

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO OQUIÑO, ROMULO LAGARIO ALIAS "ROGELIO LAGARIO", AND ARNIDO CALOSOR, ACCUSED, ROMULO LAGARIO ALIAS "ROGELIO LAGARIO", APPELLANT.

G.R. No. L-37483. June 24, 1983

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PER CURIAM:

This is an automatic review of the judgment of the Court of First Instance of Leyte in Criminal Case No. 580 finding the accused, Romulo Lagario alias "Rogelio Lagario", guilty of the crime of robbery with homicide and sentencing him as follows:

"IN VIEW OF THE FOREGOING, in spite of a personal wish of the undersigned trial Judge, that he be not constrained so to do, but finding herein accused guilty beyond reasonable doubt of the special complex crime of robbery with homicide, and considering the aggravating circumstances of abuse of superior strength, recidivism and habitual delinquency, not having been offset by any mitigating circumstance, accused Romulo Lagario is hereby sentenced to suffer the supreme penalty of DEATH. The Court further orders the accused to indemnify the heirs of the deceased in the amount of P12,000.00; and to pay the costs.

"SO ORDERED.

"Done this 10th day of July 1973, in the City of Tacloban, Phil.

(Sgd.) Godofredo P. Quimsing

District Judge"

The information for robbery with homicide in the instant case was originally filed on November 11, 1971 charging three accused, namely: Antonio Oquiño, Romulo Lagario alias "Rogelio Lagario" and Arnido Calosor. An amended information was later filed on October 23, 1972 likewise charging the said three accused but adding four (4) aggravating circumstances which reads as follows:

"That on or about the 10th of October, 1971, in the City of Tacloban, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused conspiring and confederating together and mutually helping each other, armed with bolos (pisao) with deliberate intent and with intent to kill and with the use of violence and with intent of gain did then and there wilfully, unlawfully and feloniously take and carry away a wrist watch marked "RADO" with serial No. 11658 valued in the amount of P650.00 and by reason thereof and or on occasion thereof, attack, assault and stab one Anecito Paredes with a bolo (pisao) which accused have provided for the purposes causing his instantaneous death.

"Contrary to Art. 294, par. 1 of the Revised Penal Code, with the following aggravating circumstances:

(1) That the crime was committed in the nighttime thereby facilitating its commission and enabling the accused to commit the crime with impunity;

(2) That the accused all of whom were armed, took advantage of their superior strength;

(3) That the accused is a recidivist, having been convicted by final judgment of three (3) counts of Theft which, together with the present charge, are embraced in the same title of the Revised Penal Code;

(4) That the accused, Romulo Lagario is a habitual delinquent, having been previously found guilty by final judgment in the City Court of Tacloban, in the following cases, to wit:

:

Date

:

:

Crime

:

Committed

:

Convicted

:

Date Release

Theft

(R-12,997

:

4-15-68

:

5-28-68

:

March 28, 1969

Theft

(R-13,689

:

4-19-69

:

7-2-69

:

February 2, 1971

Theft

(R-13,691

:

3-29-69

:

10-28-69

:

February 2, 1971

Tacloban City, October 23, 1972"[1]

Accused Antonio Oquiño died on February 5, 1972[2] while accused Arnido Calosor was never apprehended and remained at large.[3] Hence, only accused Romulo Lagario was arraigned on October 26, 1972. He pleaded not guilty to the crime charged and trial on the merits followed.

The evidence adduced by the prosecution is summarized in the People's brief as follows:

"At about 7:25 o'clock in the evening of October 10, 1971, Marina Uy and her deceased sweetheart, Aniceto Paredes, were strolling and conversing at the Children's Park in Tacloban City. It rained. They took shelter in one of the miniature houses and sat on one of the protruding beams of the balcony facing the door. Suddenly, accused Calosor opened the door together with his co-accused, Legario (sic) and Oquiño (pp. 2-4, tsn, Bugho, March 8, 1973). They went inside, brandished their boloes (pisao-an eight-inch knife) and threatened them. Surprised, the duo fell backward. Oquiño held Marina's right hand and dragged her away. Lagario and Calosor took Aniceto to the side of the small house and wanted to take his wrist watch (pp. 5-9, tsn, id.). Marina was able to free herself from Oquiño's hold, for her hand was wet and slippery. Oquiño joined Lagario and Calosor. He took hold of Aniceto's front T-shirt. Then, Lagario stabbed Aniceto at the solar plexus (chest) and Calosor at the back.

