

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RODRIGO BALURAN Y YAON AND ROSARIO MORANTE ALIAS CHARING, DEFENDANTS AND APPELLANTS.

G.R. No. L-28582. March 25, 1970

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PER CURIAM:

Appeal taken by Rodrigo Baluran and Rosario Morante from the decision of the Court of First Instance of Bulacan finding them guilty, beyond reasonable doubt, of the crime of robbery with homicide, committed with one aggravating circumstance and without any mitigating circumstance to offset the same, and sentencing both to suffer the penalty of death, to indemnify, jointly and severally, the heirs of the deceased Melchor Mariano in the sum of P6,000.00, and each to pay one-half of the costs.

In the morning of June 15, 1966 the Police Department of Malolos, Bulacan was informed that the body of a dead man had been found on the shoulder of a certain portion of the MacArthur Highway located in barrio Dakila of said municipality. Sgt. Antonio Cailipan, who was dispatched immediately to investigate the case, found on a slope of the shoulder of the highway, partly hidden by tall grasses, the dead body of a man apparently a victim of foul play because his right eye was swollen, his neck bore scratches and the back of his head had a big gaping wound. Searching the body, he found money in the pockets of the dead man's pants, one ring with the initial "M", and a piece of, paper. He had the cadaver taken to the morgue of the Provincial Hospital of Malolos where it remained until noon of that day.

Earlier that morning, one Macaria Garcia had reported to Justo Cruz, Chief of Police of Plaridel, Bulacan, that, contrary to what her son-in-law, Melchor Mariano, used to do everyday after he was through with his work as a tricycle driver, he failed to return home the previous night. Chief Cruz called up the Chief of Police of Malolos by telephone to relay the information to him and he was, in turn, informed that the dead body of a man, who apparently answered the description of the missing person, had been found in barrio Dakila, within the jurisdiction of Malolos. Chief Cruz and some relatives of the missing man then went to the Malolos Provincial Hospital where they found and identified the dead body of Melchor Mariano. As the Medico-Legal Officer of Bu-lacan could not be contacted, the cadaver was brought to the NBI office in Manila where an autopsy was conducted by Dr. Ricardo Ibarrola, the NBI Medico-Legal Officer, whose findings are as follows:

"Blood coming out of the nostrils; cyanosis of the fingernailbeds.

Abrasion, lumbar region, left, pos-terior aspect, 3.5 x 0.6 cm.

Contused abrasions, neck, anterior aspect, 9.0 x 7.0 cm. and posterior as-pect, 2.0 x 1.0 cm.

Contusions, purplished blue; orbital region, right, 5.5 x 3.2 cm. with marked swelling of the soft tissues; lumber re-gion, right, posterior aspect, 4.0 x 2.5 cm.

Lacerated wounds; temporo-parieto occipital region of scalp, right, 1.0 x 0.4 cm., with an adjacent contusion inferiorly, 1.5 x 0.3 cm. and the surrounding tissue slightly depressed and compressible; occi-pital region of

scalp, left side, 4.2 x 0.9 cm.

Fractures, compound, depressed and comminuted; parieto-temporal bone, right, 6.0 x 2.5 cm., extending to the right middle cranial fossa; occipital bone, left side, 1.0 x 0.1 cm.

Tracheal ring, 1st, right posterolateral aspect partially severed.

Hematoma: epicranial, fronto-parieto-temporal right, 13.0 x 11.0 cm.; neck, anterior aspect, intramuscular and around the larynx, trachea and esophagus, massive, with softening and loosening of the muscles; thyroid gland, bilateral, also massive.

Contusion, tracheal mucosa, upper part.

Hemorrhages: subarachnoidal, both cerebral hemispheres; cerebral, both lateral ventricles.

Lacerations, parietal and temporo-occipital lobes, both right, moderately extensive.

Brain, markedly congested; other visceral organs, slightly congested.

Heart contains dark fluid blood.

Stomach, about half-full of partly digested rice and food materials.”

That same day - June 15, 1966 - having received confidential information that appellants herein had been seen around midnight of June 14 at the crossing of Plaridel, Bulacan, Chief of Police Cruz of said municipality ordered that Baluran be fetched from his residence at barrio Banga. While he was evasive at the beginning of the investigation to which he was subjected, he broke down later on and disclosed to Lt. Felipe Adriano the circumstances surrounding the killing of Melchor Mariano between 12 o'clock midnight of June 13 and 1:00 o'clock in the morning of June 14, both of 1966; how his co-appellant dumped the body of their victim along the McArthur Highway; how the two tried to go to Baguio to sell the Honda tricycle driven by their victim until they were intercepted at the constabulary checkpoint at Bamban, Tarlac and later on brought to Concepcion, Tarlac; how he was allowed to go home to get the license of the Honda in San Fernando, Pampanga, while his co-appellant was left in the custody of the constabulary detachment at Concepcion. His statement was reduced to writing that same day, signed by him before the Investigating Officer and later sworn to by him before Municipal Judge Santiago of Plaridel (Exhibit B).

