

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO FUENTES Y PITELO, DEFENDANT-APPELLANT.

G.R. No. L-32756. March 28, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

It is a terrible thing to say that this case which involves the death penalty is not unusual but it is true. With alarming frequency lives are lost senselessly because the cult of violence is winning more and more followers.

On October 17, 1969, a common event happened in Manila. This is what took place in the prosaic words of the information which was filed against Rogelio Fuentes y Pitelo in Criminal Case No. CCC-VI-110 (70) of the Circuit Criminal Court of Manila, to wit:

"That on or about October 17, 1969, at nighttime, purposely sought to better accomplish their criminal designs, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one Rodolfo Nartea y Apolonio who has already been charged with the same offense in the Circuit Criminal Court of Manila, docketed as CCC-VI-504, and with others whose true names and identities are still unknown, and helping one another, did then and there wilfully, unlawfully and feloniously, by means of force and violence, and with intent of gain, and without the consent of one Manuel delos Santos y Valdez, take, steal and carry away one wrist watch, "Citizen", black dial, 21 jewels, valued at P40.00 belonging to the latter, to the damage and prejudice of the said Manuel delos Santos y Valdez in the aforesaid amount of P40.00, Philippine currency; that on the occasion of the said robbery, the herein accused in pursuance to their conspiracy, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the said Manuel Delos Santos y Valdez, by then and there stabbing him several times on the different parts of his body with a balisong knife, thereby inflicting upon him physical injuries which were the direct and immediate cause of his death thereafter."

Rogelio was duly tried with the assistance of counsel de oficio and thereafter the trial court pronounced the following judgment:

"WHEREFORE, accused is hereby found guilty beyond reasonable doubt as principal of the crime of robbery with homicide, and there being proved the aggravating circumstances of abuse of superior strength and nighttime, without any mitigating circumstance to offset the same, the Court sentences him to DEATH, to indemnify the heirs of the deceased the sum of P12,000.00 for the death of the latter, the sum of P10,000.00 by way of moral damages, the sum of P10,000.00 by way of exemplary damages, and to pay the costs."

The expediente does not show that Rogelio filed an appeal but the law mandates that death sentences should be reviewed by this Court whether or not appeal has been taken. Hence, this decision.

The appellant's brief has no statement of facts. We resort to the People's brief for such a statement which has not been disputed by the appellant as follows:

"At about 8:00 o'clock in the evening of October 17, 1969, Eduardo Lozana, while on his way home to

Constancia St., Sampaloc, Manila, via Lepanto St., same district (p. 8, t.s.n., June 30, 1970), was invited by his friends, in particular by one Jabat, to a place in Don Quixote—Lepanto St., where they drank wine consisting of two bottles of Tanduay that took them two hours to drink (p. 11, t.s.n., June 30, 1970). After drinking, a member of the group by the name of Jose, said, 'Lets go' and they all proceeded to España St. (p. 6, t.s.n., June 30, 1970). While walking along España St., Eduardo Lozana lagged behind his companions as he could hardly walk because he was intoxicated (p. 11, t.s.n., June 30, 1970). Then he saw the accused Rogelio Fuentes put his right hand on the shoulder of the victim (p. 4, t.s.n., June 30, 1970) and the two of them went inside a house at the corner of Carola and España St. (pp. 4, 5, 7, t.s.n., June 30, 1970), followed by the other three companions (p. 5, t.s.n., June 30, 1970). After these five persons had gone inside the house, he proceeded to Lepanto St. and waited for them at a place four meters away (p. 8, t.s.n., June 30, 1970). There he heard the victim utter, "Maawa na kayo" (pp. 5-6, C. t.s.n., June 30, 1970). Then the four, namely, Roger, Tudy, (Rudy) Lilit and Jabat went out of the house and he followed them to Maria Cristina St. Lozana saw Jabat, Roger and Rudy with blood in their hands (p. 9, t.s.n., June 30, 1970). He also heard from them converse about the watch they got from the victim after stabbing him and where they are going to sell it (p. 10, t.s.n., June 30, 1970).

"From Exhibit "H" (Advance Report of Cpl. Ricardo B. Leonardo, pp. 28, 29, rec. Case No. 110(7) it appears that around 11:00 o'clock in the evening of October 17, 1969, a security guard of the Jose R. Reyes Memorial Hospital reported by phone to the police authorities that a still unidentified victim of stabbing was brought thereat in a very serious condition but died a few seconds later. Those who immediately responded to the call, were, Det. Ricardo B. Leonardo, with Det. Lt. D. Lumanog, Det. Sgt. H. Clemente, Det. Cpl. J. Senen, Dets. C. Guardian and E. Callos. At the hospital, the aforesaid police authorities saw the body of the victim clad in blue T-shirt and blue pants and was wearing a black shoe but the pair of it was missing. Multiple stab wounds were also noticed at the chest of the victim.

