

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIMPLICIO MARIBUNG AND JOEL ALAGIA, DEFENDANTS-APPELLANTS.

G.R. No. L-47500. April 29, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This is an automatic review of the decision of the then CFI of Cagayan[*] finding Simplicio Maribung and Joel Alagia guilty beyond reasonable doubt of the crime of robbery with homicide aggravated by treachery and uninhabited place, and accordingly sentencing them to the death penalty.

The prosecution sets forth the facts of the case as follows:

On May 11, 1974, Edgardo Calaoan of Linao, Cagayan, went to Centro, Aparri, to attend the town fiesta carnival. At the carnival grounds, he met Vicente Baniel who invited him to watch the coronation ceremonies for Miss Aparri at the auditorium.

After the coronation ceremonies, Calaoan and Baniel made a round of the sideshows. They tried their luck at the shooting gallery with Baniel paying for the tickets. It was at the shooting gallery that they met herein appellants Simplicio Maribung and Joel Alagia.

Thereafter, appellants invited Calaoan and Baniel to the seashore behind the gasoline depot where, according to the former, a woman was waiting for them. Upon reaching the seashore, appellants suddenly and simultaneously attacked and boxed Baniel. They took off Baniel's belt, wound it around his neck and continued to box him. Maribung also hit Baniel with his elbow while Alagia kicked Baniel's testicles.

As Baniel lay prostrate on the sand, appellants took his wallet from his pocket, took the money from the wallet and threw the wallet away. Maribung also took the watch from Baniel's wrist. Appellants then, dug the shallow pit in the sand and there buried Baniel.

According to the prosecution, the incidents aforementioned took place in clear view of Edgardo Calaoan.

After witnessing said incidents, Calaoan spent the night at Minanga Aparri. The next morning, he went to the moviehouse, where he met the appellants who allegedly threatened to kill him if he told anybody what he saw, and who even gave him a "dress" so as to keep him from talking. After that encounter, Calaoan went home to Linao, Cagayan.

On May 13, 1974, CIC Villamin of the 117th PC Company informed the Aparri Chief of Police that a body, later identified as that of Baniel, was discovered in a shallow grave at the seashore.

Cpls. Raganit and Mirafuente, Patrolman Tumaro, Alamin, Hernandez, Pastor and Patubo of the Aparri Police Force, and Lts. Libarnes and Florentino of the 117th PC Company went to the place where the body was discovered and conducted investigations.

Dr. Romulo de Rivera, Aparri Municipal Health Officer was summoned to conduct the autopsy. In his necropsy report, Dr. de Rivera declared that the cause of death was asphyxia or suffocation resulting from Baniel's having been buried alive although unconscious.

In their search for evidence at the site of the discovery of Baniel's body, Cpl. Ragamit found Baniel's residence certificate and a broken watch strap. Thereafter, since no relatives appeared to claim the decomposing body of Baniel, the police caused the interment of the remains at the Aparri Cemetery.

As the police continued their investigation, they obtained information that the deceased Baniel went to Aparri to attend the town fiesta in the company of his brother-in-law Eduardo Talasig and his half-brothers, Narciso and Genaro Labbao; that the deceased and his companions parted at 11:00 P.M. at the carnival grounds and that thereafter, Jaime Labbao, the uncle of the deceased, saw the latter with Simplicio Maribung.

The police further learned from Fausto Baniel, the deceased's brother, that in the evening of May 11, 1974, the deceased was wearing a "Genova" watch. Fausto Baniel later identified the broken watch strap found at the site of the discovery of the deceased's body as the strap of his brother's watch. Said Fausto Baniel likewise turned over to the police the wallet of the deceased allegedly found by the former near the deceased's grave. Inside the wallet were three [3] five-peso bills. The wallet was said to have contained P760.00.

The deceased's watch was later found by the police investigators in the possession of Rolando Rivera, who disclosed that he got the same from Antonio Gonzales. The latter, in turn, declared that he bought the watch from appellant Maribung for P40.00.

Simplicio Maribung when taken in for questioning by the police, confessed to the killing of Baniel through an extrajudicial confession executed during the custodial interrogation conducted in the morning of May 17, 1974. Said confession was confirmed at the preliminary examination conducted by Judge Felipe Tumaldes on the same date. In his confession, Maribung implicated Joel Alagia as his companion in killing Baniel.

On the other hand, appellant Maribung in his testimony, as well as in his extrajudicial confession set forth a counter statement of facts as follows:

"At about 12:00 midnight of May 11, 1974, Maribung was with Alagia at the carnival grounds. They met the deceased Baniel, who was alone at the shooting gallery. Baniel then invited them to the seashore when there was a girl waiting for them. The appellants acceded to the deceased's invitation and thereafter, all three of them proceeded to the seashore.

