

THE PEOPLE OR THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GERÓNIMO INCIERTO, DEFENDANT AND APPELLANT.

G. R. No. L-9246. June 29, 1957

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Cebu, finding accused-appellant guilty of robbery with homicide and sentencing him to death.

On the morning of Sunday, February 7, 1954, the day of the fiesta in the barrio of Baclayan, Boljo-on, Cebu, an old widow by the name of Canuta Pepino suddenly disappeared. The last time she was seen by an immediate member of her family, her son Simeon Gonza, was on the previous evening, after the latter had taken his supper and while he was in the dance hall of the barrio waiting for a scheduled dance to start. Previous to this, Canuta had been in the store of Miguel Pepino, where she had offered the latter to pay for a pig that was to be killed on the day of the fiesta but which offer was rejected by Miguel. As she offered to pay for the pig, Canuta counted the P60, price of the pig, to Miguel, but the latter refused to accept it, preferring to be paid for the pig after the fiesta.

Canuta lived with a grandson in the barrio, and when the latter returned in the morning, he found that his grandmother was not in the house. She had not slept in the house the night previous. She was searched for in the houses of her children, and as she could not be found, all her children and the people of the barrio began to search for her. The search continued for two days, until the evening of Monday, but to no avail. However, on Monday evening at about 10:00 o'clock, one Gerardo Caitor went to Simeon Gonza and told the latter not to bother searching for his mother as the latter had been murdered by Gerónimo Incierto. So Simeon advised Gerardo to go back home and return the following Saturday, so he and Simeon may go to the municipal hall to file the corresponding complaint. Gerardo did as he was told to, and on Saturday, February 13, they went to the chief of police, who thereupon took their affidavits and filed the complaint against Gerónimo Incierto for robbery with murder. On Tuesday, February 9, a patadiong was discovered by two fishermen in the bottom of the sea. This was identified as belonging to the missing woman.

Three witnesses testified for the prosecution to prove accused-appellant's connection with the murder. Simeon Gonza testified that when his mother counted the P60 to Miguel to pay for the pig, the appellant "was present and saw the money, and even asked her to buy some tuba for him, but that the widow answered that the money was exactly P60 and that if some amount is deducted, it will no longer be enough to buy the pig. Gerardo Caitor testified that he saw appellant at around 9:00 in the evening of Saturday at a hantak game near the dance hall; that he played until around 11:00 at night, and that then he left the place, going to a store to drink tuba; that before he reached the store, appellant called him aside and asked him to help him carry a dead body, which appellant disclosed to be that of Canuta, but that Caitor refused, saying that he was afraid; that both of them then drank tuba in the store, and as Caitor was about to leave, appellant took him aside and warned him, "Do not reveal this to anybody, because you are the only one who knows about this incident." The third witness is Anatolio Nierra, who testified that on February 26, 1953 he and Canuta (the deceased) were together in a road, as he came from a store

of Canuta's brother; that while on the way, he felt a call of nature and so he stopped to answer the call, while Canuta proceeded on; that while he was still urinating, he heard the shriek of Canuta, and when he continued on his way, he heard the appellant say, "Is she still alive"; that he then asked appellant, "What is the matter, Imo?"; that appellant answered him, "Be quiet Ilong, I will also kill you," and that because of fear he ran away.

The prosecution also presented the appellant's confession, Exhibit "B" (translation attached), where appellant states that Gerardo Caitor had proposed to him that they rob the deceased; that he consented and when they saw the deceased walking, Caitor ordered appellant to strangle the deceased, while he (Caitor) was to take away her money; that Caitor pocketed the money and never gave him a share therein; that after the deceased had been killed Caitor proposed that they throw her body into the sea, as they actually did; and that thereafter, they went to a store to drink tuba, and then separated from each other, Caitor promising to divide the money the next day. According to the justice of the peace of Boljo-on, before whom the statement was taken, the same was taken by a stenographer, he asking the questions and the appellant answering them. Appellant admitted the taking of the statement and his signature thereto, but declared the statement was not true. However, in a subsequent statement, Exhibit "A", he corrected the portion of the previous confession, Exhibit "B", attributing participation of Caitor in the commission of the crime, saying that Caitor did not actually take part therein.

