

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODRIGO FONTANILLA Y LEGASPI, DEFENDANT-APPELLANT.***G.R. No. L-26382. October 31, 1969*

Ponente: CONCEPCION, C.J.

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Appeal by defendant Rodrigo Fontanilla, from a decision of the Court of First Instance of Negros Occidental, convicting him of the crime of robbery with homicide and sentencing him to life imprisonment, as well as to indemnify the heirs of Basilio Lopez in the sum of P6,051.00 and to pay the costs.

On July 9, 1965, the lifeless body of Basilio Lopez was found, in an advanced state of decomposition, floating on the Ma-ao river, near Hacienda Consolacion, in the barrio of Ma-ao, Municipality of Bago, Negros Occidental. After making inquiries, Sgt. Claudio Latido, of the local police force, learned from Antero Loraina that, a few days before, he had paid P45.00 for a pig sold to him by Lopez. Thereupon, Latido went to the house of Lopez - seemingly to ascertain the whereabouts of the money -but found that the place had been ransacked and that there were blood stains on the stairs and on a path leading to the river, five (5) fathoms away. Upon further inquiry, Latido was informed by Sergio Teves that two (2) fighting cocks and a hen belonging to Lopez were then in the possession of appellant Rodrigo Fontanilla. So, Latido went to the house of Fontanilla and asked him what he knew about the death of Lopez. As Fontanilla disclaimed any know-ledge about it, Latido departed. Before going up said house, Latido had, however, posted two (2) policemen below the same, with in-structions to watch the place. Upon Latido's departure therefrom, the policemen overheard Fontanilla tell his wife that the killer of Lopez could not be caught. Although she replied: "because you really killed him," Fontanilla did not deny the imputation. The policemen immediately reported this to Latido, who, soon thereafter, picked up Fontanilla and brought him to the police station, in Ma-ao. The next day, he was taken to the Chief of police, in the poblacion of Bago, to whom he admitted his guilt. After typing Fontanilla's confession, the Chief of Police brought him to the municipal judge of Bago, Hon. Manuel H. Javelona, to whom Fontanilla affirmed, under oath, that he had made it voluntarily and that the contents thereof are true. Brought back, thereafter, to the scene of the oc-currence, appellant re-enacted the same in the presence of residents of the locality.

In his confession, appellant stated that on July 27 (meaning June 27) 1965, Lopez went to his (appellant's) residence and took therefrom two (2) roosters he (Lopez) had previously sold to him (appellant) for P4.00, and a hen, with eleven (11) chicks, Mrs. Lopez had entrusted to his care, before leaving for Negros Orien-tal; that, when he reminded Lopez that he (appellant) had already paid for said roosters, he (Lopez) replied that the price thereof would be refunded, and bade him (appellant) to go to his (Lopez') house, if he (appellant) wanted to talk about it; that, accordingly, he (appellant) planned to get back the roosters and his share of the chicks, without any intent of killing Lopez; that, on July 29 (mean-ing June 29) 1965, he (appellant) went to the house of Lopez at about 7 p.m.; that, after exchanging the usual greetings with Lopez, who was in his yard, gathering firewood, appellant said that he had come for the roosters; that, in reply thereto, Lopez re-marked that he (appellant) wanted the roosters because he had paid very little therefor, and that its price would be reimbursed as soon as he had the

money; that this remark enraged him (appellant), whereupon he took hold of a piece of wood and struck Lopez with it, on the head; that, as Lopez staggered to the ground, he (appellant) hit him again and again, until he slumped down unconscious; that, when he (appellant) noticed that Lopez was dead he dragged his body and tossed it into the river, after taking P51.00 from a black leather wallet found in one of his pockets; that he, likewise, threw into the river the piece of wood with which he had clubbed Lopez, as well as said wallet and some papers; that, thereafter, he (appellant) returned home and hid the money in an object made of bamboo; that, the next day, he went back to the residence of Lopez, took therefrom the roosters, which were tied under his (Lopez') house, and brought them to his (appellant's) home; and that, on July 4, 1965, he lost said money playing "monte" in the house of Pacing Sol, in Ma-ao, Bago.

Judge Javelona testified that he interviewed Fontanilla, who narrated to him the events leading to the killing of Lopez and swore that he had voluntarily made the aforesaid confession and that the contents thereof are true.

Appellant denied having committed the crime charged. He said that, as he pleaded innocence, in the police station at Ma-ao, he was beaten up by Sgt. Latido, until he (appellant) lost consciousness and vomited blood; that, to avoid further suffering, which he could no longer endure, he agreed, the next day, to anything demanded of him by the police, even to the point of groggily implicating Sergio Teves and Abraham Labuyo - who were, accordingly, investigated and later released by the police - although he really did not know whether or not they had had any participation in the killing of Lopez; that when, thereafter, he was brought to the Chief of Police, in the poblacion of Bago, he (appellant) admitted everything imputed to him; and that he similarly reiterated this admission, still later, before Judge Javelona.

Appellant's wife, Erlinda Legaspi, declared that, when she saw him in the police station at Bago, there were contusions all over his body and his clothes were blood stained; yet, she never told anybody about it. Moreover, nobody, apart from her, much less a physician, has ever examined or seen any of the contusions allegedly sustained by appellant, although Judge Javelona - to whom he (appellant) ratified the contents of his confession and swore to the truth thereof - would not have failed to notice said contusions, had the same been as extensive as Erlinda Legaspi would have us believe.

