 1972, the prosecution presented its first witness - Dr. Bernardo Mora, Jr., Surigao City Health Officer, who testified on his post-mortem findings on the cadaver of Fe S. Luna, and Antonio Anol who testified that he was one of those who conspired with the accused. Upon being so informed, the trial court suspended the hearing until further investigation by the fiscal as to why Anol was not included in the information. The investigation resulted in a report dated December 8, 1972, wherein the fiscal recommended the continuation of Antonio Anol's testimony on the basis of his finding that the witness had voluntarily desisted in the commission of the crime.

On December 27, 1972, during the resumption of Antonio Anol's testimony, Rufo Patinga through counsel de oficio, Atty. Epifanio Muñeses, manifested his desire to withdraw his original plea of not guilty and substitute it with a plea of guilty.

So far as pertinent to this review, the proceedings on December 27, 1972, are as follows:

"COURT:

How about that last witness? He was not yet through.

FISCAL:

Yes, Your Honor, we call on Antonio Anol to resume his testimony.

COURT:

You have no aggravating circumstance here?

FISCAL:

If Your Honor please, although it is not so stated as an aggravating circumstance in the information, however, in the body itself there are aggravating circumstances which we intend to prove in view of the fact that the prosecution is still called upon to introduce evidence.

COURT:

It may be considered as qualifying. At any rate, you make the necessary manifestation.

ATTY. MUÑESES:

At this juncture, we would like to manifest that the herein accused Rufo Patinga told this representation that he is now willing to enter the plea of guilty.

COURT:

In other words he will change his former plea of not guilty to guilty?

ATTY. MUÑESES:

The reason here is he really participated in the commission of the crime but according to him during the commission of the crime he was still outside the house.

COURT:

If that is the way you want I'll not grant the request, but the trouble is you are qualifying. You know when the plea is qualified it means no, not guilty.

ATTY. MUÑESES:

At any rate, Your Honor, the accused now would like to enter the plea of guilty.

COURT:

What does the Fiscal say about this?

FISCAL:

We have no objection, Your Honor. However, we would like to point out that we have already introduced evidence last time.

COURT:

Order. When this case was called for the continuation of the hearing the defense thru its counsel de oficio manifested that accused is now willing to change his former plea of not guilty to guilty. The Asst. Provincial Fiscal who represented the prosecution did not interpose any objection.

WHEREFORE, as the same is sanctioned by the Rules of Court, the manifestation of the defense is hereby granted and the promulgation will follow.

ATTY. MUÑESES:

We request that the complaint be read again.

COURT: (To the Interpreter)

You arraign the accused anew.

(After the accused was rearraigned)

INTERPRETER: (To the Court)

The accused entered a plea of guilty.

COURT:

Make that of record. All right, Fiscal, you present your evidence.

FISCAL PANTEJO:

I would like to call on Antonio Anol to resume his testimony."

(TSN, December 27, 1972, pp. 38-42.)

The trial court then, continued to hear the testimony of Antonio Anol and those of Teresita Ocon and Antonio Luna, husband of the deceased, followed.

Dr. Bernardo Mora, Jr. testified on the autopsy he performed on the body of Fe Luna, stating among others, that the wounds described in his necropsy report (Exhibit "A"), must have been inflicted with a sharp-pointed instrument.

Exhibit "A" as presented in evidence, follows:

"POSTMORTEM FINDINGS

EXTERNAL FINDINGS:

1. Wound, stabbed, 1" x 1/4", located at the level of the 2nd rib, mid-clavicular line, right, penetrating the upper lobe of the right lung.
2. Wound, stabbed, 1" x 1/2" x 1" deep located at the base of the neck, occipital region.
3. Wound, stabbed, 1/2" x 1/4" x 1" deep, located at the scapular region, level of the 4th rib, 4 inches from the axillary line, left.
4. Wound, stabbed, 1" x 1/4" x 1" deep, located at the middle portion of the back, 6 inches from the sac.
5. Wound, stabbed, 1/2" x 1/4", located at the level of the 8th rib, 2 inches below the scapula, right, penetrating the back and the right lower lobe of the right lung.
6. Wound, incised, 1-1/2" long located between the thumb and forefinger left."

Antonio Anol testified that he knew the three accused: Rufo Patinga who is his brother-in-law; Roberto Granado in whose house he lived in San Francisco, Agusan del Sur, sometime in 1971 until May 10, 1972, when he transferred his residence to Mati, Surigao City; and Antonio Cudiera who had been his neighbor in Agusan del Sur. Granado stayed with him in Mati for sometime until he returned to Agusan del Sur. When Granado went again to Mati on August 1, 1972, Cudiera was with him.

