

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MARTIN LAROSA AND DAMASO ROCAFORT, DEFENDANTS. DAMASO
ROCAFORT, DEFENDANT AND APPELLANT.**

G.R. No. L-7133. April 29, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by defendant Damaso Rocafort, from a decision of the Court of First Instance of Batangas, convicting him of the crime of robbery with homicide, with, the aggravating circumstances of nocturnity and relationship, without any mitigating circumstance to offset the same, and sentencing him to the extreme penalty, to indemnify the heirs of Eugenio Villerva in the sum of P5.00 and to pay one-half of the costs.

In the morning of March 30, 1952, the dead body of a man was found in a brook in the barrio of Macalamcam, municipality of Rosario, province of Batangas, with big chunks of adobe stone tied to the body to keep it somewhat submerged in the water. The local health officer, who made an autopsy that morning, reported the following findings:

- "(1) Swollen right mandibular region, with multiple contusions on the left side of the forehead;
- (2) Lacerated wound on the left infra-orbital region;
- (3) Lacerated wound on the upper lip, right side;
- (4) Fractured right side of the occipital region;
- (5) Contusion on the chin, left aide;
- (6) Contusion, left mandibular region;
- (7) Swelling and ecchymosis on the anterior and left side of the neck;
- (8) Abrasion on the sternal region, left side;
- (9) Abrasion on the left side of the chest near the border of the breast bone;
- (10) On opening the thorasic cavity, it was found that the heart is apparently normal in size;
- (11) The lungs are apparently normal, and upon extirpation, examination revealed that no water was inside the bronchi. Placing it on a pail of water, it floated showing that air bubbles are present;
- (12) Blood is streaming from the right ear;
- (13) Upon opening the stomach revealed that it contains partly digested rice showing that only about 3 hours has passed after partaking a meal when he died (basing on the theory that if the stomach is entirely empty, death probably took place at least 4-6 hours after the last meal). There is no presence of large amount of water inside the stomach.

"The cause of death was due to shock caused by the multiple trauma received by the deceased. The instrument used by the assailant might have been a hard blunt instrument."

As the chief of police of Rosario began an investigation on the spot, the body turned out to be that of Eugenio Villerva. A son of appellant Damaso Rocafort identified the rope with which the body was bound, as the one with which a carabao of his father was tied up to the preceding night. Moreover, it appeared that the deceased had been last seen that night together with said Damaso and his uncle, Martin Larosa. Damaso could not be found, however, anywhere in Rosario on March 30. Upon being subsequently located by the authorities, he refused to make any statement whatsoever. Upon the other hand, Martin surrendered voluntarily to the authorities and signed an affidavit stating that he had killed Eugenio Villerva at the behest of his father Ciriaco Villerva. Soon, thereafter, he (Martin) implicated, however, Damaso Rocafort, and, it appearing that some money was taken from Eugenio immediately after the assault upon him, both were accused in the Court of First Instance of Batangas of robbery of P2,000 with homicide. Upon arraignment, Martin pleaded guilty to the charge, with the qualification that the amount stolen was P5.00 only, and that the crime was committed without any aggravating circumstance. Considering, furthermore, Martin's illiteracy, his condition of drunkenness at the time of the occurrence and his voluntary surrender to the authorities, said court sentenced him to life imprisonment, to indemnify the heirs of the deceased in the sum of P5.02, and to pay one-half of the costs.

Moreover, testifying for the prosecution, Martin stated that, on March 29, 1952, between 6:00 and 7:00 p.m., Damaso sent word to him that they would go to a given gambling house that evening, as they had done several times in the past. They met, soon later, in the yard of one Gabriel Sacdalan, where Damaso's brothers-in-law, Felix Villerva and Eugenio Villerva, were also present. Soon afterwards, Felix departed, whereupon Martin (who drunk a glass of wine in that place), Eugenio and Damaso left together. After crossing, in the order given, the brook above-mentioned, some distance away from Gabriel's house, Damaso struck Eugenio on the head with a piece of wood. Forthwith, Eugenio turned around and faced Martin, who was behind him. Believing that Eugenio would lunge at him, Martin, likewise, gave him a blow. As Eugenio fell on his face, Damaso turned him over and gave him some more beating, after which he (Damaso) got the sum of P5.00 from Eugenio's pocket. Then Damaso and Martin proceeded to the gambling house, leaving Eugenio unconscious in the place of the occurrence. At about three o'clock the following morning they left the gambling place. Upon reaching the scene of the crime, they found Eugenio already dead. Damaso got a rope somewhere and tied some stones to Eugenio's body, and the same was, with the assistance of Martin, thrown into the brook already referred to.

