

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO ACEJO, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-32605. April 28, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case of robbery with homicide. At about seven-thirty in the evening of Christmas day, December 25, 1969, while the spouses Ricardo Bonifacio and Herminia Belalo were staying in their home near the fishpond of Fede-rico Dullano (they were the caretakers thereof) located at Sitio Kayawa, Barrio Bantigue, Pontevedra, Capiz, they were disturbed by the arrival of Carlito Acejo and two unidentified persons who rode in a motorized banca.

Bonifacio greeted Acejo while his wife, who had suffered a miscarriage, stayed in the bedroom. After an exchange of amenities, Acejo solicited Christmas gifts from Bonifacio. The latter said that he could give only a few pants and shirts. That answer angered Acejo.

He forthwith pulled out his knife, locally known as *sevillana*, and stabbed Bonifacio in the back while the hapless victim was held by his two companions. Bonifacio fell on his knees. While in that posture, Acejo struck him on the head with an iron bar, known as *tagad* or *tara-tara*. Bonifacio slumped on the floor.

Then, Acejo turned to Herminia Belalo and raped her. Sensing that Acejo's two companions would also ravish her, Herminia fled to the kitchen, pursued by Acejo, who hit her with another club. The blow rendered her unconscious.

After she regained consciousness, she came out of the house, waded across the fishpond and took refuge in the house of the spouses Betty Biaco and Vencio Bernas (watchers of the adjoining fishpond) about five hundred meters away. Bernas fetched her parents. She was taken to the hospital where she stayed for nine days. The doctor found that she had a laceration on the head and contusions on the arms and shoulders. There was no medical examination of her private part.

An autopsy of the cadaver of Bonifacio revealed that he had two incised wounds in the head, two incised wounds in the back, one of which penetrated his right lung, and minor wounds in other parts of the body.

Herminia, on returning to her home nine days after the incident, found that four pants, six polo shirts, a wrist watch, a rifle, a transistor radio and cash of three hundred pesos were missing. The rifle and radio were recovered and turned over to the local police through the initiative of Perlita Acejo, the mother of Carlito.

On May 12, 1970, Acejo, Tito Evangelio and John Doe were charged by the fiscal with robbery with homicide, rape and frustrated homicide. Acejo pleaded not guilty. He invoked self-defense.

His uncorroborated version was that in the evening of that Christmas day, he and Evangelio, 14, were dispatched

by his mother to get shrimps from Bonifacio, who was a godson of his mother and who, because of that circumstance, was his igso-on (spiritual brother).

As Bonifacio allegedly had no shrimps, Acejo requested that he be allowed to tarry for a while so that he could listen over the radio to a soap opera called Tita Rebecca. Bonifacio denied his request, resented his presence and advised him to leave.

Because Acejo did not leave, Bonifacio allegedly got his .22 caliber rifle and aimed it at Acejo. The latter embraced Bonifacio and stabbed him near the armpit. They were separated.

Bonifacio, armed with a tagad or an iron bar used in constructing fishpond dikes, pursued Acejo. When Bonifacio was about to hit Acejo with the iron bar, the latter was able to grab that weapon from Bonifacio. He struck Bonifacio with the tagad, hitting him on the head and also hitting his wife who was behind him (Bonifacio).

Acejo and his companion proceeded to the place where their banca was anchored. The spouses ran away in the opposite direction. Acejo brought with him the rifle and radio on the pretext that other persons might take them and he would be blamed for their loss. When Acejo arrived at the poblacion, he told his mother about the killing and he surrendered to the police.

We agree with the trial court that Acejo's plea of self-defense is not credible. It is complicated and obviously fabricated. The supposed circumstance that Bonifacio did not want Acejo to stay longer and tune in on the radio was not a sufficient motive for Bonifacio to commit an unlawful aggression against Acejo, considering that the latter was the son of Bonifacio's wedding sponsor (ninang) and bearing in mind the ingrained hospitality of our people especially during Christmas.

According to Acejo, after he struck the Bonifacio spouses with the iron bar, they ran in the direction opposite to that where he and his companions went, thus implying that Bonifacio left his house. But the fact is that Bonifacio's body was found on the floor of his house on the following morning. It was there where the rural health physician conducted the autopsy (Exh. A).

After exposing the loopholes in Acejo's story, the trial court rightly characterized it as weak and flimsy or inherently false. It correctly concluded that Acejo went to Bonifacio's residence in order to commit robbery and that, to accomplish that purpose, he had to kill Bonifacio.

The trial court regarded the alleged rape as not proven. It convicted Acejo of robbery with homicide aggravated by physical injuries, abuse of superiority, dwelling, nocturnity and use of a motorized banca and mitigated by voluntary surrender to the authorities.

It sentenced Acejo to death and ordered him to pay the victim's heirs an indemnity of thirty-two thousand pesos plus the sum of four hundred ninety pesos as the value of the articles which were not recovered.

The case was elevated to this Court for review of the death penalty. Acejo's counsel contends that the robbery with homicide was not proven beyond reasonable doubt, that there was no robbery because there was no intent to gain, and that the crime committed was homicide only.

These contentions cannot be upheld. The fact that Acejo was in possession of the rifle and radio and that his explanation as to how he came to possess the same is not satisfactory is sufficient to incriminate him and to prove that he took them with *animo lucrandi* (See sec. 5[b and j], Rule 131, Rules of Court).

His mother delivered them to the police because she knew that Acejo had no right to have them in his custody. That restitution did not affect Acejo's criminal liability because the robbery was already consummated. It merely extinguished his civil liability for those objects of the robbery.

However, the alleged taking of the pants, polo shirts, wrist watch and cash amounting to three hundred pesos was not conclusively proven. No eyewitness testified as to the taking of those articles. The testimony of Herminia Belalo that, on returning from the hospital nine days after the incident, she discovered that those articles were missing, is not a conclusive evidence that Acejo should be responsible for the loss of those things.

We hold that Acejo is guilty beyond reasonable doubt of robbery with homicide and physical injuries (See *People vs. Maranan*, 121 Phil. 620). That special complex crime was aggravated by abuse of superiority, dwelling, nocturnity and use of a motorized banca. The mitigating circumstance of voluntary surrender to the authorities is not sufficient to offset those aggravating circumstances. Hence, the death penalty was properly imposed by the trial court.

However, for lack of the requisite ten votes, the trial court's imposition of the death penalty cannot be affirmed. Therefore, reclusion perpetua is the penalty that should be meted out to the accused.

WHEREFORE, the trial court's judgment of conviction is affirmed but the accused is sentenced to reclusion perpetua and the civil liability in the sum of four hundred ninety pesos, adjudged by the trial court, is set aside. Costs de oficio.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee and Antonio, JJ., took no part.

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