

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO LAKANDULA Y ZAPANTA, DEFENDANT-APPELLANT.

G.R. No. L-31103. July 20, 1983

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

MANDATORY REVIEW of the death sentence imposed by the Circuit Criminal Court of Pasig, Rizal, upon the accused Ernesto Lakandula y Zapanta in Criminal Case No. CCC-VII-164-Caloocan City.

The said accused, Ernesto Lakandula y Zapanta was charged, together with John Doe alias Dominador Beltran and Peter Doe alias Tomas Magno, with Robbery with Homicide, in an information dated January 19, 1968 and filed with the Court of First Instance of Rizal, Caloocan City Branch, on January 23, 1968, committed as follows:

"That on or about the 16th day of December, 1967, in Caloocan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent of gain and by means of force, violence and intimidation, that is by stabbing one Fernando Saya Tan, did then and there wilfully, unlawfully and feloniously take, rob and carry away cash amounting to P200.00 belonging to Benito Tan, to the damage and prejudice of the owner thereof, in the aforementioned amount of P200.00; and as a further consequence of said force, violence and intimidation employed on the person of Fernando Saya Tan, the latter was stabbed on the vital parts of the body, thereby inflicting upon him serious physical injuries which caused his instantaneous death."

Only the accused Ernesto Lakandula y Zapanta was apprehended, and when arraigned on February 7, 1968, he entered a plea of "Not Guilty." But, for reasons, mostly due to requests for postponement by counsel for the accused on the ground that he was not ready for trial and the absence of the trial judge, the case was not heard until after the case was transferred to the Circuit Criminal Court of Pasig, Rizal. Judgment was rendered on the case whereby the said accused was sentenced, under the charge aforesaid, to suffer the death penalty and to indemnify the heirs of the deceased Fernando Saya Tan in the amount of P12,000.00, and Benito Tan in the amount of P182.00, without subsidiary imprisonment in case of insolvency, and to pay the costs of suit.

The People's version of the incident is as follows:

"Editha de la Rosa, daughter-in-law of Bernardo Tan, owner of a sari-sari store located at 2556 3rd Avenue, Caloocan City, declared that on December 16, 1967 at about 9:30 o'clock p.m., she was the one attending to the store customers (p. 10, t.s.n., July 11, 1969). She noticed four persons standing nearby the store. Of these four persons, she recognized one of them by face (p. 11, t.s.n.). Just then, a boy came in to make a purchase and as she turned around to get the boy's change, Ernesto Lakandula and a companion later identified to be Dominador Beltran rushed into the store. Ernesto Lakandula grabbed the money box (p. 11, t.s.n., Id.). Instinctively she shouted 'Robbers' and at this instance Visaya, referring to the deceased Fernando Saya Tan, who was an adopted son of her mother-in-law, came in from the kitchen and chased the two men as far as the store's iron sliding door (p. 11, t.s.n., Id.). Ernesto Lakandula felled Fernando Saya Tan with a fist blow to his chest (p. 11, t.s.n.). Fernando got up and as he prepared to rush at the accused, the latter held his (Saya's) arms

and simultaneously uttered the words to his companion 'Saksakin mo na, lumalaban.' (p. 12, t.s.n., Id.). 'Ador' stabbed Fernando with a 10 inch knife hitting the latter on the left side of the breast near the armpit (p. 12) (Pls. see Exh. 'G', p. 212, rec.). After the stabbing, the accused and his companion ran away. (p. 12, t.s.n., Id.). Fernando Saya Tan asked for help (p. 13, t.s.n.). Editha together with others who lend succor, brought Fernando to the kitchen; Fernando was later on brought to the North General Hospital where he died. (pp. 13-14, t.s.n., Id.)

"Editha further declared that the money box contained about P200.00 pesos when she counted the sales at about 7:00 p.m. that evening and that the two robbers were able to grab the money box as she was taking some change for the boy who made a purchase. (p. 15, t.s.n.).

"She was brought to the municipal building the next morning where her written statement Exhibit 'G' was taken. (p. 16, t.s.n.)

"Sgt. Dizon, detective Ramon Ignacio and Venancio Bantog who responded to a telephone call reporting the robbery, executed their joint affidavit Exhibit 'E' (p. 210, rec.) wherein they narrated that it was Major Marcelo Orozco who informed them of the incident that happened at the corner of 3rd St. and 8th Avenue, Caloocan City, and that the complainants were then at the latter's house. They first fetched the complainants from Major Orozco's house and thereafter repaired to the place of the incident where they conducted an on the spot investigation. In Exhibit 'E', they stated that several pieces of coins amounting to P6.50 were found by them scattered on the floor. They also found Exhibit 'B', the scabbard and the half pair of slipper, Exhibit 'C', which according to Editha de la Rosa Tan were left by a certain John Doe 'Ador'; that Editha pointed to Ernesto Lakandula and Rogelio Mendoza as among the four who were responsible for the robbery and stabbing of Fernando Saya Tan and when they apprehended the two suspects, they admitted their participation in the offense, but implicated John Doe 'Ador' as the one who stabbed the victim.

