

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. RODULFO SABIO, ALIAS “PAPU”, DEFENDANT.*G.R. No. L-26193. January 27, 1981*

Ponente: MELENCIO-HERRERA, J.

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Automatic review of the death penalty imposed upon the accused, Rodolfo Sabio alias "Papu", by the Court of First Instance of Cebu, Branch II, in Criminal Case No. V-10804 for Robbery with Homicide.

On October 5, 1965, at about 5:00 o'clock in the morning, in Barrio Looc, Argao, Cebu, Catalino Espina, 80-years old, single, owner of a small sari-sari store located in his house was found on the second floor of his dwelling wounded on the forehead, from which injury he died three days later.

Prosecution witness JESUSA BIRONDO, a fish vendor, testified that at about 5:00 o'clock in the morning of October 5, 1965, as she was preparing to go to the seashore, she heard a shout for help coming from the house of her neighbor, Catalino Espina, which was located just across the street from her house. She recognized the voice as Catalino's. When she looked out of the window she saw the accused Rodolfo Sabio, who is nicknamed "Papu", coming out of the door of the store at the victim's house. The accused was wearing a black shirt with sleeves up to the elbow and dark trousers. She had known the accused since his birth because his house is located at the seashore in Barrio Looc, just about 40 meters from her own house, and she is familiar with his appearance because she used to see him everyday passing by her house or at the seashore. Jesusa felt scared so she retreated from the window. Then she shouted for help. Shortly thereafter, she saw from her window that many persons, about 50 to 100 neighbors, went to Catalino's house. The following day after the incident, or on October 6, 1965, Jesusa told Police Sergeant Jesus Alberca about what she heard and saw. She executed a Sworn statement on the same date.[1]

CAMILO SEMILLA, a 27-year-old fisherman and grand nephew of the victim, who had lived with the latter since childhood, left Catalino's house at past 4:00 o'clock in the early morning of October 5, 1965 to go fishing. At the seashore, he waited for somebody to help him drag his boat to the sea from the elevated support on which it was hoisted. The first person he saw was the accused, Rodolfo Sabio, who came running past him about 6 meters away, towards his (Sabio's) house. The accused was wearing a black T-shirt with sleeves reaching beyond the elbow and long "maong" pants. Witness Camilo demonstrated that the accused had his two hands tucked inside his shirt in front of the stomach while running. Minutes later, a certain Enok Calledo arrived and told Camilo to go home because his grand-uncle "Noy Ino" had cried for help. When Camilo reached home, he saw "Ino" (the victim) lying wounded upstairs. He was moaning and was able to speak only when his head was raised. When Camilo called the victim's name, the latter responded and told Camilo to fetch a policeman. Camilo noticed that the merchandise in the store were in disarray and the tin can called "barro", which he knew had contained the cash sales for Sunday and Monday of about P8.00 because they counted the money the previous night, was lying empty on the floor. When police officers Paulino Fuentes and Pedro Burgos arrived, Patrolman Fuentes asked "Manoy Ino" questions which, together with the answers, he wrote on a page torn from a calendar hanging somewhere in

the room.[2] Patrolman Fuentes then instructed Camilo to take the victim to the town dispensary at Argao, Cebu, where he was treated. But because the victim's condition was considered serious he was immediately transferred to the Southern Islands Hospital where he died three days later.[3]

PAULINO FUENTES, a policeman assigned at the municipal building of Argao, Cebu, received a report at about 5:30 o'clock in the morning of October 5, 1965, that "Ino" Espina was hacked in barrio Looc. He and another policeman, Pedro Burgos, proceeded to the victim's house where he saw the latter lying on the floor, wounded and bleeding on the forehead. Patrolman Fuentes asked the victim who had hacked him and the latter answered that it was "Papu" Sabio, son of Menes. According to said Patrolman, the person referred to was the accused, who, as well as his parents, have been known to the witness for the past three years. Patrolman Fuentes asked the victim why "Papu" had hacked him and the latter answered that "Papu" had demanded money from him. Patrolman Fuentes also asked the victim how much money he had lost but the latter was not able to answer that question. Sensing that the wound was serious since it was bleeding profusely, Patrolman Fuentes decided to take down the statement of the victim. He detached a leaf from a calendar and wrote down on it the questions he propounded as well as the answers of the victim. He then had it thumbmarked by the victim with the latter's own blood as no ink was available. Present at the time were Pedro Burgos, another police officer, and Camilo Semilla, the grand-nephew. Patrolman Fuentes himself and Pedro Burgos signed as witnesses. Reproduced hereunder in full is the said statement:

"Antemortem"

"P - Kinsa may ngalan nimo.