"The stab wound inflicted by Lagario perforated the heart through and through and Calosor's perforated the right lung (Exhibit "A", p. 100, Folder of Exhibits). Marina saw the stabbing as the place was lighted with a Mercury lamp. After Lagario and Calosor stabbed Aniceto, Marina ran away to ask for help. She went to the Leyte Provincial Jail accompanied by a man. Somebody at the jail talked to the telephone. After about twenty (20) minutes, she returned and found Aniceto wounded. His wrist watch was no longer with him (pp. 9-13, tsn, id.)

"She saw again Oquiño and Lagario in jail. Pat. de la Peña showed to her the wrist watch taken which was recovered from a man whom Lagario had asked to sell the watch (pp. 14-16, tsn., id.). They took the bleeding Aniceto to the City Hospital where he died (p. 18, tsn, id.). Accused Lagario had three convictions for theft in

Criminal Case Nos. R-13691 dated October 20, 1969 (Exhibit "D", p. 102, Folder of Exhibits), R-12997 dated May 28, 1968 (Exhibit "E", p. 103, id.) and R-13689 dated July 2, 1969 (Exhibit "F", p. 104, id.). Marina was emphatic in saying that she actually saw Oquiño help Lagario and Calosor in subduing Aniceto and in attempting to take the latter's wrist watch (pp. 40-41, tsn, id.).

"Patrolman Wilfredo de la Peña of the Tacloban City Police Force investigated the stabbing incident in which the victim was Aniceto Paredes. Among the three (3) suspects, he apprehended only Lagario and Oquiño. The latter, however, died before the case was terminated. The investigation was done in the presence of other police investigators and Lagario's relatives. At the instance of the two accused, Pat. de la Peña recovered the wrist watch of the deceased from one Agripino Aguilos, alias "Agri", a bus driver (p. 6, tsn, Santos, April 25, 1973). They admitted that they took the wrist watch from the victim. (pp. 42-45, tsn, Bugho, March 8, 1972).

"The cadaver of Aniceto R. Paredes was autopsied by Dr. Juanito C. de la Cruz, the assistant city fiscal health officer and medico-legal officer of Tacloban City (Exhibit "A", p. 100, Folder of Exhibits). The deceased received two (2) stab wounds: One (1) at the middle of the chest perforating the heart through and through and the other at the back perforating the right lung (Exhibit "B", "B-1" and "B-2", p. 101, Folder of Exhibits). Two (2) different sharp-pointed double-edged instruments were used in inflicting the two (2) fatal wounds (pp. 2-7, tsn, Santos, February 19, 1973). And, considering the location of the wounds, the assailants were directly in front and directly at the back of the victim (p. 9, tsn, id.)."

The accused presented the following version of the incident as submitted in his brief:

"At the hearing of April 25, 1973, the accused Romulo Lagario, 20 years old, single, laborer and a resident of Tacloban City, testified that on October 10, 1971 at around 7:00 o'clock in the evening he was strolling with Tony Oquiño at the children's park at Tacloban City, when somebody was killed; that while they were strolling, it rained and they took shelter in a small hut at the children's park (tsn, 2-3); that there he saw a man and a woman whose names he did not know; that Oquiño talked to the man and thereafter he saw Oquiño boxed the man and stabbed him in the middle part of the abdomen (tsn, 4); that the man slumped forward and he saw Oquiño again stabbed the man on the back; that he then ran away leaving Oquiño and the man there.

