

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO BALANAG ALIAS “PEDRING,” ACCUSED-APPELLANT, TITO BALANAG ALIAS “ANDRES,” (AT LARGE) AND ROBERTO BALANAG ALIAS “BERTO,...

G.R. No. 103225. September 15, 1994

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Federico Balanag and father and son Roberto and Tito Balanag were charged with Robbery with Homicide.[1] The Information against them, dated March 14, 1986, reads:

"That on or about the 24th day of November, 1985, in the Municipality of Aringay, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one Serafin Dacanay y Ordonio who is now deceased, and helping one another, and being then armed with handguns and bladed and/or sharp-pointed weapons, did then and there wilfully, unlawfully, and feloniously with intent to gain and by means of force, violence and intimidation, and taking advantage of nighttime, enter the dwelling of one Dr. Guillermo Lopez y Ferrer and once inside, take, steal, and carry away a shoulder bag containing a diamond ring and earrings worth P3,000.00, a United States fifty dollar bill (US \$50.00), Philippine currency in the amount of Two Hundred Pesos (P200.00), as well as a mini-stereo cassette valued at Two Thousand Pesos (P2,000.00) belonging to Genoveva L. Obra, a daughter of the aforementioned Dr. Guillermo Lopez y Ferrer, and with intent to kill, by reason or on occasion of the afore-described robbery, treacherously and taking advantage of their superior strength shoot with the said handguns and stab with the said bladed and/or sharp-pointed weapons the aforementioned Dr. Guillermo Lopez y Ferrer, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter, to the damage and prejudice of the heirs of the said Dr. Guillermo Lopez y Ferrer.

"That in the commission of the offense, the following aggravating circumstances were present: (1) the above-named accused took advantage of nighttime, to facilitate the commission of the offense, (2) the offense was committed in the dwelling of the offended parties (3) the killing of the victim Dr. Guillermo Lopez y Ferrer was committed with an unlicensed firearm.

"CONTRARY TO LAW."

Tito and Federico were arraigned on April 17, 1986. They pleaded not guilty[2] and underwent trial. Roberto Balanag, on the other hand, has remained at large. Before the prosecution could finish cross-examining Tito Balanag, he absconded.[3] He was thus tried in absentia.

The essential facts came mainly from the testimonies of eyewitnesses Iluminada Lopez and Genoveva Lopez y Obra.

On November 24, 1985, at about 7:30 P.M., GUILLERMO LOPEZ, SR., a dentist, was talking to his wife, ILUMINADA LOPEZ, in the living room of their house, situated in Sitio Salapac, Aringay, La Union, while their

daughter, GENOVEVA LOPEZ y OBRA, was in the kitchen, brushing her teeth. Suddenly, three (3) men barged into the front door of Dr. Lopez' house. Iluminada and Genoveva recognized two (2) of them as their neighbors TITO BALANAG (a.k.a. Andres) and FEDERICO BALANAG (a.k.a. Pedring). The third man, whom the Lopezes had seen for the first time, was later identified as SERAFIN DACANAY, a "compadre" of Federico.

Serafin immediately announced a "hold-up." He poked a gun at the head of Iluminada, held her arm and then led her towards Genoveva's room on the second floor of the house. Serafin demanded money and other valuables from Iluminada. She then summoned Genoveva to give her the keys to the cabinet. Her daughter followed.

Upon seeing Genoveva upstairs, Serafin also poked the gun at her head. Genoveva thus obediently proceeded towards the cabinet, near the door of her room, and she was about to open the cabinet when her father, Dr. Lopez, rushed upstairs. As Dr. Lopez was ascending the stairs, Serafin yelled at him saying: "Okinam nga lakay sica ti ngangidarum quen Berto Balanag (Vulva of your mother, you are (sic) the one (who) filed a case against Berto Balanag." [4] He shot Dr. Lopez who fell down the stairs which had no railings. Downstairs, the victim was met by accused Tito Balanag who stabbed him (the victim) with a dagger. Serafin then went downstairs and, likewise, stabbed the victim. Seeing the helpless condition of her father, Genoveva screamed. She and her mother also rushed downstairs. Iluminada thought of asking for help from their neighbors. Thus, she ran past her husband and proceeded outside their house thru the backdoor. Genoveva, on the other hand, went to her father's aid as Serafin continued assaulting her father. During the commotion, Tito and Federico fled, taking with them Genoveva's shoulder bag containing a diamond ring and earrings worth three thousand pesos (P3,000.00); fifty dollars (US \$50.00) cash; two hundred pesos (P200.00) cash; and a mini-stereo cassette, valued at P2,000.00.