T - Catalino Espina

P - Taga diin man ikao.

T - Taga Looc, Argao, Cebu

P- Kinsa may nag tikbas kanino kon nagtulis kanimo?

T - Si Rudolfo (Pafo) Sabyo nga anak ni Menez nga taga Looc.

P- Kon ikao mamatay kinsa may responsabli sa imong kamatayan.

T - Si Pafo Sabyo ro gayod ang responsabli sa akong kamatayon.

P- Imo ba kining permahan o tamlaan sa imong todlo?

T- Oo.

Catalino Espina
(Thumbmarked)

Wit:

1. (Sgd.) Paulino Fuentes
2. (Sgd.) Pedro Burgos"[4]

The English translation reads:

"Q - What is your name?

A - Catalino Espina

Q - From where are you?

A - From Lo-ok, Argao, Cebu.

Q - Who slashed you and robbed you?

A - Podulfo Sabio (Papu) the son of Menez from Lo-ok.

Q - It you will die, who is responsible for your death?

A Only Papu Sabio is responsible for my death.

Q - Are you going to sign this or affix your fingerprint?

A - Yes.

Brownish fingerprint
mark and across it is written the word
CATALINO ESPINA.

Wit:

1. (Sgd.) Paulino Fuentes

2. (Sgd.) Pedro Burgos"[5]

Thereafter, Patrolman Fuentes advised Camilo Semilla to bring the victim to the hospital. Patrolman Fuentes observed that the things of Catalino and the store items like canned sardines were all in disarray while the tin can ("barro") was already opened.[6]

On October 5, 1965, DR. MELITA REMOTIGUE AÑO, resident physician at the Southern Islands Hospital, Surgery Department, found that the victim had suffered "compound fracture on the skull, bilateral at the front-parietal area" with "laceration and cerebral contusion." From the nature of the injuries, she opined that the same could have been inflicted by a sharp instrument or by a bolo, and although the laceration was not too deep as to cause instantaneous death, the injury was fatal because it had injured the brain.[7]

The prosecution also offered in evidence and as part of the cross-examination of the accused a letter dated February 17, 1966 of the Cebu Provincial Warden,[8] showing that the accused had been previously convicted by final judgment and had served sentence for two previous crimes of Theft committed in the years 1963 and 1964.

Testifying in his defense the accused RODULFO SABIO, 18 years old, a fisherman, claimed that in the evening of October 4, 1965, he was at home listening to the radio till past 9:00 o'clock after which he went to sleep until about 6:00 o'clock in the morning of the next day, October 5, 1965, when he was awakened by his younger brother who said that certain policemen were looking for him. The policemen took him to the municipal building and incarcerated him without asking any question. He was released the next day, October 6, but was arrested again on November 24, 1965 at P. del Rosario Street in Cebu City. The accused admitted that he knew witness, Camilo Semilla, because they were neighbors but he denied that Camilo had seen him running by the seashore at about 5:00 o'clock in the morning of October 5, 1965 because at that time he was still asleep at home. The accused also admitted knowing witness, Jesusa Birondo, but alleged that she could not have seen him coming out of the door of the house of "Ino" Espina at about 5:00 o'clock in the morning of October 5, 1965 because at that time he was still asleep at home.[9]

Defense witness JACINTO MENDEZ corroborated the accused's defense of alibi by testifying that in the evening of October 4, 1965, he slept in the house of Hermogenes Sabio, father of the accused, because he and Hermogenes had planned to go fishing the following morning. In the house he saw the accused and the other children of Hermogenes. When he woke up at 5:00 o'clock in the morning of the following day, October 5, he saw that the accused and the other children were all in the house. He repaired the nets after waking up, then went out to sea with Hermogenes at about 7:00 o'clock and came back at past 8:00 o'clock in the morning.[10]

In a Decision dated April 29, 1966, the trial Court found the accused guilty of the crime of Robbery with Homicide attended by the aggravating circumstances of disregard of respect due to the victim, an octogenarian, and recidivism, without any mitigating circumstance, and sentenced him to death; to indemnify the heirs of the deceased in the amount of P6,000.00; and to pay the costs. The trial Court, however, recommended that in view of the youthful age of the accused, the death penalty be commuted to life imprisonment.

