

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.S.
JORGE SONSONA, DEFENDANT-APPELLANT.***G.R. No. L-8966. May 25, 1956*

Ponente: LABRADOR, J.

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Appeal from a judgment of the Court of First Instance of Cebu., finding Jorge Son sons guilty of robbery with homicide upon the person of Patricia Sons on a and sentencing him to an indeterminate penalty of from twelve (12) years of prison mayor to twenty (20) years of reclusion temporal, and. to indemnify the heirs of said deceased In the" sum of P1,700 for money stolen and P2,000 for her death, with costs.

On and before April 17, 1947 Patricia Sonsona, single, lived alone in her house at Barrio Ocana, Car car, Cebu. A girl, 11 years old, by the name of Lucia Sob re villa used to sleep in her house with her. In the night of April 17, 1947, while Lucia was fast asleep, she was suddenly awakened because somebody stepped on her. She noticed the presence of two men in the house. Their faces were covered with handkerchiefs. One of them took hold of her by the wrist and dragged her aside, warning her not to make any noise. Then he asked the key from Patricia, and the latter answered, "Can you afford to do me any harm, I being your own kin?" Upon hearing this, he boxed Patricia on the face. Lucia tried to struggle but he was held down by this man, while the other, whom Lucia had then recognized to be Eusebio Mejares sat on Patricia's abdomen. The shorter man tried to choke Patricia, holding her down, by the neck. As she noticed this, Lucia said, "Do not kill her," and the man answered, "No, I will not." But just the same Patricia was choked by him until she was dead. Then the man brought Lucia to a corridor and there warned her to keep quiet, otherwise she will be killed. .While she was being brought by this man, the handkerchief covering his face fell down and Lucia readily recognized him to be "Orok." (Jorge Sonsona).

Lucia then saw the two, Jorge and Mejares open the trunk and the wardrobe. Two other persons went up the house, but she did not recognize who they were Jorge ransacked the trunk, and brought it out its contents. Lucia saw tint lie took out there from a roll of paper bills about two inches in circumference. Jorge held it up, examined it and later put it inside his pocket.

Lucia did not do anything until the robbers were gone and there was silence inside the house. She had witnessed what had happened by the light of a small kerosene lamp which was placed on the altar inside 'the house. As Lucia believed that the robbers were gone, she went down to the house of one And at, where she Informed the latter's husband of what had happened. Andat's husband went to the house of Lucia's father and the latter in turn went to notify Marcelo Sanson a of the incident.

That some night Carmen Cajo, who was living in a house about 20 brazas away from that of Patricia Sonsana, was awakened by what "she believed to be a choked voice. She peeped through the window and heard it coming from the house of Patricia. She went down. and proceeded towards Patricia's house, but on her way, she suddenly met Jorge Sonsona. Carmen asked him what had happened to Patricia, because she had seen Jorge with some companions who had tried to avoid meeting, her, but Jorge did not say anything. All that lie did was to put his

hand inside his pocket. She asked him once more, but Jorge did not answer. Then she tapped Ms breast saying, "You are a fool Reg." Jorge then directed his stops towards,his own house.

Carmen went back to her house and went to sleep. Not long thereafter she was awakened by someone shouting, "Pati is dead." So Carmen awakened her sister and they went to the house of Patricia. They found many people there. Patricia was already dead. After sometime, she went home alone, and upon reaching it, she again met Jorge Sonsona nearby. Jorge asked her what had happened to Patricia, and she answered that she had been killed by robbers. Then Jorge asked her who was the companion of Patricia Sonsona, and upon being told that she was Lucia Sob re villa, he asked if Lucia told who killed Patricia. Carmen answered that Lucia did not. It was then that Jorge told her, "The truth is that the time had cane when I could accomplish my desire to kill Patricia Sonsona." Carmen then answered, "Do not say that, Oreg, because Wang Pati is there and is dead." To which Jorge countered, "You. reveal and I will kill you.," After this conversation Jorge went home and Carmen went-up her house.

When the authorities learned about the robbery and the death of Patricia Sonsona, the President of the Sanitary Division came and examined Patricia's body and thereafter submitted the following report of his findings:

"TO WHOM IT MAY CONCERN:

"This is to certify that the undersigned, President 15th Sanitary Division, have physically examined in the barrio Ocona in her house, the cadaver of one Patricia Sonsona,

single, 45 years old., residing in Ocana, Carcar, Cebu, in which I found the following:

"1- Five superficial scratches scattered on the right side of the face and an otter four scratches distributed on the neck both sides.