"Because there was no girl at the seashore and that no girl arrived to meet them after waiting for sometime, appellant Maribung demanded payment of the balance of the purchase price of the Genova watch he sold to Baniel. Vexed and irritated by the demand for payment, Baniel hit Maribung twice on the chest. Maribung fell on his back and called to his companion Alagia that he was being maltreated. Alagia ran after Baniel. Thereafter Maribung lost consciousness. When he came to he saw Baniel and Alagia boxing each other. He went to the place where Baniel and Alagia were fighting and joined Alagia in boxing Baniel. When the latter fell prostrate on the ground, appellants believed he was dead. They dug a shallow pit and there buried Baniel. Then, appellant Maribung picked up the watch where it was thrown during the affray because he was afraid it might be taken by somebody else or that he might be blamed for its loss."

Appellant Alagia, on the other hand, denied having been with appellant Maribung at the time the killing took place stating he was somewhere else.

The trial court, relying heavily on the testimony of the prosecution's "eyewitness" Edgardo Calaoan, found the appellants guilty of the crime of robbery with homicide aggravated by treachery and having been committed in an uninhabited place. Hence, this appeal.

In his appeal, appellant Maribung contends that from the evidence on record, he can be convicted only of homicide with the special privileged mitigating circumstance of incomplete self-defense. He further asserts that the trial court erred in:

- "1. Believing the testimony of Edgardo Calaoan;
- "2. Finding the appellants guilty of taking personal property of the accused;
- "3. Finding that the intent to rob the deceased preceded the killing;
- "4. Finding the presence of the aggravating circumstances uninhabited place and treachery; and
- "5. In not appreciating the privileged mitigating circumstance of incomplete self-defense in his favor."

Appellant Alagia, on the other hand, contends that the lower court erred in:

- "1. appreciating and admitting the testimony of Edgardo Calaoan;
- "2. appreciating and admitting the testimony of Maribung against appellant Alagia; and
- "3. convicting Alagia with Maribung of the crime charged.

Considering that the trial court's decision rested fundamentally on the testimony of Edgardo Calaoan, the main issue in the instant case is whether or not as the only "alleged" eyewitness, he is a credible witness as to inspire belief.

"Evidence to be believed must not only proceed from the mouth a credible witness, but it must be credible itself. [Vda. de Bonifacio vs. BCT, Co., Inc., 34 SCRA 418].

Edgardo Calaoan executed an affidavit as an eyewitness on May 23, 1974, 12 days after the alleged commission of the offense and six days after the complaint against the appellants was filed. He was not listed as an eyewitness nor investigated before the filing of said criminal complaint.

In his testimony, both appellants were apparently unarmed when the alleged incidents took place. It is but human and natural for a person to help his companion in need, or if unable to do so, to seek help. Contrary to this natural reaction, the records show that after Calaoan witnessed the incidents leading to the killing and the appellants burying the deceased, he went home. He never told anyone nor reported the incident to the police despite numerous opportunities to do so until he executed his "eyewitness" affidavit on May 23, 1974.

Evidently, under our jurisprudence, Calaoan does not meet the test for a credible witness.

"No better test has yet been found to measure the value of a witness than its conformity to the knowledge and common experience of mankind." [People vs. Baquiran, 20 SCRA 451]

"Testimony of witnesses must be reasonable or probable to be believed. Failure to immediately report occurrence of crime affects the credibility of the witness." [People vs. Beltran, 61 SCRA 156]

"A witness who keeps silent about the incident cannot be believed." [People vs. Madarang, 30 SCRA 812]

"The testimony of the sole eyewitness of a crime of murder was not believed. After seeing the incident he left home without helping the victim, did not mention the incident to the people of his own house and never informed the police authorities about it." [People vs. Bulawin, 29 SCRA 710]

The circumstances surrounding Calaoan's "eyewitness" testimony raise grave doubts as to the veracity of his declarations and his credibility as a witness. His long continued silence and his failure to report the offense to the authorities engender serious doubts as to his motives and taints his testimony with suspicion.

In addition, salient portions of Calaoan's testimony were not supported, but in fact contradicted by material evidence or lack thereof. Thus, he testified that appellants strangled the victim with the latter's own belt.[1] No such belt, however, was found by the police in the vicinity of the site of the crime. He also testified that appellant Alagia kicked the testicles of the deceased[2] but Dr. de Rivera, who performed the autopsy, declared in court that he found no injury to the deceased's testicles.[3]

Calaoan also testified that the appellants took the money from the wallet of the deceased and then, threw the wallet away.[4] However, the police investigators did not find any wallet in the vicinity of the site of the crime.[5] Instead, what was found was the residence certificate of the deceased. The alleged discovery by Fausto Baniel, who was not presented as a witness, of the deceased's wallet was never corroborated nor was it adequately explained how he was able to find it when the police investigators who combed the area failed to do so.

