

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BUENAVENTURA BULAN ALIAS TURA AND NAPOLEON ROJAS ALIAS HOB, DEFENDANTS AND APPELLANTS.

G.R. No. L-14934. July 25, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Eliseo Tiam, Sr., Buenaventura Bulan alias Tura, Napoleon Rojas alias Hob, and three others who are still at large, were charged with robbery with homicide before the Court of First Instance of Nueva Vizcaya. After trial, the court found that the crime of robbery was not clearly proved and convicted the first three accused of murder, sentencing each of them to suffer an indeterminate penalty of from 12 years and 1 day as minimum to 17 years 4 months and 1 day as maximum of reclusion temporal, with the accessories of the law; to indemnify jointly and severally the heirs of the deceased in the sum of P4,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. Bulan and Rojas were credited with half of their preventive imprisonment, while the case regarding the other unidentified accused was temporarily dismissed.

From the decision, Eliseo Tiam, Sr. Buenaventura Bulan and Napoleon Rojas appealed to the Court of Appeals. However, upon petition of Eliseo Tiam, Sr., his appeal was dismissed. The appeal of Buenaventura Bulan and Napoleon Rojas was certified to this Court on the ground that the imposable penalty under the evidence is reclusion perpetua.

On August 4, 1954, at about 5 o'clock in the afternoon, Mrs. Pacita de Guzman Peralta went to the store of Sih Hao situated at Bayombong, Nueva Vizcaya, to sell him milk fish (bangus) worth P9.60. Sih Hao handed to her a 50-peso bill but because she did not have enough change, she was told to come back later, which she did at about 7 o'clock in the evening of the same day. Upon her return, she saw Eliseo Tiam, Sr. and Buenaventura Bulan closing the front door of the store. She inquired from them where Sih Hao was and they answered that he was not there. At this juncture, one Dorotea Santiago arrived carrying a petroleum container. As the two women began their way home passing thru an alley, Mrs. Peralta heard some people talking inside the store. So the two repaired to the back door where they alternately peeped inside thru an opening about one foot wide. The store being lighted, Mrs. Peralta saw Napoleon Rojas holding the neck of Sih Hao who was standing near a table, while Bulan was holding the hands of Sih Hao, and Eliseo Tiam, Sr. an iron pipe. She also heard Sih Hao telling the malefactors that they could get all his money provided they spare his life. Later, she saw Tian with three men whom she did not recognize tie the hands and feet of Sih Hao from behind with belt and twine. And as Sih Hao lay on the table face downward, Buenaventura Bulan got an aluminum cup, filled it with hot broth, and poured it on his back and hip. Tiam and Rojas in turn got a piece of wood and used it to tighten the twine around Sih Hao's neck. At this moment, one of the three unidentified men saw Mrs. Peralta peeping thru the door and told her to go away, whereupon she hurriedly left followed by Dorotea Santiago.

The following morning, or on August 5, 1954, Major Dominador S. Dawa, PC Provincial Commander, upon

being informed of the incident, made an investigation of the store. He found Sih Hao dead on top of a table face downward with his legs and hands hogtied at the back and his face and head wrapped in a mosquito net. At the scene of the crime he also found an iron pipe, a piece of abaca twine, an aluminum cup, a piece of wood used as tourniquet, a belt, and an empty bottle of Caña rum. The autopsy performed by Dr. Amado Lumanlan, Sanitary Inspector of the Municipality of Bayombong, showed that the cause of death is shock and strangulation.

The defense put up by appellants is alibi. Buenaventura Bulan testified that on August 4, 1954, from 6 o'clock in the afternoon to 12 o'clock midnight, he was in a cabaret situated at the eastern part of the poblacion of Bayombong being in charge of preparing and collecting the tickets from the dance-girls. His testimony was corroborated by Sofia Cabauatan de Vargas, owner of the dance hall, Eliseo Cabauatan, Bulan's co-employee, Feliciano Garcia, Melito Algeria and Santiago Fernandez. Napoleon Rojas, on the other hand, testified that from 4 o'clock in the afternoon to 8 o'clock in the evening, he was in the restaurant of Mrs. Lourdes Ordonez situated in the poblacion of Bayombong playing mahjong, his testimony being corroborated by Leon D. Velasco and Justice of the Peace Floramante Tupasi.

There is no doubt that in the night in question Sih Hao was killed by appellants and their companions in a cold-blooded manner pursuant to their plot to rob and liquidate him because of his money as revealed by Napoleon Rojas in the investigation made of him by Major Dawa in connection with the incident. This clearly appears from the testimony of Mrs. Pacita de Guzman Peralta who actually witnessed how the victim was hogtied and tortured to death. The alibi interposed by appellants cannot be entertained for, as ruled by this Court, this defense can only be availed of when there is no clear evidence of their presence and participation and it is well-nigh impossible for them to be physically present at the scene of the crime. Here, not only have appellants been positively identified by Mrs. Peralta as among those who took a direct part in the killing but the places where they claimed to have been in that fateful evening are so near Sih Hao's store that the distance cannot preclude the possibility of their taking part in the commission of the crime.[1] As this Court has aptly said: "Considering that the defense of alibi is the weakest that can be put up by an accused because of the easiness with which it can be concocted, it must be supported by strong and convincing evidence to be of some avail, though the rule is always to discredit it if there is direct and positive evidence establishing the identity of the accused." (People vs. Estacio, et al., 106 Phil., 981; 57 Off. Gaz., [17] 3119.)