2-Lacerated superficial wound on the mucosa of the Inner lower lip.

3-Scratches around outside of the mouth.

4-Two c on tut ions with hematoma circular in-form situated on the leaver right quadrant near the ileac bone.

5-Slight pulmonar hemorrhage passing thru the nose both sides.

6-Slight contusion on the right jaw cir-cular in form with two inches in diameter."

CAUSE OF DEATH: ASPIXIA DUE TO STRANGULATION
AND PULMONAR HEMORRHAGE."

(Exh. A-I, p. 18, Orig. Record.)

Another witness for the prosecution is Marcelo Sonsona. He testified that he knew that Patricia Sonsona had money because one week before her death Patricia bad asked him to check up her money, as there was a person who wanted to sell her a parcel of land for P1,700. Marcelo counted the money and found that it was exactly P1, 700. He knew that Patricia had some more, which lie calculated to be P300,

A fourth witness, also for the prosecution, is Anastacio Alcordo, Chief of Police of Carcar, Cebu. He said that upon learning about the incident, he proceeded to the house, scene of the crime, and found clothes and other things scattered all around and Patricia Sosona dead on the floor. He as load the persons present who could have committed the robbery and none of them could give any clue as to their identity, except Lucia Sob re villa who had slept in the house of Patricia Sonsona. When he questioned Lucia, the latter told him that after she .was awakened and when she stood up she recognized "Orek" and Eusebio Mejares, who sat on the abdomen of Patricia Sonsona. She said there were some others but she could not recognize them. The Chief of Police also questioned Carmen Gajo, but the latter answered tint she did not know who the authors of the robbery were.

However, sometime in the month of June, 1947, she went to his office and inquired if Jorge Sonsona had already been arrested, and when she was told that Jorge was already arrested and detained in the provincial jail, she voluntarily disclosed that she had something to say about the robbery. She said that on the night of the robbery, she saw Jorge Sonsona and met him as the latter was coming from the house of Patricia; and that Jorge admitted to her that it was he who killed Patricia Sonsona.

The defense set up by the accused is an alibi. He claims that on the 17th of April, 1947, he was no longer in Carcar, Cebu because he had embarked on April 15th on a boat by the name of M/S Virginia, which was bound for Misamis; that after alighting from the boat in Misamis, he took a truck bound for Dadiangas and from there he proceeded to Davao, where his wife was staying. To corroborate this claim he introduced, two witnesses, one by the name of Jose Ang, an employee of the William's Steamship Lines, and Edilberto Ortiz, a merchant of Sibonga, Cebu. Ang testified that he was employed as overseer of the M/S Virginia, which left the City of Cebu at about 9:00 o'clock A.M. on April 15, 1947, for Sibonga, Cebu; that from Sibonga, the boat proceeded to Tagbilaran, Bohol, and from there it went to Ozamis City; that on that trip his attention was called to Jorge Sonsona by the crew of the boat, as Sonsona had boarded the boat without paying for his fare; and that when he asked Jorge why he did not have his ticket, he told him that he was one of the companions of Edilberto Ortiz, who was one of the shippers of corn from Sibonga, Cebu. Edilberto Ortiz corroborated the above testimony of Ang, stating that he met Jorge Sonsona on board the M/S Virginia on April 15, 1947 in Tagbilaran, Bohol; that Jorge approached him, told him he had no money to pay for his fare, and so asked him to give him an accommodation as passenger; that at first, Ortiz refused but later on consented; and that as Jose Ang was his friend, he asked the latter, who was the chief of the boat, to allow Jorge to stay on board without paying for his fare.

The prosecution, however, did not allow the above evidence of the supposed alibi to go unchallenged. Court officials of Cebu were asked to bring into court the manifest of M/S Virginia for April 15, 1947. The manifest does not contain the name of Jorge Sonsona or that of Edilberto Ortiz as passengers (Exhs. F and G), neither did it show that Jose Ang was the master of the ship for that trip. It is signed by Carlos Asensi, Master, not by Jose Ang.

The prosecution also introduced two other witnesses in rebuttal, namely, Mrs. Lourdes Ladonga and Mariano Alcantara. Mrs. Ladonga testified that on April 16, 1947, when she came home from school, she saw the accused Jorge Sonsona talking with her husband, who is a lawyer; and that she remembers that it was on April 16 that she had seen Jorge at her house, because it was on the following day, April 17, that she learned that Patricia Sonsona had been robbed and killed. Mariano Alcantara also testified that he lived in the house of Atty. Ladonga and on April 16, he saw Jorge Sonsona inside the house asking Atty. Ladonga to work for the payment of his (Sonsona's) backpay.