Thereafter Sgt. Elias Tuazon, Patrolmen Lucas and de Mesa, of the Police Force of Plaridel, were ordered to fetch appellant Morante from Concepcion, Tarlac. The constabulary authorities at that place delivered to them the person of said-appellant for custody, as well as the Honda tricycle. They then returned to Plaridel where they arrived at past 6:00 o'clock in the evening of June 15, 1966. Hours later appellant Morante gave a written statement describing her participation in the robbery of the tricycle and in the killing of Melchor Mariano, which was later subscribed and sworn to by her before Municipal Judge Santiago (Exhibit A).

The Honda tricycle mentioned above worth P1,850.00 belonged to Fernando Garcia, father-in-law of the deceased Melchor Mariano who was the one driving it to ferry passengers within the municipality of Plaridel and from said municipality to nearby towns such as Guiguinto and Malolos. At the time of his death, Mariano was 37 years of age, married to Agripina Garcia and with several children.

Aside from the Honda tricycle the Police Department of Plaridel recovered from appellant Baluran a watch worth P60.00 (Exhibit C), and from appellant Morante, the driver's license of the deceased Mariano (Exhibit D), his residence certificate (Exhibit E) and a prayer book (Exhibit F).

On the basis of the evidence thus gathered by the authorities, a criminal complaint for robbery with homicide

was filed against appellants in the Municipal Court of Plaridel, Bulacan. As they waived in writing the preliminary investigation (Record p. 16) the case was forwarded to the Court of First Instance where the Pro-vincial Fiscal filed the following information:

"That on or about the 15th day of June, 1966, in the municipality of Plaridel, pro-vince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Rodrigo Baluran y Yaon alias Rod and Rosario Morante alias Charing, armed with blunt instruments, conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of violence, force and intimidation, take, rob and carry away with them the following property, to wit: one (1) man's wrist watch marked 'Baybis', valued at P60.00, cash money in the amount of P4.00, driver's license, prayer book and residence certificate, all belonging to Melchor Mariano; and one (1) mo-torcycle marked 'Honda', 65 cc, with side car, valued at P1,800.00, belonging to Fernando Garcia, to the damage and prejudice of the said owners in the total sum of P1,864.00; that during the commission of robbery or on the occasion thereof, the said accused, conspiring and confederating together and helping one another, did then and there wil-fully, unlawfully and feloniously attack, assault and hit with blunt instruments they were then provided the said Melchor Mariano, hitting the latter on the vital parts of his body, thereby causing serious physical injuries which directly caused the death of the said Melchor Mariano and in order to conceal or destroy the body of the crime, the said accused, in furtherance of their conspiracy, dumped the body of the said Melchor Mariano along the side of the Mac-Arthur Highway and the railroad track at barrio Dakila, Malolos, Bulacan.

"That in the commission of this crime, the following aggravating circumstances were present to wit: (1) use of superior strength, (2) nocturnity, (3) evident premeditation, and (4) treachery.

"Contrary to law."

It appears that at about midnight on June 14, 1966 appellant Morante boarded the tricycle driven by the deceased Melchor Mariano and had herself taken to barrio Tabang, Guiguinto, Bulacan. Along the way, she had the vehicle stopped to allow her co-appellant Baluran to ride with her. Upon reaching barrio Tabang, Morante got off but returned soon saying that the person she was looking for was not in his house. They then motored back towards Plaridel, but before reaching the "crossing" Morante told Mariano to proceed to Bagong Silang where she wanted to borrow some money from someone. Once near the alleged house of the latter, appellants ordered the tricycle to stop, and Baluran got off and proceeded in the direction of the house. Returning shortly thereafter, he told Mariano to wait for a short while because Romy was getting ready. In the meantime, Morante also got off the tricycle and pretended to answer a call of nature at a nearby place. Then, the driver of the tricycle - who remained astride the driver's seat - was suddenly hit on the neck with a blunt instrument, and afterwards successive blows rained on his head, face and other parts of the body, as a result of which he fell down. Taking him for dead, appellants put him on the side car of the tricycle. Then appellant Morante started the engine and drove towards MacArthur Highway. Along the way Baluran threw the iron bar on the road side, and when they reached barrio Dakila they dumped the body of their victim on the shoulder of the highway near a ditch with growing tall grass the same place where it was discovered later. Appellants then searched the body of their victim and deprived him of P4.00, of his wrist watch, residence certificate and a prayer book. Afterwards, with appellant Morante still at the driver's seat they proceeded northward with the intention of going to Baguio where they intended to sell the tricycle, but at the Bamban, Tarlac P.C. checkpoint, they were stopped at about 4:00 o'clock in the morning by the soldier on guard duty. When the latter questioned appellant Morante, she admitted that she had no driver's license and that the ownership papers of the vehicle were not with her but with the owner, her uncle, living in Sat Fernando, Pampanga. As the guard noticed blood stains on the bar handles of the tricycle and on the floor of the side car, she told him that the same came from her nose. Upon further question-ing, she also said that they had hit a person riding in the tricycle. Due to their suspicious behavior, both were taken to the P.C. headquarters located

at Concepcion, Tarlac.

