

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SIXTO ARIOJA, ET AL., DEFENDANTS, HERMOGENES ARARAO,
DEFENDANT AND APPELLANT.**

G.R. No. L-14863. May 31, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Review of a sentence of death imposed by the Court of First Instance of Bataan, Hon. Ambrosio T. Dollete, presiding, on accused Hermogenes Ararao in Criminal Case No. 5104 of said Court, for the murder of one Mrs. Elisa Campos.

In an information filed by the Provincial Fiscal of Bataan on June 14, 1957, Sixto Arioja, Hermogenes Ararao, Pedro Verano, Alejandro Policarpio, Mario Mojica and Rufino Ararao were charged with the murder of one Mrs. Elisa Campos, with the qualifying circumstance of evident premeditation and the aggravating circumstance of nocturnity.

Sixto Arioja and Pedro Verano pleaded guilty and were sentenced accordingly, and so the trial proceeded against the other accused. After trial, judgment was rendered by the court below, finding Hermogenes Ararao guilty as leader of the group that attacked and assaulted the victim, Mrs. Elisa Campos. The court found that the crime was committed with the qualifying circumstance of abuse of superior strength and so it sentenced Hermogenes Ararao to death. This proceeding is a review of the decision of the court below, insofar as it imposes upon Hermogenes Ararao the supreme penalty of death.

The principal witness presented by the prosecution is Pedro Verano, one of the accused who had pleaded guilty of the charge. He testified that in the evening of June 6, around 9:00, Hermogenes Ararao went to his house to invite him to go serenading. Verano agreed and so went with Hermogenes. Sixto Arioja and Mario Mojica also joined them. It was their plan to borrow a guitar from some neighbors of the place where they would serenade, but they were not able to do so. In spite of the absence of a guitar they went nevertheless to the house of the girl they intended to serenade. Upon reaching the house, they gave their greetings and a man came out with a lamp. Hermogenes immediately grabbed the lamp from him and put out the light. Hermogenes ordered him to go down the stairway, to show the way, but he refused to do so. At that instant a girl went to the kitchen. Hermogenes immediately pulled her and dragged her out. Then the four brought her to the fields. Hermogenes and Arioja led the girl, while Mojica and Verano followed them. Verano asked Hermogenes where they were going and the latter answered that they were going to the fields.

Upon reaching the fields, Arioja immediately held the girl down and raped her. Hermogenes also did the same, and after him Verano himself followed. The last one to rape the victim was Mojica.

After raping the girl they brought her to a place known as Patawiran. And once there Hermogenes and Arioja declared that the girl should be killed. Verano was directed to beat the girl with a piece of wood which Mojica was carrying. At that time the girl had already fallen down because Arioja had boxed her on the arm and on the

abdomen, as a result of which she fell down. Verano followed his order and so he hit the girl with a piece of wood. After that Arioja also took the piece of wood from Verano and also hit the girl with it, Verano had hit her with the piece of wood three times, but as she appeared to be alive yet Arioja hit her again several times. After that they left the girl in the place where she had fallen down.

The other evidence submitted shows that in the morning of June 7, a detachment of the Constabulary at Cabcaben, Bataan received a report from the Commanding Officer at Mariveles, that on the previous night of June 6, Mrs. Elisa Campos was kidnapped by unknown persons. Upon receipt of the report various patrols were organized. The body of the victim was found at the place where his assailants had left her. It was already in a decomposed state. A physician examined the body and his findings are contained in his report, Exhibit "A", as follows:

"Autopsy Finding:

A female Filipina, 4 ft. 11 inches in height in a slightly decomposed state.

"External Finding:

- Bloated face; hair and face matted with dried blood; eyes bulging and tongue protruded; Nose and mouth severely contused; right jaw and neck with hematoma.
- Multiple hematoma and contusion on the anterior chest wall; scattered hematoma and contusions on both shoulder joints.
- Hematoma and contusion on both inner thighs and both knee joints.
- Contused wound on the right occipital region of the head with comminuted depressed fracture of the occipital bone.
- Severe intracranial injuries with cerebral hemorrhage.
- Negative vaginal smear for spermatozoa.

"Cause of Death:

Comminuted depressed fracture on the right occipital region of the skull with severe intracranial injuries and cerebral hemorrhage."

The first person whom the Constabulary apprehended is Pedro Verano. They subject him to questioning and they found out from him that five other persons were involved in the kidnapping and they were Sixto Arioja, Hermogenes Ararao, Mario Mojica, Alejandro Policarpio and Rufino Ararao. All these individuals were picked up by the Constabulary and their written statements were taken before the Justice of the Peace. These statements were introduced at the trial. The statement of Hermogenes Ararao was presented in court as Exhibit "C". It is embodied in the decision of the court below. So are the statements of the other accused. The incident of the kidnapping and the killing of the victim is described in the statement of Hermogenes Ararao, Exhibit "C", as follows:

"Upon arrival at the house of Mang Baswil, I was standing at a distance of three (3) arm lengths from where Sixto, Pedro Verano and Alejandro were. After a while Pedro fired the gun in front of the house. When the woman went out, Sixto, grabbed and carried her on his shoulders to the forest with our company. After Sixto had raped, he was followed by Pedro and then Alejandro. Afterwards, Sixto boxed the woman at the face, and she fell down. Then Pedro hit her with a piece of wood, and when the woman was still showing life, Sixto took the piece of wood from Pedro and with it hit also the woman. Then we went home. Upon nearing our house, Pedro ordered me to hide his firearm and the two of them threatened to kill me if I did not comply. This is all and we went home to sleep."