"He also testified that he met Oquiño at the pier of Tacloban in the morning of the next day aboard the motorboat Samareno, who requested him to sell a watch (tsn, 5); that he told Oquiño he could not sell the watch himself but would look for someone to sell the watch for Oquiño; that he requested Agripino Aguilos to sell the watch; that Agripino was unable to sell the watch retaining possession of it (tsn, 6); that the watch came into the custody of the Secret Service Division because when he was apprehended he told the police where the watch was and they took possession of it (tsn, 7).

"He also testified that he did not know a woman named Marina Uy who testified against him although he had occasion to see the woman he mentioned in that incident of Oct. 10, 1971 in the courtroom.

"On cross-examination, he admitted that he was present when Oquiño stabbed the man he referred to in his direct examination (tsn, 8); that after the stabbing he left Oquiño at the place; that he executed an affidavit in connection with the case but he is not sure if Exh. "G" is the same affidavit he executed; that he did not subscribe and swear to the affidavit Exh. "G", before Fiscal Sano (tsn, 9-10); that Antonio Oquiño gave him the wrist watch; that he did not know a person by the name of Arnido Calosor (tsn, 11-12).

"The accused was the only witness who testified in his behalf in view of the fact that at the time of the trial he was an inmate in the City Jail and, therefore, unable to secure a witness or at least contact them."

The trial court as aforesaid, refused to give credence to the evidence of the defendant and convicted him of the crime of robbery with homicide. In the instant review, defendant's counsel de oficio contends that the trial court committed the following errors:

I

The lower court erred in giving full faith and credence to the biased, unnatural, improbable and conflicting testimony of Marina Uy.

II

The lower court erred in finding that the accused is guilty of robbery.

III

The lower court erred in admitting, Exhibit "G" an alleged sworn statement by the accused before Fiscal Sano over the objection of the accused.

IV

The lower court erred in not believing the testimony of Lagario and in not acquitting him of the offenses charged.

Under the first assignment of error, accused-appellant seeks to discredit the testimony of Marina Uy, first, because she is the girl friend of the deceased victim, Anecito Paredes, second, because her testimony is uncorroborated, and third, because of the alleged inconsistencies that were attendant in her direct examination.

The rule is well-established that a witness' relationship to the victim does not, by itself, impair his credibility.[4] On the contrary, it would be unnatural for such persons interested in seeing retribution exacted for the crime to impute the same to any person other than those responsible for the crime.[5]

While it may be true that Marina Uy is embittered by the irreparable loss of a loved one, her declaration is firm, cogent, credible and straightforward. It is far from being tainted and prejudiced.

It has also been held that even assuming that the testimony of the principal eyewitness was not properly corroborated by the other prosecution witnesses, it is still sufficient to warrant the conviction of the accused, since it is also well-settled that "the testimony of a single witness which satisfies the court in a given case, is sufficient to convict." [6]

The accused-appellant points to the flaws or inconsistencies in Marina Uy's testimony which refer to "the weapon or criminal agency that caused Paredes' death, her distance from the alleged protagonists after the lapse of 3 minutes that she ran away to call for assistance, and her exaggerated and contradictory assertion that she saw the knife penetrate the body of the deceased." [7]

Appellant claims that it is doubtful whether the weapon used to kill Paredes was a pisao or a bolo or a knife because the principal eyewitness vacillated when she testified in court. At one time, she testified that the three accused threatened her and her deceased boyfriend with their pisao [8] only to admit later that she did not see the bolos brandished at the time. At another time, she claimed that the weapon was "a pisao, about eight (8) inches long" [9] only to claim later that she did not know what kind of weapon it was. [10] Then at another time, she testified that she actually saw the knife of Calosor enter the body of Paredes [11] only to contradict herself again by testifying that she did not actually see the knife penetrate the body. [12]

Appellant next casts doubt on the claim of Marina Uy that she saw how Paredes was stabbed because she also claimed that she ran away after she was able to free herself from the hold of Oquiño.

The above inconsistencies are too trivial and unsubstantial to merit a reversal of the decision. Owing to the fast succession of the events in addition to the fear engendered by the same, an eyewitness' inability to see the minute

details of every sequence, to measure by metes and bounds the distances between one point to another as well as tell the exact minutes that have elapsed, is not unusual. Besides, the seeming contradictions are explainable.