Discussing the defense evidence, the trial court says the following in the appealed decision:

"The two accused admit the killing of the driver, although each points to the other as the one responsible for said death. Both admit having taken the body to a lonely grassy place to hide it. They admit having taken the tricycle from Pla-ridel, to Malolos, Pampanga, and Tarlac, with Baguio as the terminal. The burden of proving their innocence is shifted to them, but each one of said accused failed to give a clear and convincing explanation. It is noteworthy that each of the accused tried very hard to throw the blame on each other for only the killing of the victim and not on the robbery of the tricycle. Upon the other hand, the written state-ments of both accused appearing on Exhibits A and B bore all the marks of a true con-fession. The same were written in Tagalog, the native language of accused Morante who reached first year in the high school. The said language is also fairly spoken by accused Baluran. The details of said con-fessions tally with the killing of the de-ceased driver, the taking of the Honda for sale to Baguio, the hiding of the dead driver, the taking of money, driver's license, wrist watch, residence certificate, and prayer book from the victim; the inter-ception by the PC at the checkpoint at Bam-ban, Tarlac, the attempt on their part to mislead the police about the presence of blood clots on the motor and on the footrest of the cab of the tricycle, their attempts to show to the PC authorities in Tarlac that the said tricycle was owned by an uncle of the girl who lived in San Fernando, Pampanga, the surrender by accused Baluran of the watch of the deceased, the surrender by Morante of the license, residence certificate, and the prayer book belonging to the deceased. In fact, were it not for the immediate confession of this accused Baluran, the detention of Ro-sario Morante in Tarlac PC Headquarters could not have been known to the local police of Pla-ridel. Lt. Felipe Adriano and Municipal Judge Francisco Santiago of Plaridel both testified to the voluntariness and freedom with which the said statements had been given. The father of Rosario Morante was only outside of the room where her statement was taken and he could not have been unaware of any maltreat-ment her daughter suffered, if indeed she suffered anything. In fact, from a perusal of his statements in court, he appeared to be a resigned father who expected the worst from his child in view of her boyish and wayward nature. Judge Francisco Santiago before whom the two exhibits were subscribed and sworn to went beyond the ordinary norm of conducting the preliminary investigation in this case by put-ting down in his own penmanship additional questions and answers regarding the said statements. The Court is satisfied that said police officer and Judge Santiago only did their duties, and were not biased in the least.

"As to the claim of each of the accused that only one of them is really responsible for the killing of the driver, the Court believes and so holds that the proven acts of the accused in running away with the motor vehicle after the said driver was killed, the asportation of money and other articles belonging to the victim constitute the complex crime of robbery with homicide. For under Article 294, Paragraph 1, of the Revised Penal Code, this complex crime is committed when robbery is proven and a homicide shall have been committed 'by reason or on occasion of the robbery.'

"So it does not matter whether one or the other killed the herein victim because, the latter was killed 'by reason of on occasion of the robbery'. This is apart from the consideration of the acts of the accused in this case which fully show that in the commission of the robbery there is concerted action and meeting of the minds of the two accused, so that conspiracy has been well established by the prosecution. There being a conspiracy, it is of no moment whether only one or both of them delivered the fatal blows, for the act of one is the act of the other, and both are equally responsible as principals."

In her brief appellant Morante contends that the trial court erred in admitting her confession (Exhibit A) as well as that of her co-appellant (Exhibit B) as evidence against her and that, as a result, said court erred in not acquitting her. Similarly, Baluran's counsel de oficio contends that the trial court erred: in admitting the latter's extrajudicial confession as evidence against him; in proceeding with the trial of the case without a previous valid preliminary investigation and, as a result, erred in finding him guilty of the crime charged.

Baluran's contention that there was no previous valid preliminary investigation is without merit, firstly, because the same was not raised at any stage of the pro-ceedings below; secondly, he and his co-appellant had waived the preliminary investigation in the Municipal Court of Plaridel (Record, p. 16).

Appellants also claim that the confessions in question should not be given any probative value against them because they were obtained through force and inti-midation.

