

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SEVERO CURATCHIA, DEFENDANT-APPELLANT.***G.R. No. L-31771. May 16, 1980*

Ponente: DE CASTRO, J.

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Automatic review of the decision of the Circuit Criminal Court, 9[th] Judicial District (Gumaca, Quezon) imposing the death penalty on Severo Curatchia for the crime of robbery with homicide, committed, according to the evidence of the prosecution and as, narrated in the People's brief, which We quote, together with relevant facts, before and after the commission of the crime, as follows:

"On July 28, 1966 at 5:00 p.m., Faustino Laurista passed by the house of the accused in barrio Bantad, Gumaca, Quezon. He found there the accused and the deceased already looking drunk but still imbibing 'lambanog.' Upon invitation of the accused, Laurista joined the drinking duo. By about 5:30 p.m., they consumed one (1) beer bottle of 'lambanog.' The accused asked his nit-wit brother Briccio to buy wine from persons named Cornelio Javier and Moises Batalla hut Briccio returned empty handed. The accused then asked his wife, Iluminada, to go to the copra kiln, some 50 meters away from their house, to get cooked copra. Before going, the accused got P20.00 from Iluminada to buy rice from the deceased. The P20.00 was given to the deceased who placed it in a bag tied to his waistband. The deceased told the accused he could get the rice the following morning. Thence, Iluminada and Briccio proceeded to the copra kiln. (Tsn, October 20, 1969, pp. 2-4, 10; 12).

"By that time an inky darkness was already setting in the barrio of Bantad. Feigning care for the deceased, the accused invited him to sleep in his house and pass the night away. Un-conscious of any ill foreboding, the deceased, ostensibly still groggy from their drinking bout, readily agreed. The accused rolled a mat and laid it on that part of the house used as a bed-room. The deceased curled himself comfortably on the mat and was well on the way to slumbersville. That turned to be a one way trip to eternity. (tsn, October 20, 1969, p. 4).

"Some evil forces must have seized the accused. He got an ugly 'garrote' made of 'bahe' (hard portion of anahaw trunk) with corners on two sides about 1 3/4 feet long. He slid down to the deceased then sleeping sidewise, grabbed him by the hair, and beat him with the 'garrote' on the left side of the neck. The force jarred the deceased back to reality as he shouted, 'Severo, why are you beating me?' The curt reply by the accused was 'masama mong ugali.' That was followed by about three more garrote blows at the back of the head of the deceased. The deceased groaned and immediately gave up his ghost. Thereafter, he lifted the shirt of the deceased, took his waistband containing his money bag and put it in his pocket. (tsn, October 20, 1969, pp. 4-5, 14-15; 21; 24).

"Still cool as a cat, the accused then asked Laurista to help lift the corpse of the victim on his shoulder. He directed Laurista to follow him as he proceeded to the swollen Bantad river, some 100 meters away. He dumped the body of the deceased in the river and even removed the latter's pants. Having disposed of the body, they returned to the accused's house. In the house, the accused made Laurista partake of the proceeds of the crime by giving him six P50 bills. Laurista was however warned to keep his mouth shut on pain of liquidation of his family. The accused also washed off the blood stains on the mat and floor-ings of his house. By then, his

wife Iluminada had returned and even saw the accused give money to Laurista and washed the said splatterings of blood stain. Though Laurista informed Iluminada that that was the blood of the deceased, the former kept still in sepulchral silence. Laurista went back to his own house at around 7:00 p.m. (t.s.n., October 20, 1969, pp. 5-7, 26-27).

"On July 30, 1966, Isaac Canela, son of the de-ceased, was informed that his father had not returned home for three (3) days. The deceased's relatives knew he could not afford to be away for such a length of time without feeding his hungry fighting cocks. The search for the victim was launched in the river and in his coconut plantation. Isaac Canela was informed by one Napoleon Layag that his (Napoleon) son Franny had seen the deceased drinking with the accused in the latter's house on July 28, 1966 at about 4 p. m. Isaac Canela went to the house of the accused and asked about the whereabouts of the deceased but the accused even denied the information that the deceased has been in his house on July 28, 1966. (t.s.n., Nov. 18, 1969, pp. 34-35).

"On July 31, 1966 gloomy words were received that the body of the deceased has been discovered in the Bantad river. Isaac Canela and company rushed to the Bantad river and there found the corpse of the deceased emitting foul odor in an advanced condition of decomposition. The body was examined by Dr. Alfredo Dansico, then Municipal Health Officer of Gumaca, Quezon. The body was in a state of putrefaction, bloated, the eyes and tongue pro-truded, the skin purplish. It had an incise wound on the occipital region, left, about 2 inches above the neck, 2 inches long, 1/4 inch wide and 1/5 inch deep (Exh. B). The occipital wound affected the brain and according to the Municipal Health Officer, could have been caused by a blunt object. It was further opined that the victim was already dead when thrown into the Bantad river. (t.s.n., Nov. 18, 1969, pp. 36--37; t.s.n., October 21, 1969, pp. 3-6).