Damaso's version is that, in the afternoon of March 29, at 4:00 p.m., Eugenio went to his (Damaso's) house and invited him to go to that of Roberto Rivera, who had previously mortgaged a land to him (Eugenio). The latter intended to urge Roberto to redeem the property, for, otherwise, he (Eugenio) would deliver it to Damaso. On the way to Roberto's house, they saw his partner, Francisco Ramos, in the yard of Gabriel Sacdalan. Francisco advised them that Roberto had gone away to raise the redemption money. Presently, Felix Villerva and then, after the departure of Francisco, Martin came. Soon later, Damaso and Eugenio proceeded to the former's house, where they took their dinner, with Damaso's children and his wife, who is Eugenio's sister. Half an hour later, Martin arrived and began to chat with them over the contemplated redemption of the land mortgaged by Roberto. After about two hours, upon Martin's suggestion, Eugenio and he left. Damaso volunteered to accompany them, but Martin dissuaded him, stating that Eugenio would spend the night in the house of Felix. Subsequently, Damaso dosed off upon a sack of mongo, until his wife bade him to go to bed, which he did. At midnight, she woke him up and asked him some food, she having delivered a child several days before. After preparing her food, he went to the gambling house above-mentioned, belonging to one Felipe. Shortly afterwards, Martin arrived and informed him that he had left Eugenio in the house of Felix. Damaso returned home alone at about 5:00 a.m.

The wife and a son of Damaso corroborated his testimony to the effect that he and Eugenio dined in their house; that subsequently, Eugenio departed therefrom together with Martin; that he (Damaso) slept in his house up to midnight; and that it was only then that he went to the gambling den.

The lower court gave, however, no credence to this alibi and adopted the theory of the prosecution. Hence, it convicted Damaso of the crime charged, with the aggravating circumstances of nocturnity and relationship, and sentenced him to the extreme penalty, to indemnify the heirs of the deceased in the sum of P5.00, and to pay one-half of the costs.

The issue before us hinges on the credibility of the testimony of the opposing witnesses. The lower court found the testimony of Martin Larosa sufficiently trustworthy, he having "testified in a candid and straightforward manner which inspires confidence." Said the trial Judge:

"After a careful review of the evidence, the court finds that though the main evidence for the prosecution comes from a polluted source, Martin Larosa testified in a candid and straightforward manner which inspires confidence. He admitted his full participation in the killing and robbery and in the disposal of the corpse and with the corroborative testimony of Fausto Villerva, Felix Villerva and Gabriel Sacdalan, the evidence for the prosecution is more than sufficient to sustain conviction of the accused Damaso Rocafort. It is true that on the fourth day after the incident and for the next two days, Larosa gave somewhat conflicting statements (Exhibits 1, 2 & 3); but the same portray the workings of a confused, timid and repentant mind. As explained by him, after making Exhibit 2, his conscience would not give him peace, so he had to make Exhibit 1 on the following day and on the third day Exhibit 3. It is noted that the later ones amplify on the earlier."

Upon a review of the record, we do not find sufficient reasons to disturb the conclusion reached by the lower court. Although the testimony of a co-accused requires careful scrutiny, it must be noted that Martin did not turn state witness under promise of immunity. He was not excluded from the charge in consideration of his testimony. Before giving it he pleaded guilty to the charge. Accordingly, he had no possible motive to falsely incriminate Damaso. On the contrary, Martin had every reason to protect him, for Damaso is the son of a sister of Martin.