Iluminada had barely stepped out of the house when she was blocked by "Berto" (Roberto) Balanag, Tito's father, who aimed his gun at her. Iluminada quickly retreated to the house and closed the backdoor. She stood behind the door and locked it as Berto tried to force his way in.

In the meantime, Genoveva and Serafin grappled for the bolo of the latter. Irked, he lunged at her, but she bravely parried the thrust with her arm. Her left forefinger was cut in the process. Serafin also fired at her but missed. By stroke of luck, Genoveva managed to get a bolo and attacked Serafin in self defense. Serafin died. So did the wounded Dr. Lopez. Several neighbors of the Lopezes who heard the commotion arrived at the scene. One of them, a certain Jose Dulay, reported the incident to the authorities.

That evening, police authorities, namely: Station Commander P/Sgt. Alejandro Basallo, Pfc. Benjamin Rulloda, Pat. Simeon Madarang, and Pat. Wilson Argame inspected the locus criminis. They found the bloodied bodies of Dr. Guillermo Lopez and Serafin Dacanay, sprawled on the floor. They also recovered the following: a Ruby Magnum, Cal. 22, with serial no. 05522; two (2) bolos soiled with blood; a double bladed dagger; six (6) empty shells; and one live ammunition found inside the gun's chamber.

Dr. Armando Avena, Medical Officer of the Rural Health Unit of Doña Gregoria Memorial District Hospital in Aringay, La Union, conducted the postmortem examination on the victim's body. Based on his examination, Dr. Lopez sustained abrasion wound, two (2) stab wounds, and multiple gunshot wounds (on the right breast upper outer quadrant, right zygomatic area and right upper lip). [5] Dr. Avena also treated Genoveva Lopez Obra who sustained lacerated wound on the 3rd left forefinger. [6]

According to the widow, Iluminada, her dentist husband used to earn P10,000.00 monthly. At the time of her husband's death, they had three (3) children in college. She suffered mental anguish and could hardly sleep or eat upon her husband's death. During the two weeks wake for her deceased husband, she spent, more or less, P25,000.00.

Federico Balanag interposed the defense of alibi. In the morning of November 24, 1985, he was allegedly in a farm in Salapac, Aringay, La Union, together with his brother Renato and mother-in-law, Florencia Hidalgo. At about 5:00 P.M., after a day's work of threshing palay, they proceeded towards Federico's house. They arrived home at 5:30 P.M., and dined together thirty minutes later. Thereafter, Federico slept in the room with his youngest son Ronald. His wife, Teresita and the rest of the family went to bed at 8:00 P.M.

According to Teresita, her husband was sound asleep when she woke up at around 11:00 P.M. to urinate. She then nursed her eight-month old baby and stayed awake until midnight. At around 2:00 A.M. the following day, the policemen came and took her husband with them. She learned later that Dr. Lopez had been killed. She and her daughter Gina visited Federico in jail. On their way to the municipal building, they passed by the house of the victim. There were several persons in the vicinity but she did not inquire what happened.

At the police station, Teresita noticed that her husband had bruises. He then told her he was manhandled by Station Commander Alejandro Basallo.

Gina Balanag corroborated the testimonies of her parents pertaining to the whereabouts of her father, the accused-appellant. She averred that on November 24, 1985, she went to school at about 6:30 A.M. She returned home from school at 4:30 P.M. She saw her father an hour later. Her father slept at 7:30 P.M. after dinner.

She claimed further that, at about 6:30 A.M., the morning following the incident, she was on her way to school. As she was nearing the house of Dr. Lopez, Genoveva and the latter's sister who was then carrying a wooden stick ("malo"), were waiting for her (Gina) and her companions ("Agharang da amin"). She decided to skip school.

The Balanags described their dwelling as a one room house that it would not be possible for them to leave without being seen or noticed by the other members of the family. Prior to the robbery and killing, the Balanags were in good terms with the Lopezes. Federico denied he was in the company of his cousin Tito Balanag and Serafin Dacanay that fateful evening of November 24, 1985. He admitted, however, that Serafin was the godfather of one of his children.

