

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ROLANDO DE LA CRUZ, DEFENDANT AND APPELLANT.***G.R. No. L-13974. August 31, 1961*

Ponente: PADILLA, J.

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In an amended information subscribed and filed by the Assistant City Attorney of Bacolod in the Court of First Instance of Occidental Negros, Rolando de la Cruz was charged with the crime of robbery with homicide for the death of Gung Hoc alias Chua Kia and attempted homicide on the life of Maria Tan, under the provisions of article 294 in relation to article 249, of the Revised Penal Code. After trial, the Court found him guilty of the crime of robbery with homicide for the death of Gung Hoc, under the provisions of paragraph 1, article 294, of the Revised Penal Code and sentenced him to suffer the penalty of reclusion perpetua, the accessory penalties, and to indemnify the heirs of the deceased in the sum of P6,000; and of slight physical injuries for those inflicted upon Maria Tan, under the provisions of paragraph 1, article 266, of the Revised Penal Code, and sentenced him to suffer the penalty of thirty days of arresto menor. The Court found the presence of the aggravating circumstances of night time, abuse of superior strength and disguise in the commission of robbery with homicide and disregard of respect due the offended party on account of her sex in the commission of slight physical injuries, without any mitigating circumstance to offset any of them. The defendant has appealed.

Gung Hoc alias Chua Kia and his wife Maria Tan owned and ran a store in Jalangdon, Bacolod City, where they resided. At about 8:00 o'clock in the evening of 20 November 1957 while Maria Tan was in the kitchen washing dishes, she heard her husband Gung Hoc, who was in the store sitting on an empty box of Royal Tru-Orange beside a showcase, groan. She ran out of the kitchen to see what happened to him and, at a point about two feet away from the door of the kitchen, saw the appellant pull the third drawer of the showcase, get a paper bag containing the sum of P400 and put it inside his T-shirt. She rushed to the appellant and held him by the shirt before he could start to run away. The appellant held her by the dress and they grappled with each other. Maria cried for help and shouted "robber." The appellant dragged her outside the store and beat her up with a piece of wood (Exhibit B) twice on the left forehead and one on the left shoulder. She bit him on the breast to recover the money and pulled down the mask covering his face. The appellant freed himself from her hold and ran to the north direction of the city. Maria failed to recover the money. After the appellant had escaped, Maria saw her husband sitting and his head with a big swell resting on top of a showcase. Gung Hoc vomitted and told her he wanted to move his vowels. She led him by the hand but after a distance of about 2-1/2 meters he defecated and then became unconscious. At that juncture Maria Saroña, Abner Absin, Felisa Tanoan and Ignacio Saturnino and a police patrol car arrived. The police brought Gung Hoc in their car to the provincial hospital.

Dr. Angel Lorenzo, a practising physician, was summoned to the hospital to attend to Gung Hoc. At the hospital, Dr. Lorenzo found the victim on the table in the emergency room. He examined the victim and found the following: "No. 1, infra craneal hemorrhage; No. 2, fracture of the left frontal bone; fracture left temporo-parietal bone; contusions with hematoma, left front and left parietal and severe cerebral concussions," indicated on the

diagram, Exhibit C-1. In the afternoon of the next day, 1 November 1957, the victim died of "infracranial hemorrhage due to the fracture of the skull and the severe cerebral concussions." According to the same doctor, a strong blow from a blunt instrument, as the piece of wood (Exhibit B), could have cause the above mentioned wounds and concussions. He issued and signed the certificate of death, Exhibit C.

In the evening of the incident, 20 November 1957, Dr. Eusebio Respicio, Jr., resident physician of the provincial hospital, treated Maria Tan for the following wounds:

- Wound, lacerated, 1 inch, fronto-parietal region, left with hematoma.
- Wound, lacerated, 1/3 inch, eyebrow, left.
- Contusion with hematoma, forehead, left.
- Abrasion, lacerated, 3 inches infra-clavicular region, left.
- Contusion with abrasion and hematoma, shoulder, left.
- Abrasion, mid-portion, posterior aspect, forearm, right.
- Abrasion, distal 3rd, dorsal aspect, forearm, right. (Exhibit A.)

In his opinion it "may take from seven (7) days to nine (9) days for the above lesions to heal, if no complication arises," and the wounds, except the first, could have been caused by a blunt instrument like the piece of wood (Exhibit B).

At about 2:30 o'clock in the afternoon of 21 November 1957, after the death of Gung Hoc, the police authorities interrogated Maria Tan at the city hall. She named the appellant as the one who robbed and inflicted blows upon her and her husband.

At the trial, Felisa Tañoan, Maria Saroña and Abner Absin identified the appellant as the culprit.

Felisa Tañoan testifies that at about 8:00 o'clock in the evening of 20 November 1957, while she was sitting on a bench of the bridge about four meters away from the store of Maria Tan, she saw the appellant strike Gung Hoc thrice with one of the wooden legs of a chair; that she saw Maria Tan hold appellant's shirt and pull the handkerchief covering his face, which fell; and that after the handkerchief on his face had fallen, the appellant escaped passing through the house of her uncle Severo or Bero Alisen.