Pedro Verano testified that the leader of the gang was Hermogenes Ararao, who gave the orders. Verano followed the orders of Ararao because the latter was provided with a revolver, which he carried in his waist. Upon investigation, Hermogenes Ararao confessed that he had a pistol (without license) with him, and that he hid it by the creek near their house at Cabcaban, Mariveles, and that he delivered it up voluntarily to the authorities. For the illegal possession of the revolver he was also prosecuted and found guilty. All the accused in this case were also prosecuted for rape and were convicted.

There is no question that Hermogenes Ararao was among those who kidnapped and raped Mrs. Elisa Campos during the night of June 6, 1957. The only controversy revolves around the manner of his participation in the killing of the victim; for while Verano declared that he was invited by Hermogenes and the latter gave orders regarding the killing of the victim, Hermogenes, in his confession, declared that he was merely an onlooker. This is the substance of his confession in Exhibit "C". At the trial, Hermogenes did not take the witness stand and the only witness he presented in his favor was Sixto Arioja, who declared that Hermogenes was a companion of theirs in the kidnapping in the evening of June 6; that he (Hermogenes) did not do anything; and that it was he, the witness, and Verano, who raped and murdered the girl. On cross-examination, however, he was confronted with his statement, Exhibit "I". Upon being read his confession, he rejected the same and all that is contained therein, except the fact that it was he and Verano that committed the rape and hit the victim to death.

Upon examination of Sixto Arioja's statement, Exhibit "I", we find that it was Hermogenes who invited him that evening for the purpose of serenading a woman; that it was Hermogenes who called at the house of the woman and ordered her husband to go down; that it was Hermogenes who fired at the man, then ordered Policarpio to go up the house and grab the victim; that after reaching a place known as Patawiran, it was Hermogenes who told him to rape the woman and that he obeyed Hermogenes; that after they had raped the girl, they started to go home, but after they had walked 15 meters, Hermogenes told them to "sock" the woman and so they "socked" her and the woman fell down; that after they "socked" the woman, they were told to hit her, so the witness hit the woman with a piece of wood they were carrying; that after this Hermogenes ordered that the woman be hit some more so she will not be left alive.

The facts stated by witness Arioja for Hermogenes Ararao in Exhibit "I", clearly show that his (Arioja's) testimony in court, absolving Hermogenes Ararao of participation in the rape and leadership in the killing, is not true. Arioja's testimony in court is, therefore, fully discredited.

A consideration of the evidence submitted, as above indicated, satisfies Us that Hermogenes Ararao was the mastermind and the leader of the group that kidnapped Mrs. Elisa Campos and raped and killed her on the evening of June 6, 1957. His participation as leader is corroborated by the fact that he was then only one who was armed with a revolver. We also note that Hermogenes was 21 years old, Mojica, 16, Policarpio, 21, Sixto Arioja, 18, Verano, 17, so that Hermogenes was the oldest in the group, most of his companions being merely teenagers. The fact that he did not even care to testify to deny the imputation against him by Verano, or his statement taken before the Justice of the Peace, Exhibit "C", clearly shows his guilt and participation in the crime as testified to by Verano.

But while we are convinced that the finding of the trial court that Hermogenes Ararao was the leader of the group that committed the forcible abduction, the rape and the killing, the imposition of the supreme penalty on him (Hermogenes Ararao) for the killing is not justified. The information alleges, as qualifying circumstance of the crime of murder, that of evident premeditation. The evidence shows that after using the girl and after going back (distance stated in Exhibit "I" of place of rape to place of murder is about 15 meters) Hermogenes Ararao decided that the victim be killed. Certainly, no evident premeditation could have been present, because there was no previously concerted plan to kill the victim and no sufficient time elapsed between the inception of said plan, if

any, and its fulfillment. In this finding, the Solicitor General agrees.

However, it is contended by him that another qualifying circumstance, that of abuse of superior strength, attended the commission of the crime. We find that there was abuse of superior strength, not only because the conspirators were many, six in number, and one of them was armed with a revolver and another with a piece of wood. But this circumstance of abuse of superior strength can not be considered as a qualifying circumstance, for the reason that the same is not alleged in the information. It may therefore, only be considered as an aggravating circumstance. (People vs. Alonzao, L-5504, prom. July 31, 1954.)

In view of the above circumstances, we find that there is no qualifying circumstance which may be considered as having attended the commission of the crime and which will raise the crime committed to murder, because the qualifying circumstance of evident premeditation alleged was not proved, and the aggravating circumstance of abuse of superior strength, which was proved, is not alleged. The offense committed therefore is that of homicide, attended by the aggravating circumstances of abuse of superior strength and nocturnity. There is, therefore, no justification for imposing the supreme penalty of death upon the accused Hermogenes Ararao. Under the facts proved and the allegations contained in the information, Hermogenes Ararao can only be found guilty of the crime of homicide, with two aggravating circumstances of abuse of superior strength and nocturnity.

Wherefore, the judgment of conviction sentencing the accused Hermogenes Ararao to the supreme penalty of death is hereby set aside, and another one entered finding the accused guilty of homicide, with two aggravating circumstances and sentencing him to suffer the penalty of from 17 years, 4 months and 1 day as minimum to 20 years of reclusion temporal as maximum. In all other respects, the decision of the court below is hereby affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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