In general, the testimony of Marina Uy presents a credible set of facts. She testified that she and her boyfriend, while seated on one of the protruding beams of the balcony of a miniature house at the Children's Park, were threatened by appellant together with two other companions. She may not have seen clearly the weapons when the three opened the door as she was taken aback as in fact she fell with her boyfriend to the ground but eventually saw the weapons.[13] As to the kind of weapons, it should be noted that she did not make a categorical answer that "it was a pisao, about eight inches long." She preceded her statement with the "I did not actually see it at that time." [14] Then on cross-examination, she explicitly declared that she did not actually know the kind of the weapons they had.[15] Hence, there is no basis for the alleged contradictions.

With respect to the alleged inconsistency in the testimony of Marina Uy as to whether or not she saw the weapon actually penetrate the body of the victim, We find that her testimony in cross-examination is clear that she actually saw it. Whatever she may have said that she "saw it because of the action of the forward thrust" have been clarified in her later statements. Besides, whether she saw the actual penetration or the action of the forward thrust do not really matter as the latter does not mean any other thing. The stubborn fact remains that the defenseless victim was stabbed by a sharp-pointed instrument.[16]

On the contention of the accused that Marina Uy could not have seen the stabbing as she also claimed that she ran away after she freed herself from the clutch of Oquiño, suffice it to state that said argument departs from human nature. The knowledge that one is no longer pursued would naturally make him or her stop and look back especially when a loved one is left behind. This was what Marina did as clearly indicated in her testimony. Hence, she saw the actual assailants.

We disagree with appellant's contention that there was no unlawful taking of the wrist watch and that the prosecution failed to prove the element of intent of gain.

Proof as to motive for the crime, that is, the accused intended to rob or only to kill the victim, is important or essential when the evidence on the commission of the robbery is purely circumstantial or inclusive,[17] as in this case.

Motive may be inferred from the following circumstances: (1) that certain jewelry and money found to be missing from the house of the deceased a short time after the homicide was subsequently found at a place indicated by the accused;[18] and (2) that the money which the deceased had at the beginning of the assault had disappeared when the body was being removed, although strewn above were a handkerchief, buttons torn from his shirt, and other articles.[19]

Similarly, the motive to rob was duly proven in this case by the categorical statement of Marina Uy that while appellant and Calosor were dragging Aniceto to the side of the hut, they "wanted to take his watch"[20] coupled with the disappearance of the wrist watch when she returned to the wounded Aniceto after seeking help and its subsequent recovery from a certain Agripino Aguilos whose name was supplied to the police by the appellant and his co-accused, Antonio Oquiño, after their arrest.

The intent to gain from the taking of the watch is clearly indicated in appellant's testimony that he was asked by Oquiño to sell the watch.[21]

We likewise do not find merit in the contention of appellant that his sworn statement (Exhibit "G") is inadmissible for the reason that he is illiterate and there is no evidence presented that he understood the same which was in the English language. Said sworn statement was admitted because Jose Sano, the Assistant City Fiscal of Tacloban

before whom the same was subscribed and sworn to, identified in court appellant's right-hand thumbmark and declared that said thumbmark was affixed in the presence of a witness who also signed said statement. He also testified that prior to the affixing of the thumbmark, he explained to appellant the contents of the statement in a dialect he knew and understood.

Moreover, in his testimony, appellant admitted having executed an affidavit in connection with this case.[22] He merely denied having sworn to the truth of the statement. But never did he impugn the same from the time he executed it on October 14, 1971 up to the date he testified on April 25, 1973.

We quote hereunder pertinent portions of the sworn statement of the accused bearing on his participation in the crime charged:

"Question and Answer No. 4:

Question — Why were you picked up by the police?

Answer — Because I had a participation in a robbing and stabbing incident.

"Question and Answer No. 5:

Q — Who were your companions in this incident when happened?

A — My companions were Antonio Oquiño and Arnido Calosor, alias Arnel and Arnul.