Antonio stated that during a drinking spree at the store of one Elena Colon at Mati, in the morning of August 11, 1972, the four of them - Patinga, Granado, Cudiera and himself agreed to pledge the plow of Rufo Patinga to Fe S. Luna (the victim), the following evening of August 12, 1972, and thereafter, to rob Fe S. Luna.

At around 7:00 o'clock in the evening of Saturday, August 12, 1972, they met in front of the house of a certain Toting Geli, and there they planned how to enter the house of Fe S. Luna. As previously agreed, Rufo Patinga

pledged his plow to Fe. Later, the group met again and discussed again how they would enter the house of Fe. At around 11:00 o'clock, they proceeded to the house of Fe. Antonio stayed about 10 meters from the house, while his three companions went in. He did not see what they did inside, but he saw Fe hog-tied. He also saw Teresita Ocon run to the kitchen and jump from the house. That was the timer when, according to Antonio, fear seized him and he went home, leaving behind his companions.

Antonio also testified that his three companions arrived at his house at around 11:00 o'clock that same evening. He was told by Roberto Granado and Antonio Cudiera that they were running away as in fact they did. Rufo Patinga informed him that they had killed Fe. At about 5:00 o'clock the next morning, Rufo Patinga was arrested by the Surigao City Police.

Teresita Ocon testified that on that fateful evening, she and her one-year old son slept in the house of her sister, Fe, as their husbands had gone fishing together. At around 10:00 o'clock, she was awakened when three robbers, two of whom were masked with handkerchiefs and the third whom she recognized as Rufo Patinga, entered the house, which was lighted at the time. She was given a fistblow on the stomach, hog-tied and covered with a blanket. Then she was pushed into a room by the three. While there she heard her sister shout: "That is enough Mang Rufo, do not kill us all." She was able to untie herself. Thereafter, she jumped from the house and ran to the nearby house of her Mano Samson Sitoy to whom she narrated what had happened. When they went to Fe's house, they found Fe dead. A trunk besides the bloody body was open.

The last witness, Antonio Luna, husband of the victim, testified on the things stolen: P1,500.00 cash, a Seiko wristwatch worth P120.00 and a lady's ring valued at P80.00.

After the prosecution had rested its case, the defense waived presentation of evidence, as shown in the following:

"COURT: (To Atty. Muñeses)

Do you want to present any evidence?

ATTY. MUÑESES:

Considering, Your Honor, that the accused entered a plea of guilty, however, there was some sort of condition because he said he was not in the house of the victim.

COURT:

That was belied by the witness, Anol.

ATTY. MUÑESES:

So, considering that we could not produce any other witnesses except the accused, we just waive our right to present our case.

COURT:

All right, case submitted. The promulgation will be on Friday, December 29, 1972, at 9 o'clock in the morning."

(TSN, December 27, 1972, p. 61.)

Whereupon the court a quo rendered the decision of December 29, 1972, subject of this review.

Parenthetically, it should be mentioned that Roberto Granado was apprehended by the Surigao City Police in Naga, Zamboanga del Sur, sometime in January, 1973. He was arraigned and pleaded not guilty. After trial, he

was found guilty as charged, and sentenced to suffer the penalty of reclusion perpetua only in view of his minority in the decision dated April 7, 1973. (Expediente, pp. 47-66.)

Roberto Granado appealed to this court. Later he filed a motion to withdraw his appeal, which was granted in Our resolution of April 18, 1974. (Rollo, p. 74.)

Hence, this review concerns the death sentence imposed on Rufo Patinga alone.

The appellant, through counsel de oficio, Atty. Teresita G. Oledan, prays that the decision be set aside and remanded to the lower court for further proceedings, contending that the trial court (a) "ERRED IN ITS FAILURE TO INSURE WHETHER THE DEFENDANT RUFO PATINGA FULLY UNDERSTOOD THE GRAVITY OF THE OFFENSE, THE SEVERITY OF THE CONSEQUENCES ATTACHED THERETO AS WELL AS THE MEANING AND SIGNIFICANCE OF HIS PLEA OF GUILTY" and (b) "ERRED IN NOT ALLOWING THE DEFENDANT RUFO PATINGA TO TAKE THE WITNESS STAND AND EXPLAIN HIS 'QUALIFIED' PLEA OF GUILTY AND IN GIVING CREDENCE TO THE INCONSISTENT TESTIMONIES OF PROSECUTION WITNESSES, ANTONIO ANOL AND TERESITA SITOY DE OCON. " The appellant also insists "THAT IN THE REVIEW OF THE TRIAL COURT'S DECISION, THIS HONORABLE COURT SHOULD CONSIDER THE TESTIMONIES OF THE PROSECUTION AND DEFENSE WITNESSES DURING THE TRIAL AGAINST ROBERTO GRANADO, A CO-DEFENDANT OF THE HEREIN DEFENDANT, RUFO PATINGA. " Thus the appellant assails the decision of the court a quo, principally on the theory that he was convicted solely and exclusively on his substitute plea of guilty.