"Police investigation followed suit. On August 3, 1966, Laurista was investigated and he gave a signed statement to Patrolman Lamberto Diamante. (Exh. 4). In this affidavit, in effect, Laurista denied any knowledge about the crime. The affidavit, however, was not sworn because Laurista fearful of the accused, did not return the following day. A year after, Laurista surrendered to the NBI of Batangas. On August 7, 1967 he was brought back from the provincial jail of Batangas to Gumaca, Quezon (Exh. 5-A, 5-b). On August 9, 1967, Laurista gave another written statement to Pat. Diamante. This time, he re-vealed all the gory details of the crime committed by the accused as related above. The affidavit was sworn to before Gumaca Municipal Judge Wenifredo Armenta. (Exh. A) (tsn, October 20, 1969, pp. 7-9; 17; 22-23).

"On the other hand, the accused Severo Curatchia was arrested in barrio Montecillo Sariaya, Quezon on September 20, 1966 by Pat. Crisostomo Tarasona of the Gumaca police force. On September 21, 1966, he was brought to Gumaca and endorsed to the Chief of Police to answer for his crime. (Exh. B) (t.s.n., Nov. 18, 1969, pp. 30-34)."

The details given above, as to the commission of the crime, were testified to by Faustino Laurista, appellant's brother-in-law, who was an eye-witness to the gory killing.

In his defense, appellant's testimony suggests the possibility of accidental drowning, the serious injuries on the occipital region of the deceased's body having been caused either by stone hitting the injured part when the deceased slipped while crossing the river, or inflicted by Faustino Laurista who got angry at the deceased when the latter reproached him for eating too much, and scattering the food while the trio were having a late afternoon repast in appellant's house. The lack of positiveness in appellant's theory, which sounds more like a mere conjecture, led the trial court to observe that appellant has not put up a clear-cut defense. The theory of accidental drowning is irrecon-cilable with the fatal injuries sustained by the deceased, who would have dropped dead upon their infliction which could have taken place on land not in the river. And if Laurista was the killer, appellant could not have failed to directly impute to Faustino Laurista the commission of the offense at the very first opportunity, as counsel de oficio himself ob-served, unless he was overwhelmed by a consciousness of personal guilt (p. 12, Appellant's brief).

The theory of drowning is effectively destroyed by the fact that the body was found submerged in the water which could happen only because the body when thrown into the river, contained no air, for the deceased was no longer breathing, as the medico-legal officer opined. This opinion supports the prosecution's version given through the testimony of Faustino Laurista, that when thrown into the river, the old man was already dead. This fact is also bolstered by the doctor's opinion that the wound in the occipital region of the victim, if caused by a stone, would have been round and lacerated, not incised and elongated, and the cushioning effect of the water to the fall would have prevented so severe and fatal an injury.

But more than the mere circumstantial evidence pointed out above that do not at all support the denial of the appellant of authorship of the killing is the eye-witness testimony of Laurista directly discrediting appellant's denial and pointedly proving his guilt. While he was originally charged with appellant but subsequently discharged to become a state witness, whose testimony should thus be received with extreme caution as coming from a polluted source, Laurista is a perfectly credible witness. His testimony repeats his written statement taken by Pat. Diamante on August 9, 1967, in which he narrated in detail the very brutal manner the old man was slain. The statement was taken down long before his discharge to become a state witness, and therefore was not tailored to earn his discharge but given in the interest of truth (*People vs. Riparip*, L-2408, May 31, 1950). It was corroborated by the medical finding after autopsy, and was thus given credence thereby (*People vs. Orzame, et al.*, 17 SCRA 161). He had no motive to falsify the truth against his own brother-in-law, the appellant herein, and put the lie on the latter's story that he offered to accompany the old man towards the river, when the old man insisted on going home against his advice not to take the risk of crossing the swollen river in his state of drunkenness, but declined the offer, preferring to go home alone. The story is simply unbelievable. With the swollen waters of the river, the old man assuredly would not have wished to take so much risk, nor would appellant have allowed his old grandfather to cross the river alone, even with the latter's insistence.

Counsel de oficio himself admits his inability to find any reversible error in the decision under review. In analyzing the evidence, he expressed full concurrence in the observation of the court a quo that appellant has not put up a clear-cut defense (p. 12, Appellant's brief). He has, in fact, strengthened the basis of appellant's conviction with his logical and sound evaluation of the evidence, as he gave more force to the ratiocination of the trial court, when he lined up the facts and circumstances disclosed by the evidence to bring out more vividly their inculpatory effect and implication.

Counsel de oficio, almost with an apologetic tone, has admitted his inability to find any prejudicial and reversible error in the decision of the court a quo, as he would have wished and had endeavored so to do, conscious as he is that the law providing for an automatic review of a death sentence seeks to favor the defendant (*People vs. Bocar & Castelo*, 51 O.G. 4043). He may, however, keep his peace in the thought that he has done his duty not only to his client but also to the court in helping the latter avoid, by his fair and well-founded analysis of the evidence, being misled into errors not consistent with the truth which the review seeks to ascertain, and, therefore, assure that justice is done to all parties concerned.

We are thus morally convinced that appellant killed the old man with the intention of robbing him of his money. As correctly found by the court a quo, treachery attended the killing, and fraud was employed when appellant induced the old man to sleep in his house because of the lateness of the night, but only as a pretext to facilitate the accomplishment of his evil purpose. The crime was committed also in disregard of the respect due to the victim on account of age and relationship, appellant being a grandson of the deceased, justifying the imposition of the death penalty for the crime charged -- that of robbery with homicide. However, for lack of the necessary votes, the death penalty may not be imposed.

WHEREFORE, the judgment of conviction is affirmed, but the penalty imposed therein is hereby modified by

changing it from death to life imprisonment, for lack of the necessary votes. With costs.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.

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