"Question and Answer No. 6:

Q — Where did this incident occur?

A — On or about 7:25 p.m. October 10, 1971 at Plaza Libertad, this City, inside the Children's Park." (pp. 25-26, Records)

The trial court in its decision made use of the said sworn statement to impeach the credibility of the accused in view of its inconsistency with his testimony in court on the time of the incident, the number of his companions, the person who gave him the watch as well as on whether or not he witnessed the incident. Thus, the trial court correctly relied on the principle that "the testimony of an accused does not merit credit or inspire confidence when it is inconsistent and incompatible with his statement on other occasions." [23]

Nevertheless, even without the sworn statement, it is clear in the testimony of the accused that he was at the scene of the crime at the time it was committed, that he was in the company of Oquiño, one of the perpetrators of the crime; and that the watch was recovered from the person indicated by him and Oquiño. All these show his complicity in the crime. His sheer defense that he had nothing to do with it cannot be believed as against the positive and interlocking testimony of Marina Uy who identified him and Calosor as the one who stabbed her boyfriend at the solar plexus and the back, respectively, as corroborated by the testimony of the doctor who confirmed the possibility of the use of two different weapons and inevitably of two assailants, as well as by the testimony of Detective Wilfredo de la Peña who successfully retrieved the watch exactly from the person pointed to by the accused. The lower court correctly found the different testimonies of the prosecution witnesses far more credible than the sole and negative testimony of the accused. Besides, where the issue is one of credibility of witnesses, the findings of the trial court are given great weight, having heard the witnesses and observed their deportment and manner of testifying during trial.

That the crime of robbery with homicide was committed by the accused has, thus, been duly proven beyond reasonable doubt. The trial court properly took judicial notice of the documents marked as Exhibit "E", Exhibit "F" and Exhibit "D", proving the aggravating circumstance of recidivism against the herein accused. By reason of his previous three convictions by final judgment for the crime of theft, the lower court also rightly considered him as a habitual delinquent. The assault against the unarmed victim having been perpetrated by three armed men, there is no doubt that abuse of superior strength characterized the crime. We agree with the trial court that there

was no evidence to show that nighttime was sought purposely or taken advantage of to facilitate the perpetration of the offense.

Finding no error in the decision of the trial court, We hereby AFFIRM the death sentence and the civil liability of P12,000.00 due to the heirs of the victim, imposed on accused Romulo Lagario owing to the presence of the aggravating circumstances of recidivism, habitual delinquency and abuse of superior strength with no mitigating circumstance to offset the same.

SO ORDERED.

Makasiar, Aquino, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Fernando, C.J., took no part.

Teehankee, Concepcion Jr. and Relova, JJ., for reclusion perpetua.

[1] Rollo, pp. 13-14.

[2] Record, p. 27.

[3] Record, p. 94.

[4] People vs. Villalba, 17 SCRA 948; People vs. Bautista, 6 SCRA 522; People vs. Valera, 5 SCRA 910.

[5] People vs. Bagsican, 6 SCRA 400; People vs. Reyes, 17 SCRA 309; People vs. Tagaro, 7 SCRA 187.

[6] People vs. Sope, et al., 75 Phil. 810.

[7] Appellant's Brief, p. 14.

[8] TSN, p. 5.

[9] TSN, p. 6, March 8, 1973.

[10] TSN, p. 23.

[11] TSN, p. 35.

[12] TSN, p. 36.

[13] TSN, p. 23.

[14] TSN, p. 6.

[15] TSN, p. 23.

[16] TSN, p. 5.

[17] People vs. Elizaga, 86 Phil. 364.

[18] U.S. vs. Merin, 2 Phil. 88.

[19] People vs. Dumduma & Caindoy, 55 Phil. 953.

[20] pp. 8-9, tsn, Bugho, March 8, 1973.

[21] pp. 5-6, tsn, April 25, 1973.

[22] p. 19, tsn, April 25, 1973.

[23] People vs. Ramos, 77 Phil. 4; People vs. Bauden, 77 Phil. 105; and People vs. Paras, 80 Phil. 391.

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