

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO YAP @ KIAT AND ROQUE VILLAGRACIA Y FANOY @ KOKENG, DEFENDANTS; ROBERTO YAP @ KIAT, DEFENDANT-APPELLANT.

G.R. No. L-28664. December 22, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the judgment of conviction of the Court of First Instance of Zamboanga del Norte, in Criminal Case No. 4399 of said court, sentencing therein accused Roberto Yap alias "Kiat" to life imprisonment with all the accessories of the law, to indemnify the heirs of the deceased Santos Boca in the sum of P6,000.00 and to pay one-half of the costs.

In an amended information filed in the Court of First Instance of Zamboanga del Norte by the Acting City Fiscal of Dipolog City, Roberto Yap alias "Kiat" and Roque Villagracia y Fanoy alias Kokeng"[1] were charged with the crime of robbery with homicide, allegedly committed as follows:

"That in the evening, on or about the 28th day of January, 1966, in Oro, City of Dapitan, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms, conspiring and mutually assisting one another and with intent of gain by means of intimidation upon persons, did then and there wilfully, unlawfully and feloniously take, rob and carry away P22.00, Philippine Currency, from SANTOS BOCA, and in the pursuance of their evil motive, the above-named accused, with intent to kill, did, then and there wilfully, unlawfully and feloniously attack, assault and shoot the said SANTOS BOCA several times causing his instantaneous death.

"That in the commission of the crime there were present the aggravating circumstances of treachery superior strength and craft."

On arraignment, accused Roberto Yap entered a plea of not guilty.

The prosecution presented several witnesses. ROMERICO BOCA, a nephew of the deceased and who was living with the latter and his wife, testified that at about 4 o'clock in the afternoon of 28 January 1966 he was in their house in Oro, Dapitan City, standing by the window with his aunt Maura Taruc (wife of Santos Boca) and his own wife Severa, when they saw two men enter the yard; the men (one of them was the accused Roberto Yap) identified themselves as provincial guards in search of escaped prisoners; that when the inmates of the house denied having seen the persons they were looking for the men left, only to return immediately, on the pretext that they were going to wait for Santos Boca, who, at the time, was in the "tabo-an" (marketplace); that the men stayed in the yard within their sight, smoking cigarettes.[2]

Santos Boca arrived later. He was greeted by the accused, which Santos acknowledged with a nod; that in answer to the query of the men, Santos answered that he did not know the people they were looking for; that the persons in the house were members of his family and carpenters working therein; that there was nothing in the bodega except fighting cocks. The two men poised to leave, but when Santos turned his back on them to go up the house;

they followed the latter, whipped out their pistols from their pockets and pointed them to Santos saying, "these are (the) authorities, put up your hands." As Santos moved to ascend the stairs, the men fired their guns and Santos was hit.[3] The witness also heard somebody shouting, "Mrs., where is your money." He peeped through a hole that looked out into the ground, and was able to see the accused run towards Santos Boca, who had fallen to the ground, and searched the latter's pockets. Then, having found and taken some paper bills, the accused and his companion ran away.[4] When the strangers were gone, witness took his wife and aunt to the house of a relative. He also declared that he went to Zamboanga del Sur in the company of Dapitan City policemen to look for the assailants of his uncle Santos Boca; that in the municipality of Kabasalan he saw the accused seated before a "hantak" gambling table, and right then and there he pointed him to the policemen as the killer, thus resulting in the arrest of the accused later.[5]

Romerico's wife, SEVERA BOCA, and MAURA TARUC DE BOCA, widow of the slain man, took the witness stand and corroborated the declarations of the first witness regarding the arrival in their house of two strangers at about 4:30 in the afternoon of 28 January 1966; that the two men made inquiries about certain escaped prisoners;[6] that when they disclaimed knowledge of the people they were looking for the men decided to wait for Santos Boca who was then out in the marketplace; that Santos arrived at about 5:30, and he talked to the strangers. Severa declared having seen the accused and his companion, who were following Santos, shoot the latter when the latter was about to ascend the stairs of the house.[7] The widow, Maura Taruc, did not see the actual shooting of her husband because she had gone to the other room to watch a game of "dama" (checkers) played by the carpenters. But the two women both declared that they remembered the accused because in the evening of 27 January 1966, the same person, in the company of another one, called on their house inquiring for the whereabouts of a certain Totoy Feriante, and when they answered that they did not know of any person in Oro by that name, the two men left.[8]

