

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VIVENCIO DE ROXAS, ET AL., DEFENDANTS. VIVENCIO DE ROXAS
AND BIENVENIDO LAZARTE, DEFENDANTS AND APPELLANTS.**

G.R. No. L-16947. November 29, 1962

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

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

The accused, Vivencio de Roxas and Bienvenido Lazarte, have appealed to this Court a decision of the Court of First Instance of Oriental Mindoro imposing upon each of them the penalty of death, and sentencing them, jointly and severally, to indemnify the heirs of Isidro Caunseran in the sum of P6,000.00.

These two appellants, together with Leoncio Patulot, and Emilio Patulot, were originally charged with the crime of robbery with murder, and in a separate case, with rape. Upon remand of the cases to the Court of First Instance by the investigating justice of the Peace Court of Pinamalayan, Oriental Mindoro, the cases were consolidated as one of robbery with homicide and rape. Subsequently, on motion of the fiscal, the case against Emilio Patulot was dismissed for lack of evidence, while Leoncio Patulot was discharged to be utilized as a state witness.

Despite the incomplete records that reached this Court, counsel for appellants filed his brief "believing that the records extant and now before this * * * Court are sufficient basis upon which the innocence of the accused may be gleaned and in order not to unduly delay the decision of this case", and manifested further that the case be considered submitted for decision. It appearing from the records itself that the missing portions are not substantial and will in no way affect the merits of the case nor prejudice the parties, we will now proceed to review the case.

Sufficient evidence supports the following facts:

On the night of October 12, 1964, Vivencio de Roxas, Bienvenido Lazarte, and Leoncio Patulot, under a prearranged plan, proceeded to the vicinity of the house of Isidro Caunseran in the barrio of Marayos, Pinamalayan, Oriental Mindoro. They hid in some banana groves and waited for the household to quiet down. At about eleven o'clock they took the siding of a nearby truck and utilized it to climb up to the window of Caunseran's house. Vivencio and Bienvenido climbed, while Leoncio Patulot stood guard on the ground. When the duo, who were masked with handkerchiefs covering their faces from the nose to the chin, opened the window, they were greeted by an inquiry from Caunseran, who was awakened by the noise, as to their identity. Immediately, and with the aid of a flashlight, Vivencio de Roxas approached and struck Caunseran with the butt of a gun at the bridge of his nose, between the eyes, and then stabbed him on the left shoulder with a "balisong", inflicting a wound that caused his death about a half-hour later. The two then demanded money from Naciencina Jabal, wife of Caunseran. Not content with the P50.00 that she produced, one of them ransacked the "aparador" (wardrobe) while the other stood behind Naciencina. Vivencio found P100.00 which he pocketed. Pointing the knife at the breast of Naciencina, the felons then took turns in raping her. Because of fear, as she was alone and her husband helpless, Naciencina had to surrender her flesh and honor to the lust of the two. The assailants later withdrew from the scene after warning the widow not to report the incident, and at a considerable distance from

the house divided the loot among themselves.

The principal issue in this appeal is whether the appellants were properly identified as the authors of the crime. After analysing the evidence, we find that they were. The dovetailing testimony of the widow, Naciancina Jabal, and of the prosecution witness, Leoncio Patulot, leave no room for reasonable doubt that the two appellants, Lazarte and Roxas, were the two persons who in the night of 12 October 1954, scaled the house of the late Isidro Counseran, beat him in the head with a gun butt, then stabbed and killed him, raped his wife, and ran away with the money of the couple. The statements of appellants Lazarte and Roxas, taken down by the police and sworn to by them before town mayor Pio Baldoz, confirm the testimony of both prosecution witnesses in many essential details, such as the waiting in a banana grove until everything was quiet; the use of a truck siding (barandilla) as a ladder to the window of the victim's house; the startled question of the deceased upon being awakened; the battering and killing of the husband; the robbery, and the subsequent division of the loot. The main divergence, and one to be expected under the circumstances, is that Roxas charged that Lazarte and Patulot were the ones who climbed up the house and executed the crime while he remained on guard outside. Lazarte, on the other hand, stated that it was Roxas who aided him in the perpetration of the complex offense.

The admission by the trial court of the confessions, Exhibits "D" and "E", is strenuously assailed on the ground that they were coerced and obtained through torture. The appellants rely mainly on the testimony of defense witness Leonardo Macasaet, Vice-Governor of Oriental Mindoro, who asserted in court that both appellants were tortured by PC sergeant Julian Ortiz, by placing cartridges between their fingers and pressing them together, boxing the accused, and compelling them to insert their fingers in the socket of an electric lamp. This charge was denied by the sergeant, and as pointed out by the court below, it seems absurd that Ortiz should use physical coercion on both suspects in the office of the vice-mayor and in the presence of the deputy governor. Neither does it appear that appellants complained of the alleged torture to Dr. Pio Baldoz, the mayor of the town, before whom the statements were sworn, nor showed him any injuries. Moreover, the statement of Roxas avers that it was Patulot, and not him, who accompanied Lazarte in entering the deceased's house, an exculpatory statement that does not harmonize with the coercion complained of.