Appellant's theory is belied by the records. The appellant reversed his original plea after the prosecution had started with its evidence. Notwithstanding the plea of guilty which the appellant had entered, the trial court continued to receive evidence. Thus the prosecution resumed with the testimony of Antonio Anol (after he had been investigated by the fiscal), and continued with those of Teresita Ocon and Antonio Luna, as though no substitute plea of guilty had been entered.

After the prosecution had closed its evidence, the trial court, as a matter of course, asked the defense to present its evidence. But as the records disclose, the defense waived the presentation of evidence for lack of witnesses. So it is not fair to say that the lower court erred in not allowing Patinga to take the witness stand. The trial court could not have disallowed Patinga from testifying because precisely he declined to testify.

It is to be noted that the findings of facts and the conclusions contained in the decision are based on the evidence appearing on record. It could well be said that the accused-appellant was convicted on the strength of the evidence adduced by the prosecution, independently of his substitute plea of guilty. For as succinctly stated in the People's brief: "There was therefore no abbreviated proceedings as what ordinarily happens in a case where the accused enters a plea of guilty, but there was actually a trial on the merits with full opportunity given to both the prosecution and defense to present their respective evidence." Also, "if the court a quo had rendered its decision against appellant on the sole reliance of appellant's plea of guilty, on the principle that a plea of guilty is an unconditional confession of guilt of the crime charged as well as of 'all the material facts alleged' in the information, 'including all the aggravating circumstances listed therein' (People vs. Saligan, L-35792, Nov. 29, 1973, 54 SCRA 190), then it would have found that appellant's commission of the crime charged was attended by all the aggravating circumstances alleged in the information (evident premeditation, use of superior strength, and treachery). Yet said court found that appellant's commission of said offense was attended only by the aggravating circumstance of use of superior strength (which is alleged in the information), and nighttime, which is not alleged therein, while it made no finding at all on the other circumstances of treachery and evident premeditation likewise alleged in the information." (pp. 11; 12-13, People's Brief.)

We, therefore, find no justifiable reason for the remand of this case to the lower court for further proceedings.

In the light of the appellant's attack on the credibility of the prosecution's vital witnesses - Antonio Anol and Teresita Ocon, the ultimate question is whether the guilt of the accused has been proved beyond reasonable doubt.

The testimony of these witnesses is impressed with credibility and can withstand scrutiny.

Antonio Anol spoke of an uncontradicted tale of an expressed conspiracy among Patinga, Granado, Cudiera and himself to rob Fe S. Luna that evening of August 12, 1972. The conspiracy was hatched in a drinking spree in the morning of August 11, 1972. The conspirators persistently adhered to their criminal design, until they carried out the robbery to its completion. Thus on the designated evening, Rufo Patinga pledged his plow with the victim; then they convened in barrio Mati and discussed further how they would enter the house of Fe. Earlier they had talked in front of the house of Toting Geli and planned their entry to the house of the victim. Finally at about 10:00 o'clock, they went to the house of the victim.

Antonio did not see how the robbery was actually carried out. But the dead body of Fe S. Luna and the open trunk near the body are mute yet eloquent evidence that the robbery was successfully carried out. In fact, Antonio stated that Cudiera and Granado left that same evening; and Rufo Patinga informed him that they killed the victim.

The testimony of Teresita Ocon strengthens that of Antonio Anol. She saw and recognized Rufo Patinga because there was light inside the house. She could not have failed to recognize him as she was tied by the three, two of whom she said were masked with handkerchiefs. She even heard her sister shout: "That is enough Mang Rufo, do not kill us all."

Any doubt on the appellant's participation in the conspiratorial criminal act is set at rest by the statement of his counsel on the occasion of the change of plea from not guilty to guilty, thus: "The reason here is he really participated in the commission of the crime but according to him during the commission of the crime he was still outside the house."

To further cast doubt on Antonio Anol, the appellant urges Us to consider the evidence adduced during the trial of Roberto Granado. This We cannot do because the evidence in Granado's trial is not part of the evidence in this appeal.

The court a quo correctly found the commission of the crime attended by the aggravating circumstances of abuse of superior strength and nighttime. For certainly an attack by three men against a helpless and defenseless woman - Fe S. Luna, constitutes abuse of superior strength and the evidence indubitably shows that the malefactors purposely sought nighttime to facilitate the commission of the crime.

WHEREFORE, the judgment of the court a quo is affirmed in all respects. Costs de officio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur. Fernando, C.J., no part.

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