"The record of the hospital showed that the victim was brought thereat by a certain Antonio Pastor y Deang of No. 949 Instrucion and Manolo Puerto of 1612 España corner Carola St., shortly before 11:00 p.m. October 17, 1969. From the hospital Antonio Pastor and Manolo Puerto accompanied Det. Ricardo Leonardo to the scene of the crime which is a lonely house being demolished at No. 1614 España corner Carola St., Sampaloc, Manila. There, Det. Leonardo found blood scattered inside the ground of the house, coins amounting to P0.70 and still warm rice and a piece of dried fish. When Antonio Pastor and Manolo Puerto were investigated, they said that they were attending to their restaurant situated just opposite the crime scene when the victim ran inside the restaurant and slumped on one of the tables.

"It appears further in Exhibit "H" that while Pat. Nicolas Guillen of P/D3 was patrolling, he was notified by a bystander regarding the incident and tried to chase the suspects but was able to arrest two persons near the crime scene, namely, Eduardo Lozana and Romeo Garcia. The latter was released after his alibi was verified and found true.

"Eduardo Lozana when investigated by the homicide division, readily related all that happened and was even brought to the house where the incident took place, then to the victim (p. 13, t.s.n., June 30, 1970). He was later on released.

"With the revelation thus made by Lozana, the police finally had a lead on the case. Late in the morning of October 18, 1969, Det. Ricardo Leonardo, who was investigating the case, was able to arrest Rodolfo Nartea. A balisong knife (Exh. "D1") was also recovered from him (Nartea). When investigated, Rodolfo Nartea executed a sworn statement (Exh. "F", p. 26, rec. Case No. 110(70) subscribed and sworn to before Fiscal Cate, admitting authorship of the crime at the same time mentioning his companions in the commission thereof, namely, Conrado Apostol, Boy Lelit and Jose Manuel. The wrist watch of the victim (Exh. "E") was traced and recovered from the buyer by the name of Juanita Cadelina who bought the same from Rudy (Rodolfo Nartea) in the sum of P30.00. With identification of the other suspects, a teletype message was sent to all police stations for their apprehension. Accused-appellant was finally apprehended on April 8, 1970. Jose Manuel was likewise arrested but died at the North General Hospital as a result of a gunshot wound. Conrado Apostol is

still at large. Accused-appellant executed a statement admitting his participation of the crime. This was subscribed and sworn to before Fiscal Cate (Exh. "G", p. 27, rec., Case No. 110[70]). From said exhibit, accused-appellant admitted that he is sporting the alias "Boy Lelit" (Q. No. 3, Exh. G also pp. 16, 17, 18, 19, 20, t.s.n., June 30, 1970).

"The victim was identified as Manuel de los Santos by his wife Carmelita de los Santos who likewise identified the wrist watch (Exh. "E") as the one her husband was wearing on the night of October 17, 1969, when he left their house (pp. 4, 5, t.s.n., July 1, 1970).

"Results of the post-mortem examination of the body of the deceased Manuel de los Santos revealed that the cause of death was multiple stab wounds lacerating the heart, lungs, liver, stomach and intestines (Exh. "C", p. 23, rec., Case No. 110[70]; and Exhibit "B", Certificate of Death [p. 22, rec., id.]). The victim sustained 15 stab wounds (p. 2, t.s.n., June 30, 1970)." (Pp. 2-6.)

The appellant has made only one assignment of error, namely: The lower court erred in finding that the person consistently mentioned as Boy Lelit is the accused Rogelio Fuentes.

The appellant claims that the trial court "leaned heavily on the testimony of Eduardo Lozana in arriving at its conclusion that accused Rogelio Fuentes is actually the "Boy Lelit".

For reasons which are difficult to follow, the appellant claims that Lozana's testimony shows that Rogelio Fuentes and "Boy Lelit" are two different persons. But Lozana's testimony clearly shows that Rogelio Fuentes is "Boy Lelit" as shown by his testimony:

"Q.- After you waited, what happened?

A.- They went out

Q.- Who is this 'sila'?

A.-

Lilit, the accused and his companions (at page 8, t.s.n., June 30, 1970.)

"COURT:

Q.- Who is Lilit?

A.- Rodolfo Fuentes.

ATTY. SULIT:

Q.- And this Rodolfo Fuentes is the accused?

A.- Yes, sir. (p. 9, t.s.n., *ibid.*)"

The appellant states that four persons brought the deceased inside the house where the stabbing took place. Citing the statement (Exhibit "F") of Rodolfo Nartea, the four were Rodolfo Nartea, Conrado Apostol, Boy Lelit and

Jose Manuel alias Jabat. But the appellant claims that he is not Boy Lelit.

The appellant's claim is belied by his own sworn statement, Exhibit "G" which reads in part:

"1. Tanong:

Nais mo bang magbigay ng isang malaya at kusang loob na salaysay at sagutin ng buong katotohanan ang lahat ng itatanong namin sa iyo?