"They also stated in Exhibit 'B' that they were able to recover part of the loot in the amount of P18.00 from the wife of Ernesto Lakandula. (Exh. 'E', p. 210, Rec.).

"Sgt. Mendoza further declared that when they were investigating the two suspects at the police department, they admitted that when the victim resisted, Ernesto told his companion Dominador Beltran, 'Saksakin mo na, lumalaban' and Dominador Beltran did stab the deceased. (pp. 9-10, t.s.n., July 9, 1969)

"Bernarda Tan, declared that after the incident, the wife of Ernesto Lakandula, on two occasions, pleaded with her to have the case settled amicably. She offered her P800.00 in settlement of the case, but she refused. (pp. 23-24, t.s.n., July 15, 1969).

"Dr. Ernesto Ibarrola, Medico-Legal Officer of the NBI conducted a post-mortem examination of the victim and his findings were contained in his Necropsy Report No. N-7-1800. (Exh. 'A', p. 205, Rec.; p. 3, t.s.n., July 7, 1969)

"He confirmed, on the witness stand, that the deceased died due to a stab wound on the left chest which could have been caused by a single bladed instruments. (p. 6, t.s.n., July 7, 1969)."

The accused, Ernesto Lakandula y Zapanta, on the other hand, while admitting that he was near the scene of the crime when it was committed, denied participation in its commission. He also denied that he told "Ador" to stab the deceased Fernando Saya Tan. He declared that at about 9:30 o'clock to 10:00 o'clock in the evening of December 16, 1967, he went to the store of Benito Tan to buy some cigarettes. When he arrived at the store, he met Felix Itchon and Efren Esquivel who were drinking beer and talked with them. Itchon was particularly interested in securing a driver's license and asked for his assistance in securing one. While they were thus conversing, Dominador Beltran, nicknamed "Ador", came to the store to buy beer. But, Benito Tan, the storeowner, refused to sell him beer. As a result, an altercation ensued. Suddenly, the "boy" of Benito Tan, the

deceased Fernando Saya Tan, appeared and boxed "Ador" on the face, causing the latter to fall. The deceased went towards "Ador" to hit him again, but "Ador" stood up, drew a knife from his waistband, and stabbed the deceased. Then, "Ador" ran away. So did Felix Itchon and Efren Esquivel. Then, he heard gunfire and saw Benito Tan holding a gun in his hands. He told Benito Tan not to fire again as they were many people around and he might hit somebody. He then held the deceased by the shoulders and helped him to his feet. But, Benito Tan ordered him to put the deceased down (Bitiwan mo yan). So, he released the deceased. Benito Tan asked him who the assailants were, but he told Tan that he did not know them. Benito Tan, however, was insistent and warned him that "If you will not point them to me, I will include you," but he stuck to his answer that he did not know who the persons were.[1] He went home, and later that evening, he was arrested by Ramon Ignacio and Gaudencio Dizon, members of the Caloocan City Police Department and brought to the police headquarters where he was made to sign a confession,[2] after he was maltreated by the said policemen.[3]

To support his claim, the accused presented the testimony of Felix Itchon and Efren Esquivel, as well as the medical certificate issued by the medico-legal officer of the Caloocan City General Hospital who examined him in the afternoon of December 17, 1967.[4]

The trial court however, rejected the defense and found that the accused did in fact participate in the commission of the crime complained of.

We have examined the records of the case with great care and find no cogent reason to disturb the findings of fact of the trial court. The alibi of the accused that he was outside the store of Benito Tan when the crime was committed is negated by Editha de la Rosa Tan who categorically declared that the accused entered the store and took away the cash box which contained their sales for the day; that it was the accused who boxed the deceased Fernando Saya Tan on the chest, held him by the hands, and directed Dominador Beltran to stab him because he was fighting back. Editha Tan knew the accused personally so that there was no possibility of her committing an error in identifying the accused as one of the malefactors, and the appellant failed to show that she had any possible motive to falsely implicate him in the commission of the offense.

Besides, in order to accept alibi as a meritorious defense, it must be shown that it was physically impossible for the accused to be at the scene of the crime when it was committed. In the instant case, however, the accused admitted that he was in the store of Benito Tan when the crime was committed and even held the hands of the deceased in order to help him up, so that it was not impossible for him to have committed the crime as testified to by the prosecution witness.

