

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISTUTO URSAL ALIAS TOTONG URSAL, DEFENDANT-APPELLANT.

G.R. No. L-33768. April 20, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Automatic appeal from a judgment of the Court of First Instance of Cebu finding accused Cristuto Ursal, alias Totong Ursal, guilty beyond reasonable doubt of the crime of murder, sentencing him to death and ordering him to pay the heirs of Aquilina Lepon the sum of P12,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs.

Prosecution evidence, as synthesized in the People's Brief, are as follows:

"At around 4 o'clock in the afternoon of October 25, 1970, in Bo. Curva, Libertad, Bogó, Cebu, Aquilina Lepon, a middle age woman of 53 years (tsn, April 13, 1971, p. 32), while she was near the awning of her house (Exh. A-Translation), was suddenly hacked and boloed on the head by appellant Cristuto Ursal alias Totong Ursal. This gory incident was witnessed by a 10-year old girl, Maximina Ortega, who was on an errand to buy petroleum at the victim's store which is housed in the same building where appellant lives (tsn, March 30, 1971, p. 13).

"Upon being hit, Aquilina Lepon ran towards a neighbor's house (Ibid, p. 14), and this neighbor, Rita Mitante, who was then feeding her children, saw Aquilina running and screaming for help, saying, 'Please help us, because we are being hacked by Totong' (Ibid, p. 5). After saying these words, Aquilina Lepon, with wounds on her head, collapsed and was not able to say anything more (Ibid, p. 5). Aquilina's husband, Severo Lepon, was likewise attacked while he was sleeping near the awning of the house (Exh. A-Translation), but he was perhaps more fortunate than his wife in that he survived (tsn, April 15, 1971, p. 14).

"Appellant fled to his house along Pelaez Street, Bogó, Cebu, subsequently sought refuge in a co-laborer's house and then hid in one of the barrios of Tabogon, Cebu until he was arrested on November 2, 1970 (Ibid, pp. 23-25, Appellant's Brief, pp. 3-4; Exh. A-Translation). The following day, November 3, 1970, appellant was brought before Bogó Municipal Judge Vicente de Roda before whom appellant's extrajudicial confession (Exh. A) was subscribed and sworn to. In said confession, appellant admitted killing Aquilina Lepon and assaulting her husband, Severo Lepon."

On the other hand, appellant claims that in the afternoon of October 25, 1970 he went to his father's house in Bo. Gairan, Bogó and after staying there for about one hour and a half he proceeded home at the Poblacion of Bogó, Cebu. While waiting for transportation near the house of Severo Lepon, it rained and he took shelter in said house. He was waiting for the rain to stop when a verbal altercation between one Juanito Nogas and Aquilina Lepon, wife of Severo, took place. Then he saw Juanito Nogas struck Aquilina on the head with a piece of wood, causing the latter to fall on the ground. Thereafter, Juanito Nogas got a bolo from the store, handed it to him (the accused) and ordered him to hack Severo Lepon who was then sleeping. When he refused, Juanito stabbed and hit him in the hand. Afraid that Juanito might strike him again with a piece of wood he took the bolo and hit Severo in the

forehead, following which he (appellant) and Juanito ran away. It was then that they met the girl, Maximina Ortega, who was on her way to buy petroleum.

Appellant denied having hacked Aquilina, although he admitted hitting Severo with a bolo. Further, he disputed the declaration of Judge De Roda that he affixed his thumbmark in an affidavit in the presence of the latter.

In this appeal, Cristuto Ursal alleged that the trial court erred (1) in admitting accused's supposed confession since he was not duly afforded the right to counsel and other constitutional rights accorded to suspects; and (2) in not rejecting the purported confession of the accused as not all the witnesses to it testified specially considering that this case involved the capital penalty.

The appeal lacks merit. Firstly, Maximina Ortega, 10 years old, testified having seen appellant hacking the victim that afternoon of October 25, 1970. Her testimony on this point reads:

"FISCAL POTOT:

Q

On October 25, 1970, at 4:00 in the afternoon do you remember where were you?

WITNESS:

A

Yes, sir, I remember.

Q

Where were you?

A

I was in the house of Na Quiling because my mother told me to buy crude oil worth five centavos.

Q

Were you able to go to the store of Na Quiling?

A

I was only up to their yard, sir.

Q

Why?

A

Because it was on that precise moment that I saw Totong hacking Na Quiling.

Q

Now can you tell this Honorable Court what is the real name of this Quiling you are referring to?

A

I do not know, sir, the real name of Na Quiling.

Q

Do you know the husband of your Na Quiling?

A

Yes, sir. Severo Lepon is the husband of Nana Quiling.

... ..

Q

You said you saw Totong hack your Na Quiling, can you tell this Honorable Court what is the real name of Totong?

A

Cristuto, sir.

Q

What is the family name?

A

Cristuto Ursal.

Q

How long have you known Cristuto Ursal?

A

It has been quite a time already, sir, that I came to know Mano Totong.