Maria Saroña, who owns a store near that of Gung Hoc, swears that at about 8:00 o'clock in the evening of 20 November 1957, she saw the appellant grappling with Maria Tan near the door of the latter's store; that as they grappled with each other, she heard Maria Tan shout "robber" and saw the mask on the appellant's face fall; that after Maria Tan had screamed for help, the appellant pushed her and ran away; and that when she reached her store, she saw Maria Tan, who was wounded on the forehead, aiding her husband, who was in a sitting position, feet on the ground, hands on the show case, and his head swollen.

Abner Absin declares that at about 8:00 o'clock in the evening of 20 November 1957, while he was talking with Ignacio Saturnino in front of the latter's house on the same street where Gung Hoe's store is located, he heard somebody shout for help; that upon hearing the shout he and Ignacio Saturnino ran to the store of Gung Hoc from where the shout came; that when they reached the east side of the road about four meters from Gung Hoe's store, he saw the appellant grappling with Maria Tan and beating her up with a piece of wood; that he saw the appellant strike Maria Tan three times; that the appellant escaped and ran away passing through the house of Severe or Bero Alisen; that he and Ignacio Saturnino pursued the appellant but lost sight of him; and that he went to the store of Gung Hoc and found him unconscious and being attended to by his wife Maria Tan.

The appellant denies having committed the crimes with which he is charged. He brands as a lie the testimony of Felisa Tañoan, Maria Saroña, Abner Absin and Maria Tan. He claims that in the evening of 20 November 1957 he was at home taking care of the child of his sister. Testifying in behalf of the appellant, Ignacio Saturnino states that he saw the incident in the store of Maria Tan but denies having recognized the culprit because although he pursued him he failed to overtake him. Severo Alisen asserts that the culprit is not the appellant but one Luciano whose surname he does not know but whose nickname Lucing a "compadre" of his older brother.

The appellant's avowal of innocence cannot be believed in the face of the overwhelming evidence against him. The victims' store was well lighted with two fluorescent lamps when the incident took place and the appellant was positively and clearly identified by Maria Tan and the witnesses Felisa Tañoan, Maria Sarona and Abner Absin, against whom the appellant could not impute any reason why they would like to convict him of a grievous offense for which he could be deprived of life and liberty. He himself testifies that he has had no misunderstanding with any of them. On the other hand, it is his sister Lucia de la Cruz, who testifies that the appellant was at home when the incident happened, who has reason to pervert the truth to shield him from punishment. The testimony of Ignacio Saturnino that he failed to recognize the culprit, whom he pursued up to the bridge of Severo Alisen, does not disprove the established fact that it was the appellant who committed the crimes. The appellant worked with him in the pier. Neither does the testimony of Severo Alisen who says that it was Luciano, nicknamed, Lucing, a "compadre" of his older brother, whom he saw coming out from the store of the victims on the night in question.

Maria Tan testifies that she bit the appellant on the breast to recover the money he took from the third drawer of the showcase. On motion of the defense counsel, the trial court ordered her to show her teeth to determine whether she was capable of biting. The trial court found that her denture, except one upper and another lower molar, was complete. Upon examination of the appellant, the trial court found a scar about 5 or 6 mms. long, 2-1/2 inches above his left nipple. The appellant has failed to state the reason why he has that scar. Maria Tan is physically capable of biting the appellant on the night in question and the scar could have been caused by her bite. This particular evidence establishes beyond reasonable doubt that the appellant is the culprit.

The fact that it was only at noon of the next day, 21 November 1957, not on 23 November as claimed by the appellant, that Maria Tan revealed to the police authorities the identity of the appellant, has been satisfactorily explained by her. According to her, she was in a state of confusion and was more concerned with the serious condition of her husband on the night of the incident than with the revelation of the identity of the appellant.

On 5 December 1958 counsel de parte for the appellant filed in this Court a motion for new trial on the ground of newly discovered evidence. Attached to the motion is a letter of the appellant addressed to his counsel informing him that Delfin Caniendo, an inmate of the national penitentiary in Muntinlupa, Rizal, where the appellant is confined, and who comes from Bacolod City, confessed to him "that he was the very person who actually committed that crime of Robbery with Homicide for which I was accused and sentenced." (Annex A to motion for new trial.) Section 3, Rule 117, partly providing that if a motion for new trial "is based on newly discovered evidenced, it must be supported by the affidavits of the witnesses by whom such evidence is expected to be given," has not been complied with. Hence, the motion for new trial is denied. In addition to the penalty imposed by the trial Court, the appellant should be, as he is, ordered to return to the complainant Maria Tan the sum of P400 taken by him.

As thus modified, the judgment appealed from is affirmed, with costs against the appellant.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.
Bautista Angelo and Labrador, JJ., took no part.

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