What is most disturbing is that Calaoan even denied executing an affidavit before the police when he was being investigated. The reason, obviously is that his statements in the said affidavit proved to be materially inconsistent with his testimony. In his affidavit, he stated that he was 35 to 45 meters away from the protagonists. But in his testimony he declared he was only 9 meters away.[6] How can Calaoan be 9 meters away when he, the appellants and the deceased were supposed to have gone to the seashore together? He also stated in his affidavit that the first time he saw the appellants was at the seashore. In his testimony, however, he declared that the appellants invited him and the deceased at the carnival grounds. He also stated in his affidavit that appellants even took the loose coins from the pocket of the deceased. But with the prosecution introducing evidence that three five peso bills were found inside the wallet of the deceased, the greed ascribed to the appellants in ransacking the pockets of the deceased for loose coins becomes, at the very least, hardly believable.

On the other hand, details of appellant Maribung's story are corroborated by the prosecution's witnesses.

The mother of the deceased testified that his son bought a watch from Maribung.[7] Police investigator Raganit testified that Jaime Labbao, the uncle of the deceased, informed him that he saw the victim with Maribung on May 10, 1974 and that the latter was collecting P40.00 from the deceased[8] because the deceased did not pay the full purchase price of the watch.[9]

Compared with Calaoan's testimony, Maribung's story is more consistent with human experience and reason. It is inconceivable that appellants would suddenly conspire to rob and kill because they allegedly saw P5 bills inside the deceased's wallet in spite of the fact that the latter had a companion, and to execute such intention although they knew that the companion of the deceased could run away and report the crime. It is more credible that only the appellants and Baniel, the deceased, who went to the seashore and that while there an altercation developed when Maribung demanded payment from the deceased.

We hold, therefore, that the trial court's reliance on the credibility of Calaoan as an eyewitness is misplaced. While conclusions of trial courts on the credibility of witnesses are not to be disturbed on appeal, this doctrine bows to the rule that the guilt of the accused in a criminal case must be proved beyond reasonable doubt.[10]

The only direct evidence that the appellants took personal property from the deceased is Calaoan's testimony which has been established as lacking in credence.

The testimony of Dolores Paggahao, mother of the deceased, that the deceased had money when he went to Aparri is not only self-serving but suffers from material inconsistencies. She testified that she did not know the total amount her son had[11] but in her affidavit, she was certain that her son had the exact amount of P760.00 in his wallet.

Even assuming that the deceased had that money when he went to Aparri, he could have spent it considering the

deceased attended a fiesta celebration.

"While there is testimony that four or five days prior to the crime, Kee Kang received a large amount of money, there is nothing to prove that the money remained with him until the time the killings were committed. The hiatus between the reception of the money and the delict itself was long enough for the deceased to spend the money elsewhere." [12]

A man should not be convicted on highly speculative evidence such as the testimony of the mother of the deceased in this case.

Did the prosecution prove all the essential elements of the special complex crime of robbery with homicide? Art. 294 of the Revised Penal Code defines robbery with homicide as:

"Art. 294. Robbery with violence against or intimidation of persons.— Penalties — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed."

In robbery with homicide, the killing may occur before or during the robbery but it must be by reason of or on the occasion thereof. Hence, proof of intent to rob is essential and that such intent exists before the killing or during the killing of the victim. [13]

Calaoan's testimony fails to support the trial court's finding that homicide was committed for the purpose of robbing the victim. Calaoan's testimony is as follows:

"Q.

You said that Vicente Baniel bought the tickets. Do you remember who were persons at your back?

A.

Yes, sir. They are Joel Alagia and Simplicio Maribung.

Q.

Will you please tell this Honorable Court if Joel Alagia and Simplicio Maribung saw Vicente Baniel getting his wallet from his pocket?

Atty. Oñate: The witness is incompetent.

Court: Sustained."

The matter of Alagia and Maribung having seen the wallet of the deceased and the contents of said wallet was never again touched upon in any part of Calaoan's testimony. There is, thus, no evidence whatsoever to show that the appellants saw the deceased with cash. Consequently, there is no basis for the trial court to conclude that "the intent to rob the deceased preceded the killing because the accused saw the deceased with cash and decided to kill him." [14]

The testimony of Maribung is not likewise evidence to show intent to rob the deceased. He testified that he demanded payment from the deceased who got irritated enough to box him; a fistfight ensued between the deceased and the appellants and when the deceased lay prostrate on the sand, Maribung picked up the watch which fell from the deceased's hand during the affray to prevent its being taken by somebody else or for Maribung to be blamed for its loss.

Even assuming, arguendo, that there was taking of personal property, since the intent to rob has not been established, appellants cannot be convicted of the special complex crime of robbery with homicide.