Q

This Totong which you said bears the true name of Cristuto Ursal, if he is inside the court room will you please point to him?

A

Yes, sir, that one.

COURT: To witness.

Go down and point to him.

INTERPRETER:

Witness coming down from the witness stand indicated and pointed to the accused, Cristuto Ursal by touching the accused on his shoulder.

FISCAL POTOT:

Q

You stated that you saw Cristuto Ursal hack your Na Quiling, now will you please tell this Honorable Court if you saw with what weapon did Cristuto Ursal hack Quiling?

WITNESS:

A

It was a bolo, sir.

Q

Can you recall in what portion of the body was your Na Quiling hit?

A

Yes, sir, she was hit on her head. (Witness pointing to her head.)

COURT: to witness

Q

How many times was she hacked by Totong?

A

Only once, sir.

Q

What else did you see?

A

No more, sir.

Q

All right, when you saw your Na Quiling hacked by Cristuto Ursal, what did you do?

A

I ran towards the direction of our house." (TSN, pp. 12-14, March 30, 1971 hearing)

The testimony of the child, Maximina Ortega, was corroborated by Rita Mitante who was in her house, about 30 meters away from the house of Aquilina, when she saw the latter running towards her, saying "Please help because we are being hacked by Totong." She saw the injury on Aquilina's head and after telling her what Totong did, she was not able to talk anymore. Further, Rita declared as follows:

"FISCAL POTOT:

Q

Do you know where is Aquilina Bacolod now?

A

Yes, sir.

Q

Where is she?

A

She is already buried.

Q

Why?

A

Because she is already dead.

.. ...

Q

You said Aquilina Bacolod died of the injuries she sustained, what relation has that injury to that injury you said you saw in the afternoon of October 25, 1970?

ATTY. OLIS:

We object. She is incompetent. Only a doctor could testify on that matter.

COURT:

Witness may answer.

WITNESS:

A

That was the very same injuries that caused her death." (TSN, pp. 7-8, March 30, 1971 hearing.)

Secondly, the contention of appellant that it was a certain Juanito Nogas who actually killed Aquilina is hard to believe. The uncorroborated version of appellant that it was Juanito Nogas who struck Aquilina with a piece of wood is puerile and undeserving of credit. A single blow with a piece of wood would not be able to cause three lacerated wounds. Dr. Leopoldo Jiao testified that the victim Aquilina Lepon suffered lacerated wounds on the head and a fracture on the skull which actually caused her death. Besides, Nogas was not presented to shed light on the matter. If Nogas were really the culprit, why did not appellant tell the police or the municipal judge so that the same could have been reflected in his statement, Exhibit "A"? And, why did he choose to remain in hiding instead of telling the authorities what actually transpired that afternoon? Certainly, his flight to Tabogon is a circumstance which strongly indicates guilt.

Thirdly, it has not been shown why Maximina Ortega would testify against him. The testimony of this ten-year old child would be accepted since no motive was disclosed why she would testify the way she did and impute on the appellant the commission of such serious a crime as murder other than to tell the truth and the desire to bring

the culprit to justice. And, how did he (appellant) know that she was on her way to buy petroleum?

With respect to his extrajudicial statement, Exhibit "A", which appellant claims was taken of him without the assistance of counsel, suffice it to say that he was investigated on November 3, 1970, or before the effectivity of the 1973 Constitution. As stated in *People vs. Viduya*, 97 SCRA 666, Section 20, Article IV of the New Constitution, has no retroactive effect and does not apply to confessions obtained before January 17, 1973 when the constitution took effect. Ursal's pretension that the statements appearing in Exhibit "A" were not his own cannot be given credence. The details mentioned therein and the testimony of Maximina Ortega proved conclusively that the confession given before the municipal judge was voluntarily made.

And, even discounting Exhibit "A" as prosecution evidence, the testimonies of Maximina Ortega and Rita Mitante were enough to sustain the charge against appellant. The attack on the victim was sudden and unexpected; thus, the killing of Aquilina was qualified with treachery.

However, We agree with the observation of the Solicitor General that the aggravating circumstances of disregard of sex and dwelling should not be considered in this case.

A. Disregard of sex - There is no showing that appellant specially saw to it that his victim would be a woman. In *United States vs. De Jesus*, 14 Phil. 190, the aggravating circumstance of sex "is not sustained by the fact that the victim was a woman, unless it further appears that aside from the unlawful taking of her life, there was in the commission of the crime some specific insult or disrespect shown to her womanhood."

B. Dwelling - It cannot be definitely stated that the crime was committed inside the house of the victim. All that can be gathered from the record is that Aquilina when struck by appellant "was near the awning of the house." This would indicate that she was outside her house.

WHEREFORE, modifying the decision of the lower court, We find Cristuto Ursal alias Totong Ursal guilty beyond reasonable doubt of the crime of murder, without any aggravating or mitigating circumstances attending its commission, and hereby sentence him to reclusion perpetua; to indemnify the heirs of the deceased Aquilina Lepon in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Teehankee, J., took no part.

Aquino, J., is on leave.

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