Sagot: Opo.

2. T:

Ano ang tunay pangalan at iba ibang bagay na nauukol saiyong pagkatao?

S:

Rogelio Fuentes y Pitelo, 21 taong gulang, may-asawa, walang trabaho, tubo sa Ligaw, Albay at nakatira sa No. 1525 Dagonoy, San Andres Bukid, Manila.

3. T: Ano ang ginagamit mong alias?

S: Boy Lelet po.

4. T: Bakit Boy Lelet ang tawag saiyong?

S: Yoon po ang tawag sa akin kahit sa aming bahay."

The defense of the appellant is alibi in addition to his disclaimer that he is Boy Lelit. He claims that on the night in question he was at home in San Andres Bukid, Manila.

The defense of alibi must fail not only because it can be easily fabricated but also because he had been positively identified as a participant in the crime and he admitted it in Exhibit "G" thus:

"6. T:

Alam mo ba na ikaw ay hinahanap ng mga pulis tungkol sa pagkakasangkot mo sa isang patayan, doon sa canto ng Carola at España St., Sampaloc, Maynila, noon Octubre 17, 1969, humigit kumulang alas 10:45 ng gabi?

S: Opo.

7. T: Ano ba ang naging participation mo dito sa patayan na ito?

S:

Ako po ang inutusan ni Jose Manuel, Alias Abat na tawagin yoong tao na napatay.

8. T: Saan lugar naroroon yoong tao nang iyong tawagin?

S: Naglalakad po sa calle España, malapit sa canto ng Carola.

9. T: Lumapit ba naman yoong tao ng iyong tawagin?

S: Opo.

10. T:

Nang lumapit yoong tao, isalaysay mo nga ang iba pang nangyari sa kanya?

S:

Inutusan nga po ako ni Abat na tawagin yoong tao; ang isip ko ay kilala ni Abat, paglapit po sa akin, aking inakbayan yoong tao, sa utos ni Abat aking kinuha ang relo, pagkatapos kong kunin ang relo noong tao, pinasok ni Conrado Apostol yoong tao, sa silong noong ginigibang bahay sa canto ng Carola at España, pagsunod ko po ay nagkakagulo na at hindi nagtagal, lumabas na kami, doon ko nalaman na sinaksak pala yoong tao, pagkat may dugo si Rudy sa kamay (Rudolfo Nartea). Kami ay niyaya ni Abat sa kanilang bahay.

11. T: Doon sa bahay nila Abat, ano ang inyong pinagusapan?

S:

Pinagusapan namin ang tungkol sa paghahati sa pagbibilhan ng relo at hindi ko na malaman ang iba pagkat lasing po.

12. T: Ikaw ba naman ay napartehan sa pinagbilan ng relo?

S: Opo.

13. T: Magkano ang iyong naparte sa pinagbilhan noon relo?

S: P7.00 po lang.

14. T: Magkano bang nabili yong relo?

S:

Hindi ko po alam, basta P7.00 ang binigay sa akin na siyang kaparte ko daw.

15. T: Alam mo bang namatay yoong tao na sinaksak ni Rudy?

S: Nabalitaan ko na lang po.

16. T:

Akin pinakikita saiyo itong isang relo na ang tatak ay Citizen, na itim ang dial, at nikilado naman ang bracelet, ano ang masasabi mo tungkol sa relong ito?

S: Yaan po ang relo na aking kinuha sa tao.

17. T: Sino-sino ba kayong magkakasama noong gabing yoon?

S:

Si Rudolfo Nartea, Abat, at Conrado Apostol po, at isa pang hindi ko kilala.

18. T:

Bago ninyo nakita yoong tao sa canto ng Carola at España, saan lugar kayo nanggaling?

S:

Sa may tulay po ng Lepanto na malapit sa Don Quixote, Sampaloc, Manila."

The sole assignment of error must fail because it has been shown indubitably that Boy Lelit who was one of the four persons who attacked the deceased is in fact Rogelio Fuentes the appellant.

Only the aggravating circumstance of nocturnity is alleged in the information but the trial court found that the crime was attended by two, namely: superiority and nocturnity. Considering the number of the assailants, the aggravating circumstance of superiority can be appreciated. But nocturnity should not aggravate the crime because there is no evidence that nocturnity was purposely chosen to facilitate its commission. On the contrary, the crime appears to have been committed on impulse because of inebriation. It is to be recalled that the malefactors had been drinking for two hours prior to the incident. And it is for this reason that the appellant is entitled to the mitigating circumstance of intoxication which does not appear to be habitual. We thus have an aggravating circumstance which is cancelled by a mitigating circumstance justifying the reduction of the penalty.

WHEREFORE, the judgment of the trial court is affirmed in all respects but modified as to the penalty only which shall be reclusion perpetua. Costs against the appellant.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.
Aquino, J., on leave.

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