It is urged by Damaso that Martin had incriminated him because he (Damaso) had previously implicated him (Martin). This pretense is untenable, for Martin had admitted, from the very beginning, his participation in the commission of the crime charged. In fact, he had voluntarily surrendered himself to the authorities. What is more, Martin tried, at first, to shield Damaso, by telling the peace officers who investigated him (Martin) that Ciriaco Villerva had induced him (Martin) to kill his (Ciriaco's) son, Eugenio Villerva. Indeed, Damaso had prevailed upon Martin to abstain from revealing his intervention in the killing of Eugenio, under promise to support his (Martin) family during his confinement in jail. Upon the other hand, Damaso had always refused to take any statement to the authorities.

At any rate, the following circumstances indicate the substantial veracity of the theory of the prosecution, to wit:

- (1) The rope with which the body of Eugenio was tied belonged to Damaso. The chief of police, who testified about this point, is, admittedly, a good friend of appellant.
- (2) Patrolman Flaviano Martija said in April, 1952, while the defendants herein were in the municipal jail of Rosario, he overheard Damaso asking Martin "Why did your uncle, right away squeal when our agreement was Whatever might happen we may not squeal?" There is no evidence that Patrolman Martija had any ill feeling towards appellant or any other possible motive to commit perjury.
- (3) This same witness overheard Damaso confessing his guilt to his counsel, who remonstrated him for his failure to reveal it earlier to him (counsel). The latter did not take the witness stand to deny the veracity of this testimony of Patrolman Martija.

(4) Damaso corroborated Martin's testimony concerning the fact that they were together in a gambling house in the evening of March 29 to 30. Needless to say, appellant's theory to the effect that it was already midnight when he left his house and proceeded to the gambling place is inherently incredible.

(5) When Damaso was brought to a room in the municipal building of Rosario where the dead body of Eugenio Villerva was, he refused to approach it and became pale and nervous.

(6) When the chief of police, who is a good friend of Damaso asked him questions, Damaso refused to say anything.

(7) Damaso absented himself from his hometown on March 30, 1952. He claimed, to have gone shopping to the neighboring town of San Juan, and to have returned to his house in the evening. But this pretense is incredible, for having returned home from the gambling place at 5:00 a.m., it is most unlikely that he would be in the mood to spend the whole day coming and going for shopping purposes.

(8) Damaso did not go to the barrio where the body of Eugenio later lay in state, and he neither gave his condolence to the relatives of the deceased, who was his brother-in-law, nor attended his funeral.

Only one more point need be touched—the motive of the killing. There is abundant evidence, partly confirmed by appellant's testimony, that Eugenio Villerva expected to collect from Roberto Rivera a certain amount of money which, together with P2,000 he (Eugenio) was believed to bring with him, he intended to invest in another loan guaranteed by a mortgage; that on March 29, 1952 Eugenio left his residence in the barrio of Tinga and went to that of Damaso, at the latter's invitation; and that said sum of P2,000 was missing when the cadaver of Eugenio was found the next day. Thus the motive appears to be robbery, although, according to Martin's testimony, the only amount taken by Damaso from Eugenio was P5.00. It is not improbable, however, that said testimony of Martin was based upon information given by Damaso as to the amount he succeeded in getting from Eugenio.

In view of the foregoing, we are of the opinion that the lower court did not err in finding appellant Damaso Rocafort guilty of robbery with homicide. Although the aggravating circumstances of nocturnity and relationship attending the commission of the offense warrant the imposition of the extreme penalty, for want of the number of votes necessary therefor the penalty of life imprisonment must be meted out to said appellant. Moreover, he should be sentenced to indemnify the heirs of the deceased, not only the sum of P5.00 stolen from him, according to the evidence, but also, the additional sum of P6,000, for the loss of life. Thus, modified as to the penalty and the indemnity, the decision appealed from is hereby affirmed in all other respects, with the costs of this instance against the aforementioned appellant. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Endencia, Barrera and Gutierrez David, JJ., concur.

Reyes, J.B.L., J., took no part.

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