Moreover, as the lower court said, the wife of the appellant offered to pay Bernarda Tan, the adoptive parent of the deceased, the amount of P800.00, as settlement of the case, an act which constitutes an implied admission of guilt.[5]

We also find no merit in the appellant's claim that the lower court erred in assuming jurisdiction over the case. The appellant argues that the transfer of the case from the Court of First Instance of Rizal to the Circuit Criminal Court, in accordance with Administrative Order No. 202 issued by the Secretary of Justice on May 26, 1969, was not made in the interest of the administration of justice, as stated in said Administrative Order, because the accused and his witnesses were made to travel more than 22 kilometers to Pasig, Rizal, instead of commuting a short distance from the City Jail of Caloocan City, where he had been detained since his arrest, to the City Hall Annex, where the Court of First Instance holds sessions; that, even assuming that the Secretary of Justice can legally issue Administrative Order No. 202, nevertheless, he cannot authorize the transfer or reassignment of cases arising from municipalities other than those mentioned in said Administrative Order; and that Rep. Act No. 5179, which created the circuit criminal courts, does not authorize the transfer of cases which are pending and

have been partly tried by the Courts of First Instance, as in this case where the accused had already been arraigned.

We find no justification, however, to sustain the appellant's claim that this case was transferred to the Circuit Criminal Court of Pasig, Rizal, by virtue of, and pursuant to, Administrative Order No. 202 of the Department of Justice. The said Administrative Order reads, as follows:

"In the interest of the administration of justice and upon joint petition of the Municipal Mayors of Parañaque, Las Piñas, Muntinglupa, Montalban, San Mateo, Marikina, Malabon, and Navotas, Rizal, which is favorably indorsed by the Provincial Governor, all cases arising from the aforesaid municipalities are hereby transferred effective immediately from the branches of the Court of First Instance of the province to which they are presently assigned to the branches of said Court with official station at Pasig, with the exception of those cases the trial of which have already been begun by the Judges to which they are presently assigned.

"All administrative orders of this Department which are in conflict herewith are hereby revoked."

As could be seen therefrom, only cases arising from the municipalities of Parañaque, Las Piñas, Muntinglupa, Montalban, San Mateo, Marikina, Malabon, and Navotas, Rizal, were directed to be transferred to the branches of the Court of First Instance of Rizal with official station at Pasig, Rizal. No mention whatsoever is made of cases arising from the City of Caloocan; hence, the transfer of the case to the Circuit Criminal Court could not have been effected pursuant to said Administrative Order No. 202. But, since this case had been transferred, We can only assume, as the Solicitor General stated, that, in the absence of any other showing in the records, the transfer of the case to the Circuit Criminal Court was effected in accordance with the long standing practice followed by judges of moving cases from one branch to another branch of the same court, if they are agreed that such a step would best promote the ends of justice, as in this case, which had been pending for a long time in the Court of First Instance without being heard although the accused was detained. Thus, in the case of *People vs. Gutierrez*,^[6] the Court justified the transfer of a criminal case from the Court of First Instance of Ilocos Sur to the Circuit Criminal Court of the Second Judicial District, saying:

". . . The Constitution has vested the Judicial Power in the Supreme Court and such inferior courts as may be established by law (Article VII, Section 13), and such judicial power connotes certain incidental and inherent attributes reasonably necessary for the effective administration of justice. The courts 'can by appropriate means do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of government'. (*Borromeo vs. Mariano*, 41 Phil. 322)

"One of these incidental and inherent powers of courts is that of transferring the trial of cases from one court to another of equal rank in a neighboring site, whenever the imperative of securing a fair and impartial trial, or of preventing a miscarriage of justice, so demands."

At any rate, since the appellant entered trial in the Circuit Criminal Court without raising any objection to such transfer, he cannot now be heard to protest such transfer on appeal.

IN VIEW OF ALL THE FOREGOING, the judgment appealed from should be, as it is hereby, **AFFIRMED**. However, for lack of the necessary votes, the accused-appellant who has been a detention prisoner for more than fifteen (15) years, is hereby sentenced to reclusion perpetua. With costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Guerrero, Abad Santos, Plana, Escolin, Relova and Gutierrez, Jr., JJ., concur.

De Castro, J., on sick leave.

Melencio-Herrera and Vasquez, JJ., are on official leave.

[1] t.s.n. of August 9, 1969, pp. 4-12.

[2] Exh. "H".

[3] t.s.n. of August 9, 1969, pp. 6, 13-14, 20-21.

[4] Exh. "1".

[5] Rule 130, Sec. 24, Revised Rules of Court.

[6] G.R. Nos. L-32282-83, Nov. 26, 1970, 36 SCRA 172.

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