The appellant limited himself to denying all the acts imputed to him and declaring that at about 8:00 in the evening of Saturday, he went home and stayed there till the following morning. He did not introduce anyone to corroborate this statement. The court below found that the prosecution, had succeeded in proving a chain of circumstances that pointed to the appellant as the one responsible for the death of the deceased, who was, after being killed, thrown into the sea by appellant. The court, however, held that only homicide was committed, as there was no evidence of any qualifying circumstance of murder, not even abuse of superior strength. It held that the motive of the crime must have been to rob the deceased of her money. It also found that nocturnity aggravated the offense, and so imposed upon appellant the supreme penalty of death.

We are satisfied that Canuta Pepino was killed and later thrown into the sea on the evening of Saturday, February 6, 1954, and that the motive for the crime was robbery, as it was conclusively shown that she had P60.00 in her possession before her disappearance. The defense does not dispute this fact. However, it claims that the testimonies of Gerardo Caitor and Anatolio Nierra, principal witnesses for the prosecution should not be believed, and appellant's confession, Exhibit "B", should not have been received as evidence, in view of the absence of a translation.

Insofar as the testimony of Anatolio Nierra is concerned, we agree with the counsel for the defense that there are supposed facts stated therein which disclose its unworthiness. There is, first, the very material error as to the date of the supposed commission of the crime.

Whereas, it actually took place on February 6, 1954, witness testified that the occasion happened in February 26, 1953. Again this witness declared that on the day of the disappearance of the deceased, he participated in the search for the body of the deceased. It is strange that at that time he failed to disclose to anyone that on the night previous he had heard the deceased, scream and had seen her motionless body lying on the roadside. Neither did he indicate then where he saw the dead body, as he should naturally have done. This conduct on his part is quite strange. Lastly, the reason why, according to him, he testified for the prosecution was because there had been a delay in the trial of the appellant because of the absence of an eyewitness; and that upon learning of this fact he approached the son of the deceased and suggested that he could testify to supply the deficiency in the evidence for the prosecution. It is evident, therefore, that he may have been a last-minute witness offering himself to help bolster the case for the prosecution. There is also confusion in his mind as to the order in which the disappearance, the search for the body and the arrest of the accused happened in relation to one another. He said that the accused

was arrested the day following the disappearance, which is not correct. We are, therefore, inclined to agree with the attorney for the defense that the testimony of this witness should be rejected.

But with respect to the testimony of Gerardo Caitor, we are fully satisfied that it articulates with the facts and circumstances testified to by the other witnesses, or those that were admitted by the defense. Thus his statement that he attended a hantak game together with the appellant is admitted by the appellant. That appellant should ask Caitor's help to carry the body is made probable by reason of the fact that the appellant had loaned him money and naturally the appellant thought that he could expect help from him. Again, the mere fact that appellant in his first confession, Exhibit "B", pointed to Caitor as his companion, which statement was made immediately upon his arrest, discloses or indicates that Caitor had knowledge of the commission of the crime and that appellant knew that he had such knowledge. And lastly, in a spirit of repentance and a desire to do justice to Caitor, appellant finally admitted in his confession that Caitor did not actually participate in the commission of the crime.

Of course, the strongest evidence against the accused is his own confession, Exhibit "B" where he admits having choked the deceased. This confession given by him voluntarily before a competent officer, the justice of the peace, who testified to the voluntariness thereof and the regularity in the preparation of the same, The appellant did not deny having made that confession; he admitted at the trial that he actually confessed to his guilt when the statement was being made, which admission shows that the confession reflects the truth (except as to Caitor's supposed participation) and not a statement of facts imposed upon the appellant.

The simple denials of the appellant are not sufficient to destroy or affect the worth of the evidence submitted by the government against the appellant. If the appellant was really not guilty and was somewhere else at the time of the commission of the crime, it should have been easy for him to secure witnesses to this fact. He did not, however, present any and we are inclined to believe that no such witness was presented because none could be taken by him to support his claim.

For the foregoing considerations, we are fully convinced that the appellant is guilty of the crime of robbery with homicide, which offense was attended by the aggravating circumstance of nocturnity. Under the circumstances, the penalty of death, which is the maximum prescribed for the offense, should be imposed. However, there is no sufficient number of Justices in favor of such penalty, so the Court is constrained to reduce, as it hereby reduces, the sentence imposed by the trial court to reclusion perpetua. In all other respects, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L. and Felix, JJ., concur.

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