After trial, the court a quo found Federico Balanag and his co-accused Tito Balanag guilty of Robbery with Homicide.[7] They were meted the penalty of reclusion perpetua. The court a quo also ordered accused-appellant and Tito Balanag, to indemnify, solidarily, the heirs of the deceased Dr. Guillermo Lopez, the following amounts:

- a) P 50,000.00 -- for the death of Guillermo Lopez;
- b) P 48,110.00 -- as actual damages;
- c) P 20,000.00 -- as moral damages; and
- d) P172,000.00 -- for loss of earning capacity.

Both accused appealed.[8] However, Tito Balanag, who has remained at large, did not file the required Appellant's Brief. His appeal was considered abandoned for failure to prosecute his appeal and, more importantly, for his refusal to submit himself to the jurisdiction of the authorities.[9]

Accused-appellant Federico Balanag now contends:

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED, FEDERICO BALANAG, OF THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE AND/OR IN NOT EXONERATING HIM OF THE OFFENSE."

We affirm the judgment of conviction.

Prefatorily, the defense assails the validity of the Criminal Complaint, dated November 27, 1985,[10] and the amended Criminal Complaint, dated December 2, 1985,[11] filed by investigating officer P/Sgt. Alejandro Basallo, on the ground that the owner of the stolen items Genoveva Lopez y Obra, was not identified. She was merely referred to as the "offended party." Accused-appellant avers that a valid complaint for robbery, must specify the owner of the stolen property, considering that the phrase "personal property belonging to another," as an essential element of the crime of robbery, should be clearly established.[12] He claims, further that he could not be convicted of the crime of robbery with homicide since the victim of the robbery, Genoveva Lopez y Obra, did not file any complaint for robbery, and the person killed, Dr. Guillermo Lopez, was not robbed of his personal belongings. The argument lacks merit.

We need not delve lengthily on the cited defect in the Criminal Complaint and Amended Criminal Complaint since the said error was corrected in the Information, dated March 14, 1986.[13] Said information alleged that the stolen items belong to Genoveva Lopez y Obra, daughter of Dr. Guillermo Lopez.

We have also ruled that in this kind of a complex crime, the victim of the robbery need not necessarily be the victim of homicide.[14] Thus, in *People vs. Disimban*,[15] we affirmed the conviction of the accused for robbery with homicide although the robbery victim was different from the homicide victim. There is *robo con homicidio* even if the victim killed was an innocent bystander.[16] Or that death supervened by mere accident, provided that the homicide was produced by reason or on the occasion of robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration.[17] In the recent case of *People vs. Pamintuan*,[18] the accused prisoners were held liable for robbery with homicide although the items robbed, i.e., five (5) shotguns and three (3) guns, Ruby Cal. 22, belong to the armory of the Provincial Jail of San Fernando, Pampanga, and not the personal properties of the homicide victims, the provincial jail guards.

We now come to the more important issue of whether the guilt of accused-appellant was established beyond reasonable doubt. We rule in the affirmative.

At least two credible witnesses, Iluminada and Genoveva, positively identified accused-appellant Federico Balanag as among those who barged into their house that tragic evening. Genoveva even saw accused-appellant when he fled from the scene, taking with him a mini-stereo cassette. These eyewitnesses could not have been mistaken as they knew Federico and Tito even before the incident. The records reveal that the Lopezes and the Balanags were neighbors since birth.[19]

It was also not improbable for the eyewitnesses to recognize the faces of the culprits. According to Genoveva, the accused were not wearing masks, albeit Serafin was wearing a hat. At that time, too, the place of incident was well lighted as 50 watts electric bulbs, installed along the porch, in the living room and the kitchen, were on.[20]

The credibility of these eyewitnesses is further enhanced by the fact that Iluminada and Genoveva had no ill feelings against Federico prior to the incident. Accused-appellant himself confirmed this lack of ill motive.[21] Thus, we see no reason to depart from the well established rule that when there is no evidence to show that the prosecution witnesses were actuated by improper motive, their identification of the accused should be given full faith and credit.[22]

Nonetheless, accused-appellant stresses that nobody testified on his participation to the killing. He points out that, since there was no proof of conspiracy, he could not be held responsible for the death of Dr. Lopez. We hold otherwise.