Dr. MA. FLORIAN OCHOTORENA, Senior Resident Physician of the Rizal Memorial Hospital in Dapitan City, who performed the autopsy on the cadaver of Santos Boca, testified as to the injuries sustained by the deceased, which were also contained in the autopsy report (Exhibit "E"), as follows:

"THORAX - Presence of a gunshot wound, measuring about 1 cm. in diameter with the edges everted, located at the left anterior lower thoracic region over the 5th rib, left, about 2 inches from the midline. Subcutaneous emphysema noted over the same region.

"ABDOMEN - Presence of a gunshot wound, measuring 1/2 cm. in diameter with inverted edges and blackish color wound, at the back, right lumbar region, about 1 inch from the spinal column. Probing of wound showed that the wound is directed upward, medially, and anteriorly towards the left side.

Another gunshot wound with the same diameter and description was seen at the right gluteal region directed downwards and anteriorly. Probing of the wound showed that it was connected with the wound at the right thigh, proximal portion, anterior aspect.

"EXTREMITIES - Presence of a gunshot wound, measuring about 1 cm. in diameter with everted edges at the right thigh, proximal portion, anterior aspect. Underlying tissues such as the muscles and subcutaneous tissues were seen protruding from the wound. Dissection of the said wound revealed a fracture of the right pelvic bone. Probing of the wound showed that it was directed upwards, laterally, meeting the gunshot wound at the right gluteal region.

X X X

X X X

x x x

CAUSE OF DEATH:

Gunshot wounds, thru and thru (a) Lumbar region (back) right (entrance) towards the anterior left chest traversing the abdominal cavity, diaphragm, pericardium, pleural cavity, lungs with fracture of 5th anterior rib; (b) gluteal region (back) right (entrance) towards the right thigh, proximal portion, anterior aspect with fracture of the right pelvic bone."

The prosecution also presented ANSELMO MATUBA, operator of a boat that ferries passengers from Bagting beach to Sinonoc in Dapitan City, who declared that in the morning of 27 January 1966 two strangers boarded his boat bound for Baylimango; one of them was the accused; that he remembered the accused because the latter got angry when he asked for their fares before departure.

For the defense, GERONIMO DICHE, a resident of Naga, Zamboanga del Sur, testified that on 27 January 1966 the last counting of votes of the candidates in the beauty contest being held in connection with the town fiesta celebration was conducted; that one of the candidates was his daughter Leticia Diche, and the accused was one of her leaders; that during that last canvassing of votes, the accused was present; that the accused deposited an envelope containing P200 in his daughter's ballot box; that the affair ended at about 2 o'clock in the morning of 28 January 1966; that the accused slept in their house; that in the morning, the Provincial Warden of Zamboanga del Norte and companion, who were looking for an escaped prisoner, dropped by their house; that after breakfast the warden went to the municipal building bringing the accused along with them; that in the evening of 28 January 1966 his daughter, who was elected fiesta queen, was crowned, and the accused was present; that the accused again slept in their house, that evening, and left for Pagadian only on 30 January.[9]

ROMAN CABATO, chairman of the committee that managed the beauty contest during the fiesta celebration of 1966, declared in court that he came to know the accused Roberto Yap as a leader of Leticia Diche; that in the evening of 27 January 1966, he saw the accused drop an envelop into the ballot box of Leticia Diche, and that he also saw Yap in the evening of 28 January 1966.[10] He admitted that it was Geronimo Diche who requested him to testify in the case.

PATERNO LUBATON, the provincial warden of Zamboanga del Norte, testified having gone to Naga in the morning of 28 January 1966, to look for an escaped prisoner; that he and his companion went to the house of Geronimo where he met the accused Roberto Yap;[11] that after they had breakfast he went to the municipal building, tagging along the accused; that he left the municipal building at about 11:30 in the morning; that it is impossible for a person to reach Orap (Oro), Dapitan City, by 4 o'clock in the afternoon if he were to leave Naga at 11 o'clock in the morning, because the trip by bus would take approximately 9 hours. It was Geronimo who requested him to testify in the case.