Then, again, the exculpatory matters incorporated into the confession, such as appellant's alleged lack of intention to kill, when he went to the residence of Lopez; the simple, natural and logical flaw of his narration therein; the details given, such as the place where he kept the P51.00 he took from the body of Lopez, and the fact that he (appellant) lost the money, on July 4, 1965, playing "monte" in the house of Pacing Sol, in Ma-ao, Bago; the mistakes committed in the confession, in mentioning July 27 and 29 as the dates of events that had happened on June 27 and 29; and the fact that the object used by appellant to kill Lopez was a piece of wood, according to said confession - although the physician who examined the body of the deceased, about a week before, stated that the latter had an incised wound, at the nape of the neck, cutting important blood vessels and nerves that must have caused death through severe hemorrhage - leave no room for doubt that His Honor, the trial Judge, had not erred in not believing the testimony of appellant and that of his wife; and that the contents of said confession were not figments of the imagination of either Sgt. Latido or the Chief of Police, to which appellant had merely assented, and could not have been but freely and voluntarily supplied by appellant himself, without any compulsion except that springing from his guilty conscience.

Indeed, there is an additional fact that conclusively belies his claim of duress, and that is that the same was allegedly applied by Sgt. Latido in Ma-ao, whereas the confession was taken by the Chief of Police in the Poblacion of Bago, where, apparently, Latido did not participate and was not even present. Appellant was, seemingly, so free from any duress in this place that he even claimed to have advised the Chief of Police and Judge Javelona of the beating he had allegedly received from Latido in Ma-ao. Incidentally, appellant's testimony

to this effect merely reveals his lack of veracity, for Judge Javelona affirmed that appellant had not only declared under oath that his confession had been freely made and that its contents are true, but, also, narrated the circumstances surrounding the occurrence.

Needless to say, Latido denied having laid hands upon appellant. Besides, upon his apprehension in the evening of July 15, 1965, appellant was taken to the police station of Ma-ao, where Latido left him, on account of the high fever he then had, with instructions to the policemen on duty there to bring appellant to the Chief of Police, in the town of Bago, which they did. What is more, appellant re-enacted the commission of the crime in the presence of other persons.

One point requires a clarification. The physician who examined the body of Lopez said that he must have died in consequence of an incised wound in the nape of the neck, but appellant's confession shows that he had merely clubbed Lopez. This seeming contradiction was, however, explained in the decision appealed from. The autopsy was performed when the body of the deceased was in a very advanced state of decomposition, after having been in the river for ten (10) days. His Honor, the trial Judge surmised that said incised wound "might have been caused by sharp objects," as the body was "carried by the current of the river."

Everything considered, We are satisfied that appellant's confession is not tainted with duress and that he had killed Basilio Lopez in the manner stated in said confession. Pursuant thereto, his acts do not constitute, however, the special complex crime of robbery with homicide of which he is accused, since his purpose in going to the residence of Lopez and beating him to death was not to steal. It should be noted that he merely wanted to get back the roosters belonging to him, for he had admittedly bought them from Lopez, who had been fully paid therefor and had taken the roosters from appellant's house without his consent and without refunding its price. The sum of P51.00 was taken by appellant, when he found it in one of the pockets of Lopez, before tossing his dead body into the river. In other words, the thought of carrying away said amount came after the killing had been consummated, and as a mere incident of the task of disposing of or concealing the corpse of the victim.[1]

We cannot even convict appellant of the crime of robbery, separately from said killing, the only evidence on the appropriation and taking away of the aforementioned sum of P51.00 being his confession, which is not corroborated by evidence of the corpus delicti, insofar as said amount is concerned, inasmuch as the same has never been found, he having lost it in gambling, according to his confession, and, independently thereof, there is no evidence of its presence in the body of Lopez, at the time of the occurrence.[2]

As a consequence, appellant is merely guilty of homicide, and, no modifying circumstance having attended its commission, he should be sentenced to an indeterminate penalty of from 8 years and 1 day of prision mayor to 14 years, 8 months and 1 day of reclusion temporal, with the corresponding accessory penalties, and to indemnify the heirs of Basilio Lopez in the sum of P12,000,[3] without subsidiary imprisonment, in view of the nature of the principal penalty.[4]

Thus modified, as to the characterization of the crime committed, and the penalty, as well as the indemnity therefor, the decision appealed from should be, as it is, accordingly, affirmed, in all other respects, with costs against appellant Rodrigo Fontanilla.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.
Barredo, J., did not take part.

[1] *People v. Manuel*, 44 Phil. 333, 341; *People v. Elizaga*, 86 Phil. 364; *People v. Glore*, 87 Phil. 739; *People v. Atanacio*, L-11844, Nov. 29, 1960.

[2] Rule 133, Sec. 3, of the Rules of Court. *U.S. v. De la Cruz*, 2 Phil. 148; *U.S. v. Agatea*, 40 Phil. 596; *People v. Batangan*, 54 Phil. 834; *People v. Cruz*, 76 Phil. 666; *People v. Nazario*, 77 Phil. 1047; *People v. Ansang*, 93 Phil. 44, 47; *People v. Garcia*, 99 Phil. 381, 384-385; *People v. Abrera*, L-20038, July 28, 1966; *People v. Manobo*, L-19798, Sept. 20, 1966; *People v. Gamao*, L-19347, Feb. 27, 1968.

[3] *People v. Pantoja*, L-18793, Oct. 11, 1968; *People v. Sangaran*, L-21757, Nov. 26, 1968; *People v. Gutierrez*, L-25372, Nov. 29, 1968; *People v. Buenbrazo*, L-27852, Nov. 29, 1968; *People v. Bakang*, L-20908, Jan. 31, 1969; *People v. Labutin*, L-23513, Jan. 31, 1969; *People v. Acabado*, L-26104, Jan. 31, 1969; *People v. Vacal*, L-20913, Feb. 27, 1969; *People v. Gonzales*, L-23303-04, May 20, 1969; *People v. Tapac*, L-26491, May 20, 1969.

[4] Art. 39, Revised Penal Code.

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