Appellants assail the credibility of Mrs. Peralta's testimony on the ground that if it were true that she saw what happened inside the store of Sih Hao in the night in question it is strange that she failed to reveal that incident in the two affidavits she executed, one on August 28, 1954 before Major Dawa and the other on September 3, 1954 before Justice of the Peace Vicente T. Singson of Bayombong, and revealed the same only in her third affidavit executed before said Major Dawa on October 17, 1954. And to further buttress their contention they presented as witness Juanito Ifugao who claimed that Mrs. Peralta testified for the prosecution because of the illicit relation she had with the victim, in addition to what one Arsenio Chico alias Isauro Reverente testified that Mrs. Peralta was paid P500.00 and given a cavan of rice in consideration of her testimony.

We cannot give much importance to the above claim of the defense it appearing that Juanito Ifugao had been employed in the house of Eliseo Tiam, Sr., one of the accused, as a helper or protegee which accounts for his interest in the exoneration of the accused, while Arsenio Chico was found by the trial court to be a person of questionable character having been accused or convicted in several crimes involving moral turpitude. With regard to the failure of Mrs. Peralta to state in her first affidavits what she actually saw in the store of Sih Hao which led to his tragic end, the trial court made the following interesting observation to which we agree:

"Para el Juzgado el testimonio prestado por la testigo ocular de cargo Sra. Pacita de Guzman Peralta es claro, directo, y convincente en cuanto a la participation de Jos acusados Eliseo Tiam Sr., Buenaventura Bulan alias

Tura y Napoleon Rojas alias Hob en la comision del crimen de autos. Es verdad que la testigo Sra. Pacita de Guzman Peralta no declaro todo lo que sabia del crimen de autos en la declaracion jurada que habia prestado ante el Comandante Provincial Dominador S. Dawa el dia 28 de Agosto de 1954 * * * y en el testimonio prestado por ella en la investigacion preliminar ante el Juez de Paz de Bayombong el dia 3 de Septiembre de 1954 * * *. Con todo, ella ha explicado diciendo que su omision o su falta de no haber dicho todo lo que sabia de la muerte de Sih Hao, se debio a que (1.º) dos de los acqui acusados, o sean, Buenaventura Bulan y Napoleon Rojas eran conocidos notoriamente en la comunidad como asesinos razon porque tuvo que guardar silencio sobre los hechos del asesinato de Sih Hao; (2.º) que fue ella amenazada por Mrs. Irene Tiam, esposa del acusado Eliseo Tiam Sr. de no revelar a las autoridades lo que ella vio en la noche del dia 4 de Agostos de 1954 en la tienda de Sih Hao, de lo contrario, le pasaria algo grave a ella y a su familia; y (3.º) porque no se dio proteccion a ella por las autoridades. * * * Ademias, la citada Pacita de Guzman Peralta declaro toda la verdad acerca de la muerte de Sih Hao el dia 17 de Octubre de 1954, cuando presto una declaration jurada suplementaria ante el Comandante Dominador S. Dawa * * * cuando estaba segura de que los acusados Tiam, Bulan y Rojas ya fueron arrestados y se le dio a ella proteccion por las autoridades, y reitero la misma declaracion en el testimonio que habia prestado durante la vista de esta causa."

The information charges appellants with the crime of robbery with homicide. We agree with the trial court that the crime of robbery has not been duly established for there is nothing in the evidence that would indicate that the malefactors have actually taken or carried away some property belonging to the deceased. While the word homicide was used in the information, the same was only so used in its generic sense, the fact being that it actually charges the accused with having killed the deceased with the qualifying circumstance of evident premeditation. There is enough evidence to show the presence of this circumstance, and it appearing that the crime was committed in the dwelling of the deceased which is offset by the mitigating circumstance of drunkenness as found by the trial court, the penalty prescribed by law should be imposed in its medium period, or reclusion perpetua.

Wherefore, with the modification that the penalty to be imposed upon appellants is reclusion perpetua, the decision appealed from is affirmed in all other respects, with costs.

Paras, C.J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J.B.L., Endencia, Barrera, and Gutierrez David, JJ., concur.

Bengzon, J., took no part.

[1] People vs. Masoni, et al., G.R. No. L-3973, September 18, 1952; People vs. Binsol, 100 Phil., 713; 53 Off. Gaz., 3045; People vs. Umali, G. R. Nos. L-8866-70, January 23, 1957; People vs. Pesimo, G. R. No. L-11413, March 31, 1959; People vs. Estacio, supra; People vs. Masic, G. R. No. L-12050, May 26, 1960.

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