On the above evidence for the prosecution and the defense the judgment of conviction is based. It also appears from the record, that Eusebio Mejares was also found guilty in a separate trial but four others were acquitted.

Counsel for the appellant argues in this Court that certain discrepancies in the testimony of the principal witness, Lucia Sobrevilla, prove that her testimony should not be believed. We note, however, that the original notes taken during the trial in 1948 of the testimonies of Lucia Sobrevilla and Carmen Gajo had been lost or destroyed, so they had to be reconstituted in the year 1952. This must account for some of the supposed discrepancies. It is of importance to point out, however, that the supposed discrepancies do not relate to the identity of the accused-appellant, as the person who choked Patricia Sonsona to death, but as to the details regarding the same, memory of which by the witnesses must have been affected by time. But it is an undisputed fact that as early as May 30, 1947, Lucia Sobrevilla had already pointed out in her affidavit (Exh. C-I, pp. 16-17, Orig. Oil Record.) before the municipal officials of Carcar, that the person who choked Patricia Sonsona was Jorge Sonsona and that his companion was Eusebio Mejares. She also disclosed these facts to the Chief of Police, when that official made

an investigation on the .day following the robbery. As to Carmen Gajo, it is also proved by the testimony of the Chief of Police that after Jorge Sonsona had been arrested she volunteered to disclose tic facts which she testified to in court, i.e., that she mot the appellant on the night in question, when he was coming from the house of Patricia Sonsona, and that the accused then admitted to her that he was the one who killed the deceased, warning her to keep the matter a secret.

The evidence submitted by the appellant to prove his defense of alibi has also been disproved by the manifest of the M/S Virginia. Oral evidence is easy to fabricate. The evidence supporting his alibi is entirely oral in nature. There is no document, nor written record, on which It could be anchored in order to give it the needed veracity or persuasiveness. And the written record which should have proved the alibi conclusively discredited it.

The alibi is furthermore discredited by the testimony of Mrs. Lourdes La donga and Mariano Alcantara, when Jorge Sonsona was seen by them in the house of Atty. Ladonga asking the latter to have his backpay papers expedited. The Court further notes that the appellant said that he had but PI9 at that time, and that he was to go to Davao, so far away. He was therefore in dire need of money. This circumstance Is further attested to by the fact that the payment of his backpay was urgently desired by him. Here was the immediate motive, therefore, for him to commit the crime.

We, therefore, have on the one hand, the testimony of Lucia Sob re villa, eyewitness to the offense, collaborated by Carmen Gajo, who saw the appellant come from the house of the deceased and to whom the appellant hod admitted his guilt, . both unimpeached. On the other, we have the alibi set up to destroy the above testimonies , discredited by official records and by the testimonies of two witnesses, who had seen the appellant in Cebu City on the day before the commission of the crime . We hold that under the circumstances no other conclusion can be made than that the commission of the crime by appellant has boon proved beyond reasonable doubt, and that he had participated in the commission ' of the crime in the manner testified to by the witnesses of the prosecution The court a quo, therefore, did not err in finding him guilty of the crime charged.

The crime committed is robbery with homicide. The Solicitor General recommends that the penalty of death should be imposed upon the appellant , because of the supposed presence of the aggravating circumstances of dwelling, abuse of superior strength and use of disguise. We do not believe that the aggravating circumstance of superior strength can be considered as having attended the commission of the crime, because while two men assaulted the deceased, they did not use any arms, but limited themselves to the use of their arms and hands, so their superior strength can not be so marked.- Neither is the aggravating circumstance of disguise present because, according to the testimony of the principal witness, the deceased knew who her aggressors were . Said principal witness also identified both of the aggressors. So the only aggravating circumstance pie sent is that of dwelling. While this circumstance may be sufficient to raise the penalty to the maximum provided by law, which is death, because of the absence of any mitigating circumstance to offset it, there is no sufficient number of votes among the members of this Court, necessary for the imposition of the death penalty.

The judgment appealed from is hereby modified. The penalty imposed by the lower court is hereby raised, to reclusion perpetua, and the indemnity to be paid by the appellant, together with the other who has been found guilty in participating in the commission of the crime, is raised to P4,000 for the death of Patricia Sonsona. In all other respects the sentence imposed by the lower" court is hereby affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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