The absence of any record of the formal presentation of these exhibits, "D", "E", and "F", in our opinion, does not render consideration thereof a reversible error, because repeated reference to said exhibits in the course of the trial by the counsel for the accused as well as the court's order of 26 September 1956, convincingly show that the documents were part of the prosecution's evidence.

Anyhow, even discarding these statements, there remains sufficient proof of appellants' guilt in the concordant testimony of the widow Jabal, and witness Patulot. We see no Justification for entertaining doubt that the two appellants whom Patulot accompanied to the decedent's house, and whom he saw entering through the window, on the night of 12 October 1954, were the same individuals that the widow had seen attacking her husband. The continuity of events is barely interrupted, and it is unreasonable to suppose that appellants, after entering, went out again and were replaced by two other individuals of identical appearance. No evidence even hints at such an improbable sequence.

Appellants insist that they were not properly identified by the widow, Naciancina Jabal, because she testified that the intruders wore handkerchiefs covering the lower half of their faces. But she also stated at the trial that the masks were later removed, and considering that the stabbing of her husband was followed by a search for money and the successive rapes, the removal of their masks, whether intentional or accidental, in the course of the frenzied activities that followed the killing is neither absurd nor incredible.

That appellants were really recognized by the widow is attested by her admitted failure or refusal to identify the

other suspects, of similar build, first shown to her by the investigating authorities (as a consequence of which the same were released), and her subsequent positive identification of the accused herein. That she did not know their names, and was unable to describe their appearance to the police, does not detract from her veracity, since recognition and description are different processes that do not necessarily go together. Description presupposes a facility of communication that many persons do not possess.

As previously noted, the version given in court by Leoncio Patulot is, in many respects, confirmed by the statements of the appellants themselves (Exhibits "D" and "E"); and while the said witness at first did make inconsistent statements to the police, in his affidavit of 17 October 1954 (Exhibit 1), we do not believe that such inconsistencies are enough to overturn the credit accorded by the trial court to this witness. For it is apparent from the affidavit itself that Patulot was, at that time, intent in escaping involvement above anything else, and was unwilling to disclose everything that he knew. In fact he promised to reveal all in court—"sa juzgado co na sasabihin ang lahat" (Exhibit "1").

It is next argued that it is physically impossible that the knife or balisong (Exhibit "C") exhibited by the prosecution should be the murder weapon, because of the dimensions of the wound as established by the autopsy, it being 1.07 centimeters deeper than the knife's blade is long, and 1.222 centimeters wider. This variance is not significant, as pointed out by Hoffman and Gross. The latter, in his "Criminal Investigation", notes that—

"In few cases will the length of a stabbing wound made by a knife correspond with the size of the instrument unless it be withdrawn from the body exactly as it has been inserted. What most frequently happens is that the opening made at the moment of penetration will be lengthened by the act of withdrawing the weapon." (Gross, Criminal Investigation, English tr., Adam, Third Ed., p. 418)

In fact, the same author has also explained the mechanism of an apparently greater improbability—that the wound may even be narrower than the knife blade that produced it. He points out that a blunt point often depresses the skin and stretches it before penetrating,

"but in the consequence of this depression, the skin, which is extremely elastic, is much dilated and when the pressure ceases and the knife is withdrawn from the wound, the skin contracts again, the result being that the exterior wound opening is narrower than the knife. The maximum difference between the size of the wound and that of the knife maybe, according to Hoffman, 3/8 to 3/4 inch, a quantity not to be neglected." (Criminal Investigation by Hans Gross, 3rd Ed., p. 419)

The elasticity of the soft portions of the body can likewise explain the difference between the blade's length and the depth of the wound, which is produced while the flesh is compressed by the impact of the blow, and thus appear deeper upon the return of the tissues to their original expanded condition.

The defense of alibi of both accused is not worthy of belief. De Roxas claimed that he slept in the house of Andres Manahan, and Lazarte claimed that he slept in the house of Emilio Patulot; and that neither had left the said houses on the night of 12 October 1954. These claims are not substantiated by testimony of any of the inmates of the respected houses, aside from the fact that these houses are only three kilometers distant from the house of Caunseran.

The testimony of Rodrigo Vista, witness for the defense, and held as a prisoner in Muntinglupa penitentiary for another crime, implicating himself and other persons in the commission of the present charge, did not affect the evidence for the people for lack of convincing elaboration. This witness imposed as a condition, before he would continue his testimony, that his three alleged accomplices (one of whom had escaped from prison) should be present in court, a demand that, under the circumstances, evidences irresponsibility and doubtful veracity.

We, therefore, find no reason to modify the findings of the court below. However, for lack of sufficient votes to

uphold the death penalty, the sentence is reduced to life imprisonment, as provided by law. In all other respects the judgment appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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