The accused, ROBERTO YAP, for his part, declared that as a leader of candidate Leticia Diche he was present during the last canvassing of ballots held in the evening of 27 January 1966; that he dropped P200.00 in her ballot box that evening; that the affair lasted until about 2 o'clock in the morning of 28 January 1966, and he slept in the house of Geronimo Diche;[12] that in the morning, some visitors came, including Roman Cabato and provincial warden Lubaton; that after breakfast, he went with Lubaton to the municipal building; that the warden left Naga at about 11 o'clock in the morning; that in the evening of 28 January 1966 he attended the coronation of Leticia Diche as fiesta queen of Naga; that the dance that followed, held near the marketplace, ended at about 2 o'clock in the morning. He denied having gone to Oro or Orap, or of having killed and robbed Santos Boca whom allegedly he did not know;[13] that when he was arrested in February, 1966 he had with him more than one thousand pesos.

On 10 July 1967, the court rendered judgment in the case, finding the accused guilty of the crime charged, without

any aggravating and mitigating circumstances, and sentenced him to life imprisonment with the accessories of the law, to indemnify the heirs of the deceased Santos Boca in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. From this decision, the accused filed the present appeal.

Appellant now assails the correctness of the lower court's decision, contending mainly that said court erred(1) in convicting him of the crime of robbery with homicide on the basis of the sole uncorroborated testimony of Romerico Boca; and (2) in disregarding the testimonies of the defense witnesses allegedly supporting his claim of innocence.

The issues being raised by herein appellant clearly hinge on credibility of witnesses. And in this regard, it must be remembered that the rule consistently adhered to by this Court is to give due respect to the binding of the trial court on the matter, the latter tribunal having had the opportunity to observe the demeanor and conduct of witnesses while testifying and, therefore, is in a better position to properly gauge their credibility.[14] Thus, appellate tribunals will not disturb the findings of fact of the trial court unless there is proof that said court, in making the findings, had failed to appreciate some fact or circumstance of weight and substance that would have altered the results of the case.[15]

We find no justification for disturbing the factual findings of the court below. Contrary to appellant's allegations, it was not Romerico Boca alone who identified him as one of the assailants of the deceased. Two other witnesses, Severa Boca and Maura Taruc de Boca recognized appellant as one of the two men who stayed in their yard and awaited for the arrival of Santos. These witnesses had a good look at the men because it was then about 4:30- in the afternoon only. Severa also was positive in her declaration that it was appellant who shot Santos Boca while the latter was in the act of going up the stairs of the house. It is true that these witnesses are relatives of the deceased. But the fact of their relationship would not necessarily disqualify them from testifying in the case, nor render their clear and positive testimonies less worthy of faith and credit.[16] The question here is whether or not the witnesses could have seen the incident and narrated it as they saw it happen.

In this connection, it may be pointed out that despite cross-examination by counsel for the defense, the witnesses stuck to their declarations that appellant was one of the strangers who stayed in their yard and shot Santos Boca. And no motive was shown why these simple folk would testify the way they did and impute on the herein appellant the commission of such serious a crime as robbery with homicide other than the desire to bring the culprit to justice.

There is also a piece of evidence that lends further credence to the testimonies of Romerico and Severa Boca. The autopsy on the cadaver of the deceased revealed that he was hit twice: one bullet, entering the abdominal region, back, travelling in upward direction, anteriorly towards the left and coming out at the left anterior lower thoracic region, while a second bullet hit him in the right gluteal region, back, plodding downwards and anteriorly, coming out at the right thigh. The first of the findings indicates that the deceased was fired at when his back was turned against his assailants, who must have been stationed a little to his right, and while he was in a place higher than the latter. Romerico and Severa declared that appellant shot Santos Boca while the latter was going up the stairs. This would explain the upward, left-to-right direction of the fatal wound that cut through some of the deceased's internal organs. The second shot must have hit Santos when he was already falling, hence, the downward direction of the bullet.

As regard the charge of robbery, it may be true that only Romerico declared having seen the taking of money by the accused from the pockets of Santos. But this is so because according to Romerico, Santos fell just below the place where he was hiding, and he saw the incident through a hole. And the defense failed to disprove that

Romerico had really witnessed the emptying of the pockets of the fallen man by appellant. In truth, police Sergeant Hamoy later found the deceased's pockets turned out and empty.