After going over appellants' testimony (transcript of October 6, 1966, pp. 1-45 and 45-75) and other evidence presented to support their contention, we find that the same is too weak and unreliable to overcome the testimony of Lt. Felipe Adriano of the Plaridel Municipal Police, and of Francisco Santiago, municipal judge of the same municipality (pp. 4-19 of the transcript of the stenographic notes corresponding to August 11, 1966, respectively) show-ing that the aforesaid confessions were made freely and voluntarily. While it is true that they were taken in the police department of Plaridel, it is equally true that the affiants were subsequently taken to the presence of Muni-cipal Judge Santiago who had said confessions read to them as they were, asking them afterwards whether they were the questions made to them and the answers given by them. Both replied in the affirmative and further affirmed in the pre-sence of said judge that they had not been subjected to any violence, threat or intimidation. Moreover, Judge Santiago, whose credibility has not been assailed by appel-lants, asked them additional questions now forming part of their respective confession.

In the particular case of appellant Morante, who claims that she was given face blows and karate blows, the following excerpts from the testimony of her own father would be sufficient, We believe, to show that her claim deserves but scant consideration –

"Q You stated that you were able to talk with your daughter here the following days after she was taken from Tarlac and that she complained to you that her hair was pulled by a police of-ficer, did you come to know that police officer?

A I did not inquire from her who that policeman was, because I was not in-terested in knowing who.

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Q Did you ask your daughter if she was hurt?

A Yes, sir.

Q What was the answer?

A She said - not very much.

Q Your daughter also told you that some-body gave her a karate blow, did you ask her who gave that karate blow to her?

A She complained to me, sir. I did not ask who that person was.

Q You stated you did not ask her who that man was but did she tell you who that man was?

A She told me; I have forgotten, sir.

Q You mean to say she has given the name of the man who gave her that karate blow?

A Yes, sir.

Q But you have forgotten the name of that man already?

A Yes, sir.

Q But on the day it was told you, you knew the name of the man?

A I know that person by name but I do not know his face."

Moreover, the questioned statements (Exhibits A and B) are in Tagalog, the native language of Morante, and a dialect fairly spoken and understood by Baluran. Their contents tally substantially in many important respects with their respective testimony during the trial. Each of them, however, claims that it was the other who did the killing we agree with the lower court that while upon the evidence it was appellant Baluran alone who inflicted the fatal blows that killed Mariano, appellant Morante is likewise responsible therefor, the conspiracy to rob and kill said deceased having been established. The fact that appellant Morante engaged the services of Mariano and the use of his tricycle on the night in question; the fact that she later fetched her co-appellant and both directed Mariano to take them to barrio Tabang pretend-ing that Morante was going there to borrow money from someone; the fact that while they were motoring back towards Plaridel, Morante told the tricycle driver to proceed to barrio Bagong Silang where she intended to see a relative by the name of Romy to borrow money from him; the fact that upon hearing the alleged house of the latter, appellants ordered the tricycle driver to stop and then appellant Baluran got off pretending to look for Romy in the house just to come back later saying that the latter was already getting ready; the further fact that Morante then got off of the tricycle and while she was pretending to answer a call of nature at a nearby place, Baluran attacked the unsuspecting tricycle driver with a blunt instrument, hitting him on the neck, head and face, which injuries caused his death; the fact that they afterwards took the body of their victim aboard the tricycle and dumped it on the shoulder of the road along the MacArthur highway; the fact that both appellants run away with the tricycle of the deceased with the intention of selling it in Baguio City but were unable to do so because they were apprehended at Bamban, Tarlac; lastly, the fact that both were found in the possession of money and other things belonging to the deceased; all these can lead us to but one conclusion, namely, that both appellants had conspired to rob and kill the deceased Melchor Mariano. This makes one completely liable for the acts of the other.

The foregoing makes it unnecessary for us to consider appellant Morante's contention that the trial court erred in considering the confession made by her co-appellant as evidence against her. It is clear from what has been stated heretofore that, even disregarding the confession of Baluran, the rest of the evidence of record is sufficient to support the judgment of conviction against her.

The crime of robbery with homicide charged having been proven beyond reasonable doubt, We come now to the consideration of the manner and circumstances under which the crime was committed. We agree with the trial court that the evidence of record shows that the deceased was attacked and killed treacherously with a blunt instrument.

The crime committed, considering all the foregoing, is robbery with homicide penalized under paragraph 1 of Article 294 of the Revised Penal Code with reclusion perpetua to death. This penalty should be imposed in its maximum degree, the commission of the offense having been attended by one aggravating circumstance without any mitigating circumstance to offset the same.

WHEREFORE, it is our painful duty to affirm the appealed judgment, except that the indemnity of P6,000.00 is increased to P12,000.00 to be paid, jointly and severally, by the appellants to the heirs of the deceased Melchor Mariano. With costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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