Conspiracy need not be proved by direct evidence of prior agreement to commit the crime. It could be inferred

from the conduct of the accused before, during or after the commission of the crime, showing that the accused had acted in unison with each other, evincing a common purpose or design.[23] The circumstances in field show the existence of conspiracy among accused-appellant and his cohorts. Federico, Serafin and Tito simultaneously barged thru the front door of Dr. Lopez' residence. To further secure the area, Roberto Balanag stood on guard at the back portion of the house. Serafin then led Iluminada upstairs, while Tito and Federico stayed downstairs. Their plan was almost perfect and would have been successful if Dr. Lopez did not attempt to rescue his wife and daughter from Serafin. Dr. Lopez' unexpected resistance, albeit futile in the hands of the armed robbers, aborted the well-planned robbery. Thus, Tito and Federico hastily got Genoveva's shoulder bag and the mini-stereo cassette. They fled together, leaving behind Serafin who was still grappling with Genoveva. Without a doubt, accused-appellant acted in unison and cooperated with his companions in committing the robbery.

It is settled that when homicide is committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be liable as principals of the special crime of robbery with homicide, although they did not actually take part in the homicide. The exception to the rule is when it is clearly shown that they endeavored to prevent the unlawful killing.[24] In this case, there is no evidence that accused-appellant tried to prevent the killing of Dr. Lopez. His claim of innocence is belied by the fact that, after Dr. Lopez was shot and stabbed by his cohorts, he carried away the mini-stereo cassette of the Lopezes. Accused-appellant was, therefore, correctly found guilty of the special complex crime of robbery with homicide.

Accused-appellant's defense of alibi cannot succeed because of circumstances pointing to its contrived nature and his positive identification by the prosecution witnesses.[25] The records show that accused-appellant's house was about 120 meters from the house of the Dr. Lopez, thus, it was not physically impossible for him to be at the scene of the crime and to commit the crime.[26]

The testimonies given by accused-appellant's wife and daughter vis-a-vis that of eyewitnesses Iluminada and Genoveva, do not inspire belief. For one, Gina lied when she testified she attended school on November 24, 1985. When confronted that it was a Sunday, she got confused and said she went to school on November 22, 1985 or January 22, 1985. Gina also denied knowing Dr. Lopez, only to admit later that she knew him as he was their neighbor.[27] She also claimed that Genoveva and her sister waited for them after the incident, prompting her not to proceed to school. On cross-examination, however, Gina admitted that she was not sure if they were really waiting for them.

The testimony of Teresita appears to be more consistent in contrast to her daughter's story. However, the trial court gave greater credence on the prosecution witnesses' testimonies. It is settled that when the issue of credibility of witnesses is involved, appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked which if considered, might affect the result of the case.[28]

Robbery with Homicide is punishable with reclusion perpetua, notwithstanding the aggravating circumstances attending the commission of the crime,[29] since at the time of the commission of the offense, Congress had yet to restore the imposition of death penalty.

In connection with the civil liability of accused-appellant, the award of P48,110.00, for actual or compensatory damages, is not fully supported by evidence. The records show that the total amount incurred for burial/funeral expenses was P19,482.00, not P23,110.00.[30]

Anent Mrs. Lopez' additional claim of P25,000.00 for the expenses incurred during the two weeks wake for the victim, we find the said claim reasonable considering the social standing of the Lopezes in the community. The

Lopez are prominent in their place, not to mention they belong to a big family, (Mr. and Mrs. Lopez sired 13 children, most of whom are professionals and gainfully employed). The total award for actual damages should then be P44,482.00, and not P48,110.00.

With respect to the claim for loss of earning capacity of the victim, we note that the victim was already 69 years old at the time he was killed on November 24, 1985. His income as a dentist was P10,000.00 per month, or P120,000.00 per annum. After deducting therefrom the necessary and incidental expenses which the victim would have incurred if he were alive, the court a quo, declared that the victim's annual net income would be P24,000.00. The trial court multiplied his net annual income by his life expectancy of seven (7) years and two (2) months,[31] hence, P172,000.00 was awarded for loss of the earning capacity of the victim.

In computing the loss of the earning capacity of the victim, several factors are considered besides the mathematical computation of annual income times life expectancy. Allowances are made for circumstances which could reduce the computed life expectancy of the victim, e.g., nature of work of the victim,[32] his lifestyle, age, and state of health prior to his death.[33] In addition, we have to consider the rate of loss sustained by the heirs of the victim.[34] In this case, albeit there was no evidence on the state of health of the victim, considering his advanced age, we find it reasonable and fair to assume that he would not be able work and earn, as a dentist, until he reaches the final moment of his life.[35] Thus, we reduce the award for loss of the earning capacity of the deceased to P144,000.00, which is the approximate amount he would have earned until his 75th birthday.[36]

WHEREFORE, premises considered, we AFFIRM WITH MODIFICATION the assailed Decision, dated September 5, 1991, of the Regional Trial Court (Branch XXXIII) of Bauang, La Union, in Criminal Case No. A-1540. Accordingly, the indemnification granted in favor of the heirs of DR. GUILLERMO LOPEZ, are modified as follows:

- a) P 50,000.00, for the death of Dr. Lopez;
- b) P 20,000.00, for moral damages;
- c) P 44,482.00, for actual expenses; and
- d) P144,000.00, for loss of the earning capacity.