Of course, the defense presented witnesses who had allegedly seen the accused in Naga, Zamboanga del Sur, in the evening of 27 January 1966, and in the morning of 28 January 1966. The provincial warden of Zamboanga del Norte came out With the declaration that he was with the accused until about eleven o'clock in the morning of 28 January 1966, which would have negated the prosecution theory that said accused-appellant was in the Boca yard in Dapitan City at about 4:30 in the afternoon of the same day, considering the intervening distance.

As previously stated, however, the lower court gave due credence to the positive assertions of the prosecution witnesses, and painstakingly indicated in its decision the inconsistencies in the testimony of those supporting appellant's alibi. Between the positive declarations of eyewitnesses to the incident and the testimonies tending to support the alibi of the accused, the former deserve more weight; particularly since the defense evidence leaves a period of several hours, from 10 a.m. to 8 p.m. of the murder day, 28 January, during which the whereabouts of accused Yap are not accounted for satisfactorily. Said the court:

"... But granting as a fact that Lubaton and Suan were in Naga from 4:00 o'clock to 10:00 o'clock in the morning of January 28, 1966 although Exh. 9 on Exh. 8 shows that they were going only to Labason and Liloy, the warden did not know the whereabouts of Yap, or what Yap had done thereafter. From 10:00 o'clock in the morning to 4:00 o'clock in the afternoon of a day, it is a period of six hours. It has been earlier adverted that traveling non-stop on a rented automobile, jeepney, or jeep, from Naga to Dapitan City can be reached in five hours. Considering that Oro is only 3 kilometers from the poblacion of Dapitan, one using a motorboat will be there in about ten or fifteen minutes at the most, or in about thirty minutes if one would walk from the poblacion to Oro."

There being no mitigating nor aggravating circumstances proved during the trial, the penalty for the offense committed was correctly imposed in its medium period.

The court below awarded the heirs of the deceased Santos Boca P6,000.00 indemnity. Following the rulings of this Court,[17] this should be increased to 12,000.00.

WHEREFORE, and with the foregoing modification, the decision appealed from is hereby affirmed, with costs against the appellant.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Barredo, and Villamor, JJ., concur.

Teehankee, J., reserves his vote.

Makasiar, J., did not take part.

[1] This accused was never apprehended and has managed to remain at large.

[2] Page 2, t.s.n., hearing of 9 May 1966.

[3] Page 4, t.s.n., hearing of 9 May 1966.

[4] Page 6, t.s.n., hearing of 13 May 1966.

[5] Accused was actually placed under arrest on 10 February 1966.

[6] Pages 17, 37, t.s.n., hearing of 13 May 1966.

[7] Page 9, id.

[8] Pages 14, 34-35, t.s.n., hearing of 13 May 1966.

[9] Pages 40-41, t.s.n., hearing of 5 October 1966.

[10] Page 44, id.

[11] Page 48, t.s.n., hearing of 15 October 1966.

[12] Page 55, t.s.n., hearing of, 15 October 1966.

[13] Page 56, id.

[14] People vs. Lumayag, L-19142, 31 March 1965, 13 SCRA 502; People vs. Clemente, L-23463, 28 September 1967, 21 SCRA 261; People vs. Gumahin, L-22357, 31 October 1967, 21 SCRA 729; People vs. Alcantara, L-16832, 18 November 1967, 21 SCRA 906; People vs. Ricaplaza, L-25356, 29 April 1968, 23 SCRA 374; People vs. Espejo, L-27708, 19 December 1970, 36 SCRA 400.

[15] People vs. Labis, L-22087, 15 November 1967, and cases therein cited, 21 SCRA 875; People vs. Briosos, L-28482, 30 January 1971, 37 SCRA 336.

[16] People vs. Ricaplaza, supra; People vs. Malillos, L-26568, 29 July 1968, 24 SCRA 133.

[17] People vs. Pantoja, L-18793, 11 Oct. 1968, 25 SCRA 468; People vs. Gutierrez, L-25372, 29 November 1968, 26 SCRA 143; People vs. Buenbrazo, L-27852, SCRA 324; People vs. Nabual, L-27758, 14 July 1969, 238 SCRA 747, and many others.

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