"A complaint charging the commission of the complex crime of robbery with homicide must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. It is well recognized in this jurisdiction that where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted of the other." [15]

We find Alagia's defense of alibi untenable. To prosper, alibi as a defense, must not only show that the defendant was not at the scene of the delict when it was committed, but must likewise demonstrate that it was physically impossible for him to be at the scene of the crime during its commission. The distance between the scene of the crime in Aparri and the alleged place where Alagia was is not such that it would have been impossible for Alagia to be at the scene of the crime when it was committed.

Maribung's testimony is, in effect, the most serious evidence against Alagia. Maribung's testimony does not betray any motive forcing him to swear falsely against Alagia. With Maribung's extrajudicial confession confirmed by him during the trial, his testimony became in effect, the testimony of an eyewitness which as regards Alagia's participation in the killing of Baniel remains uncontroverted by the evidence presented in the case.

There is also no evidence that treachery and uninhabited place attended the offense as aggravating circumstances.

Appellant Maribung testified that when he regained consciousness, he saw Alagia and the deceased boxing each other. [16] That the victim was able to defend himself negates the presence of treachery, which by definition is the employment of means, methods or forms in the execution of the crime by the offender which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. [17]

For the place of a killing to be considered "uninhabited" or "despoblado", it must be such that there is no reasonable possibility for the victim to receive help. [18] In this case, the place of the killing is only within walking distance from the carnival grounds and the municipal hall. Since it was the fiesta of Aparri, it can be reasonably expected that people would be walking around at or near the vicinity of the place of the killing. Calaoan who supposedly witnessed the commission of the crime could have easily sought help. All these are contrary to the essence of "despoblado" as an aggravating circumstance.

Appellant Maribung pleaded incomplete self-defense in mitigation of the crime charged. However, in order that incomplete self-defense may be appreciated in favor of the accused, there must be unlawful aggression on the part of the victim. The act of the deceased in hitting Maribung on the chest could have constituted the unlawful aggression contemplated under the law, had it been continuous. [19] But from the narration of events by Maribung, it is clear that when he fell down, the deceased did not continue his attack, but instead tried to flee when Maribung called to Alagia for help. Alagia ran after the victim and engaged him in a fistfight, to be joined later by Maribung after the latter regained consciousness. [20]

"An act aggression, when its author does not persist in his purpose, or when he discontinues attitude to the extent that the object the attack is no longer in peril, does not constitute an aggression warranting self-defense." [21]

Notwithstanding, We consider the act of the victim in hitting Maribung on the chest, although not sufficient to constitute unlawful aggression for the purpose of self-defense, as sufficient provocation on the part of the victim, hence, a mitigating circumstance to be appreciated in favor of appellant Maribung.

WHEREFORE, the judgment of conviction under review is hereby set aside and another one entered finding accused-appellants Simplicio Maribung and Joel Alagia guilty beyond reasonable doubt of the crime of simple homicide. In view of the mitigating circumstance of sufficient provocation on the part of the victim, accused-appellant Simplicio Maribung is sentenced to an indeterminate penalty of 6 years and 1 day of prision mayor as minimum and 12 years and 1 day of reclusion temporal as maximum. Accused-appellant Joel Alagia is sentenced to an indeterminate penalty of 8 years of prision mayor as minimum and 14 years of reclusion temporal as maximum. The indemnity awarded by the trial court is increased to P30,000.00.

SO ORDERED.

Teehankee, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin Sarmiento, and Cortes, JJ., concur.

Yap, J., on leave.

[*] Penned by Judge Napoleon R. Flojo

[1] t.s.n., Jan. 28, 1975, pp. 47-48

[2] Ibid, p. 48

[3] t.s.n., Feb. 25, 1975, p. 34

[4] t.s.n., Jan. 28, 1975, p. 7

[5] t.s.n., Aug. 27, 1974, p. 37

[6] t.s.n., Jan. 28, 1975, p. 20

[7] t.s.n., Dec. 16, 1974, p. 26

[8] t.s.n., May 28, 1974, pp. 112-113

[9] t.s.n., May 28, 1974, p. 116

[10] People vs. Paghaluwagan, 36 SCRA 116

[11] t.s.n., Feb. 16, 1974, p. 11

[12] People vs. Manobo, 18 SCRA 40

[13] US vs. Valmonte, 30 Phil. 59

[14] Decision, p. 15

[15] US vs. Laboy-laboy, 38 Phil. 330; People vs. Gumao, 22 SCRA 809

[16] t.s.n., June 15, 1976, p. 133

[17] Art. 14[16], Revised Penal Code

[18] People vs. Arpa, 27 SCRA 1037; People vs. Rubis, 52 Phil. 172

[19] People vs. Macariola, 120 SCRA 92

[20] t.s.n., June 15, 1976, pp. 128-129

[21] People vs. Sumicad, 56 Phil. 647, citing in People v. Macariola, Ibid

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