No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Docketed as Criminal Case No. A-1540 before the Regional Trial Court (Branch XXXI) of Agoo, La Union.

[2] Original records, pp. 30-31.

[3] Original Records, p. 226.

[4] TSN, June 16, 1986, p. 4.

[5] Postmortem Examination, dated November 24, 1985, marked as Exhibit "D."

[6] Medical Certificate, dated November 24, 1985, marked as Exhibit "B."

[7] Decision, dated September 50, 1991.

[8] Original Records, pp. 501 and 503.

[9] In the case of *People vs. Potajo*, G.R. No. 57718, November 24, 1988, Minute Resolution, we held that an appeal is considered abandoned where the accused-appellant fails to properly prosecute the appeal or does some act inconsistent with its prosecution.

[10] Original Records, p. 1.

[11] Original Records, p. 11.

[12] The elements of the crime of robbery are as follows:

a) unlawful taking by means of force or intimidation;

b) with intent to gain;

c) of personal property belonging to another.

[13] Original Records, p. 23.

[14] *People vs. Camba*, No. L-36472, November 19, 1984, 133 SCRA 251.

[15] No. L-1746, January 31, 1951, 88 Phil. 120.

[16] *People vs. Barut*, No. L-42666, March 13, 1979, 89 SCRA 14.

[17] *People vs. Veloso*, No. L-32900, February 25, 1982, 112 SCRA 173.

[18] G.R. No. 100771, May 28, 1993, Supreme Court Advanced Decisions (SCAD), Vol. 41, p. 905.

[19] TSN, June 24, 1986, p. 4.

[20] TSN, June 24, 1986, pp. 3 and 11.

[21] TSN, April 10, 1989, p. 54.

[22] *People vs. Bolado*, G.R. No. 105375, September 28, 1993, 226 SCRA 800.

[23] *People vs. Yabut*, G.R. No. 85472, September 27, 1993, 226 SCRA 715.

[24] *People vs. Yabut*, G.R., No. 85472, September 27, 1993, 226 SCRA 715.

[25] *People vs. Java*, G.R. No. 104611, November 10, 1993, 227 SCRA 668.

[26] TSN, November 21, 1988, pp. 19-20.

[27] TSN, January 26, 1989, pp. 25-36, 31-34, 80.

[28] *People vs. Lagario*, G.R. No. 92000, July 5, 1993, 224 SCRA 351.

[29] See Section 19, Article III of the 1987 Constitution.

[30] Exhibits "E" to "J." In arriving at said figure, we disregarded the amount of P320.00 under Official Receipt No. 2257 (Exhibit "H") since it appears that said amount was merely inserted/added in the receipt. As for Official Receipt No. 2329 (Exhibits "I" and "I-I"), the value of the materials used for the tomb of the victim specified therein was P1119.00. The amount of P1,300.00, marked as labor expenses, although reflected in Exhibit "I", was not proved. Mrs. Lopez did not testify on this amount, nor was the alleged contractor presented to testify on the matter.

[31] The trial court adopted the formula $(2/3 \times [80-32]) = \text{life expectancy}$ which was applied in *People vs. Daniel*, G.R. No. 66551, April 25, 1985, 136 SCRA 92. In the recent case of *People vs. Alvero, Jr.*, G.R. No. 72319, June 30, 1993, 224 SCRA 16, the formula used was $(2/3 \times [80-\text{age at the time of death}]) = \text{life expectancy}$.

[32] *People vs. Daniel*, G.R. No. 66551, April 25, 1985, 136 SCRA 92.

[33] *People vs. Davila, Jr.*, G.R. No. L-28512, February 28, 1973, 49 SCRA 497; *Philippine Airlines Lines, Inc. vs. Court of Appeals*, G.R. 54470, May 8, 1990, 185 SCRA 110.

[34] *People vs. Quilaton*, G.R. No. 69666, January 23, 1992, 205 SCRA 279.

[35] *Ibid.*

[36] Annual net income of P24,000.00 multiplied by six (6) years ($75-69 = 6$) equals P144,000.00.

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