In this appeal, the defense has made the following:

"Assignment of Errors

- I. "The lower Court erred in concluding that the felony of Robbery with Homicide, instead of only Homicide, had been established by the evidence;

II. "The lower Court erred in admitting Exhibit 'A' of the prosecution as an ante-mortem declaration of the victim;

III. "The lower Court erred in giving credence to the testimony of Jesusa Binondo, witness for the prosecution;

IV. "The lower Court erred in finding that the defendant-appellant was the perpetrator of the crime." [11]

1. We find merit in the contention that only the crime of Homicide had been committed. The evidence indicative of robbery consisted merely of the testimony of witness Camilo Semilla who declared as follows:

"Q. How far was Rodolfo Sabio when he passed by you running that moment?

A. About six meters from me.

Q. Did you notice while he passed by you running, if he was holding anything?

A. Yes, he had his hands inside his shirt."

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Q. What did you notice inside the house upon your arrival from the seashore?

A. I saw that the 'barro' was already empty, lying on the ground, and the merchandise items were in disorder.

Q. Do you know what things were placed in that thing or tin can which you call 'barro'?

A. It contained the cash sales.

Q. That 'barro' which you mentioned, where was it before you left the house to go to the shore that dawn?

A. Beside the bed of Ino.

Q. You said that tin can or 'barro' where the cash sales were kept was beside the bed, do you know more or less the amount placed therein?

A. About P8.00.

Q. How do you know that tin can had P8.00 inside?

A. Because the previous night we counted the money.

Q. The P8.00 was the sales for how many days?

A. That was the sales for Sunday and Monday." [12]

and that of Patrolman Fuentes, to wit:

"Q. When you were inside the house of Catalino Espina, what else did you find in the course of your investigation?

A. I saw that the things of Catalino Espina and the stands where the items for sale were displayed were all in disarray.

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Q. What other conversation did you have with Catalino Espina after that first question?

A. I asked him why Papu hacked him, and the victim answered that Papu demanded money from him.

Q. Could we say that the answer of the deceased Catalino Espina was outright after the question?

A. Yes, sir.

Q. Even with the second question, is that correct?

A. Yes, sir.

Q. Was there a third question you propounded to Catalino?

A. Yes, sir.

Q. Will you please let us know the third question?

A. I asked him how much money he lost, and he was not able to answer that question.

Q. Do you know why he did not answer that question?

A. I think he did not answer that because when he was hacked he had not yet given money to Papu."

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"Q. You stated in the direct examination that the things in the house of the deceased Catalino Espina were in disarray, is that correct?

A. Yes, sir.

Q. Will you please state before the Honorable Court the things that were disarrayed when you went up the house of the deceased?

A. The canned sardines were disarrayed, others had dropped to the ground; the 'barro' was already opened, and other things in the store were in topsy-turvy state."^[13]

Plainly, the evidence supportive of the charge of robbery is at best circumstantial and does not establish beyond reasonable doubt that the accused had carried away personalty belonging to the offended party. There was no eyewitness to the alleged robbery, nor was any part of the alleged missing objects recovered. The consummation of the robbery cannot be inferred nor presumed from the circumstance that the accused was seen running "with his hands inside his shirt", or that the "barro", alleged to have contained cash amounting to about P8.00, was seen on the floor, open and empty, or that the things and merchandise inside the house were in disarray (*People vs. Labita, et al.*, [99 Phil. 1068, unreported case]). A conviction for Robbery with Homicide requires that the robbery itself be proven as conclusively as any other essential element of a crime (*People vs. Pacala*, 58 SCRA 370 [1974]), it not being enough to infer said robbery from mere suspicion and presumption (*U.S. vs. Alasa-as*, 40 Phil. 878, 881).

"Where there was no eyewitness to the alleged robbery, and the evidence merely shows that after the killing some of the things inside the house where the killing took place, were missing, it cannot be presumed that the accused killers committed robbery. It is necessary to prove intent to rob. This necessarily includes evidence to the effect that the accused carried away the effects or personalty of the offended party. In the absence of evidence that the accused carried away the missing objects, they cannot be convicted of robbery."^[14] (Emphasis supplied)

Nor can the dying declaration of the victim which, in part, reads:

"Q. Who slashed you and robbed you?

A. Rodulfo Sabio (Papu) the son of Menez from Lo-ok."

be admitted to establish the fact of robbery. The admission of dying declarations has always been strictly limited to criminal prosecutions for homicide or murder^[15] as evidence of the cause and surrounding circumstances of death.^[16]

2. Next, the defense questions the admissibility of Exhibit "A" of the prosecution as an ante-mortem statement arguing that there is no evidence showing that when the declaration was uttered the declarant was under a consciousness of an impending death; that, in fact, the victim had hopes of recovery for his first word to Camilo Semilla was for the latter to fetch the police. Defense counsel argues further that there are doubts as to when said Exhibit "A" was thumb-marked because, although it was already in existence in the morning of October 5, 1965, as alleged by Patrolman Fuentes, the accused was never confronted with the document when he was taken into custody by the police for the first time from the morning of October 5 to October 6, 1965, thereby implying that the document did not yet exist at that time.

The arguments advanced are unavailing. The seriousness of the injury on the victim's forehead which had affected the brain and was profusely bleeding; the victim's inability to speak until his head was raised; the spontaneous answer of the victim that "only Papu Sabio is responsible for my death"; and his subsequent demise from the direct effects of the wound on his forehead, strengthen the conclusion that the victim must have known that his end was inevitable. That death did not ensue till three days after the declaration was made will not alter its probative force since it is not indispensable that a declarant expires immediately thereafter. It is the belief in

impending death and not the rapid succession of death, in point of fact, that renders the dying declaration admissible.[17] Further, the fact that the victim told his grandnephew Camilo Semilla to fetch the police, does not negative the victim's feeling of hopelessness of recovery but rather emphasizes the realization that he had so little time to disclose his assailant to the authorities. The mere failure of the police to confront the accused with the ante-mortem declaration the first time the latter was arrested and incarcerated from October 5 to October 6, 1965, neither militates against the fact of its execution considering that it was evidence that the police was under no compulsion to disclose.

3. The credibility of witness Jesusa Birondo is also assailed by the defense alleging firstly, that it is unbelievable that she could have really identified the accused as the person who came out of the victim's house considering that the distance from her window to that house was 17 meters, and at 5:00 a.m. on October 5, 1965, it was still dark and raining; secondly, there is a glaring divergence between her testimony at the trial and her statement at the preliminary investigation, which statement was suppressed and not made known to the trial Court; thirdly, said witness was uncertain as to when she actually brought to the attention of the authorities the matter of her having seen the accused; and finally, the defense asks, if it were true that the accused had been identified by said witness to the Chief of Police even before the accused was taken into custody, why was not the accused confronted with such fact?

For one who has known the accused since the latter's infancy and who is very familiar with the accused's appearance because she sees him almost everyday passing by her house or at the seashore where the accused has his house, it is not incredible that Jesusa Birondo recognized the accused, at side view, even at a distance of 17 meters (which was the trial Court's estimate of the distance between Catalino Espina's house and that of Jesusa Birondo as described by the accused) at 5:00 o'clock in the morning and even if it were raining. Besides, Jesusa's description of the clothes that the accused was wearing was corroborated by Camilo Semilla, who also saw the accused that same morning.

The alleged divergence between Jesusa's statement at the preliminary investigation and her testimony at the trial neither merits serious consideration since an affidavit, "being taken ex parte is almost always incomplete and often inaccurate." [18] Besides, the discrepancies pointed out by the defense, to wit: whether or not Jesusa saw what the accused did after leaving the house of the victim and whether or not she went down from her house after the incident, refer to minor details or collateral matters which do not destroy the effectiveness of her testimony. Further, the discrepancy as to the exact date when the witness actually disclosed to the authorities her having seen the accused on the morning of the incident, is also a minor detail which does not detract from the reliability of her identification of the accused. Moreover, the defense has not shown any ulterior motive on the part of witness Jesusa Birondo that would make her implicate and testify falsely against the accused, who was a neighbor and an acquaintance.

4. In the fourth and last assignment of error, the defense decries the speed with which the trial Court decided the case, alleging that the Decision was prepared and signed on April 29, 1966, or one day after the close of trial on April 28, 1966, and was read to the accused on April 30, 1966, without benefit of a transcript of stenographic notes nor memoranda of the parties, so that the trial Court could not have seriously considered the merits of the case or must have prejudged it even before the trial ended. That contention is belied, however, by the detailed findings of facts in the Decision of the trial Court duly supported by the transcript of stenographic notes now on record.

Finally, the defense contends that the guilt of the accused has not been established beyond reasonable doubt. The alibi put up by the accused, however, crumbles under the positive identification by witnesses Jesusa Birondo and Camilo Semilla and the dying declaration of the victim, aside from the fact that because of the proximity of the

house of the accused to that of the victim, it was not impossible for the accused to have been at the scene of the crime.

In summation, the accused is guilty only of Homicide, attended by the aggravating circumstances of disregard of respect due the offended party on account of his age, and dwelling. Recidivism is not to be considered because of our finding that the crime of Robbery has not been conclusively established.

The penalty imposable for the crime of Homicide, attended by aggravating with no mitigating circumstances, is reclusion temporal in its maximum period or seventeen (17) years, four (4) months and one (1) day to twenty (20) years.[19]

WHEREFORE, we find the accused, Rodolfo Sabio alias "Papu", guilty of the crime of Homicide and hereby sentence him to an indeterminate penalty of twelve (12) years of prision mayor as minimum, to twenty (20) years of reclusion temporal as maximum; to indemnify the heirs of the deceased, Catalino Espina, in the amount of P12,000.00; and to pay the costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Fernandez, Guerrero, and De Castro, JJ., concur.

Barredo,[*] J., no part.

Aquino, J., concur in the dissent of J. Abad Santos.

Abad Santos, J., see dissenting opinion.

[1] page 8, CFI Record; t.s.n., April 11, 1966, pp. 13-24.

[2] Exhibit "A"

[3] t.s.n., April 14, 1966, pp. 7-17.

[4] Exhibit "A", CFI Record, p. 12.

[5] Exhibit "A - Translation," CFI Record, p. 13.

[6] t.s.n., April 11, 1966, pp. 2-13.

[7] Exhibit "B"; t.s.n., April 14, 1966, pp. 2-6.

[8] Exhibit "C"

[9] t.s.n., April 27, 1966, pp. 11-28.

[10] t.s.n., April 28, 1966, pp. 2-10.

[11] p. 71, Rollo.

[12] t.s.n., April 14, 1966, pp. 8-9.

[13] t.s.n., April 11, 1966, pp. 6, 9, and 12.

[14] Ambahang and Amid, 108 Phil. 325; Villorente and Bislig, 30 Phil. 59; Barruga, 61 Phil. 318, AQUINO, Revised Penal Code, 1976 Ed., pp. 1415-1416.

[15] U.S. vs. De la Cruz, 12 Phil. 87.

[16] Sec. 31, Rule 130, Rules of Court.

[17] U.S. vs. Virrey, 37 Phil. 625 (1918).

[18] People vs. Pacala, 58 SCRA 370, 379 (1974), citing Moore on Facts, 1094-1095 and People vs. Tan, et al., 89 Phil. 337, 341.

[19] Art. 249, in relation to Article 64, par. 6.

[*] Justice Barredo took no part as he was the Solicitor General at the time the People's Brief was filed.

DISSENTING OPINION

ABAD SANTOS, J.:

I dissent in respect of the finding that no robbery was committed by Rodulfo Sabio for the following reasons:

1. The tin can or "barro" which contained some P8.00 the night before the incident, was found empty and lying on the ground of the house where the deceased had his store. It could only have been Sabio who took the money for it was he who entered the store and hacked Catalino Espina who died as a result thereof.
2. True, Catalino Espina could not state how much money was lost. But from inability to state the amount lost, it does not follow that nothing was lost. The two - the loss and the amount of the loss - are two entirely different concepts.
3. Naturally, Catalino could not state how much money was lost because he was hacked severely on the forehead before the money was taken by Sabio. A man mortally wounded who did not hand over any money to his assailant should not be expected to answer an inconsequential question as to the amount of his loss. A man in his situation would be thinking not how much he had lost but of his impending death.
4. There would be no motive for the killing if there was no robbery and robbery cannot be discounted after Sabio had entered the store and attacked its owner.

Considering, however, the fact that Rodulfo Sabio has been in detention since 1965 and the recommendation of the trial judge that the death penalty imposed on him be commuted to life imprisonment on account of his youth, my vote as to the appropriate penalty is reclusion perpetua.

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