

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENANTE PAREL Y TEJAMO, ACCUSED-APPELLANT.*G.R. No. 108733. September 16, 1996*

Ponente: BELLOSILLO, J.

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This case hinges on the issue of whether the circumstantial evidence now on record constitutes an unbroken chain sufficient to convict the accused Renante Parel y Tejamo of the special complex crime of robbery with homicide. The Regional Trial Court of Manila found him guilty, sentenced him to reclusion perpetua and ordered him to indemnify the heirs of the victim Leticia Perez P50,000.00 for her death and P70,412.00 for actual damages, and to pay the costs.

Leticia Perez was residing in a three-storey building at No. 871 G. Apacible Street, Ermita, Manila. On the ground floor was her restaurant Le Mars Food House (Le Mars). A two-segmented stairway located on the left side of the restaurant served the second and third floors. Near the stairs was a comfort room for the employees and customers. On the right side were the food counter, cash register and kitchen. On the second floor were the storeroom and the quarters of five of her twenty-eight employees. On the third floor were the bedrooms of Leticia and her son Michael, and a comfort room. Before December of 1991 Leticia was sharing her room with a sister Marita Banaban who worked as cashier in the restaurant. But Marita was out on a vacation in Bicol and returned only on 4 March 1992, the day Leticia was killed.[1]

The other employees of Le Mars were Jean Santollo and a certain Luz who worked as counter girls, Mary Yurag as cashier, Steve as cook, Erwin as kitchen helper, and Samuel Terrado, Jun Recente, Rocky Solis and Lito Perenia. Estrellita San Luis, a half-sister of Leticia, was supervisor. Estrellita was also the common-law wife of accused-appellant. Renante used to work at Le Mars as a kitchen helper until 1991 when he transferred to other restaurants as temporary cook, although he would always hang around Le Mars where he would substitute the regular cook whenever the latter was not available on Sundays. He would also fetch Estrellita regularly from the restaurant after work.[2]

On 4 March 1992 Leticia called up her son Michael who was then temporarily residing in Sucat, Paranaque, for the duration of his review for the medical board examinations. She asked him to help her in the restaurant as her sisters Marita and Estrellita were not there to assist her. Marita was arriving from Bicol that day while Estrellita was going on leave.[3]

Michael arrived at about one o'clock in the afternoon and took over the cash register. At about two o'clock he asked permission from his mother to accompany a friend to buy car accessories. Michael also told his mother that there were 100 peso bills worth P4,000.00 in the cash register. Leticia told Michael to put the amount in her bag. Michael noted that aside from the P4,000.00 he placed inside his mother's bag there were smaller denominations worth P2,000.00. Then he left. Meantime, Leticia told Jean Santollo to take care of answering the telephone calls as she was going up to her bedroom to rest, taking her bag with her. Mary Yurag took over as cashier up to four

o'clock in the afternoon.[4]

At three o'clock in the afternoon Jean went to the second floor. She saw Luz, Samuel and appellant Renante repacking bijon noodles. Jean asked Renante where Estrellita was and he answered that she was in school with her daughter Mila. He then went up to the third floor and was gone for about five minutes after which he came back and helped Erwin. At three-thirty, Renante told Jean to go down to the ground floor to answer the telephone. At first Jean was reluctant, but upon insistence of Renante she acceded after realizing that she would be taking over as cashier at four o'clock when Mary Yurag would be off-duty. Jean left the three - Luz, Samuel and Renante - on the second floor.[5]

At about this time Marita Banaban arrived from Bicol and went straight to her sister's bedroom on the third floor. The two sisters talked for about twenty minutes after which Marita left.[6]

At three-forty-five that afternoon, while on duty as a counter girl, Jean caught sight of the accused in front of the restaurant. She asked him where he was going. He replied that he was seeing his employer for some money. At four-thirty, Mary went to the bedroom of Leticia and turned over P828.00 to her. When Mary went down to the second floor, she saw Renante and Samuel trading jokes. As she fixed herself, Renante kidded her that she should go home as she was already married. Mary left.[7]

At half past four in the afternoon Jean took over as cashier. She saw appellant standing by the stairway but soon lost sight of him when customers began coming in.

At four-forty-five Jean received a telephone call for Estrellita. Jean told the caller that Estrellita was not there, only appellant. Jean looked for Renante but did not find him, so she informed the caller that he must have already left. Appellant then appeared near the kitchen and asked her if Estrellita called. Then he went to the comfort room near the stairs and was not seen by Jean anymore after that.[8]

At eight that evening Michael arrived. He went briefly to his bedroom on the third floor and came down again to supervise the closing of the restaurant. Then he went up to his mother to tell her that dinner was ready. At that time there were still employees in the restaurant. Michael knocked at his mother's door. There was no answer. He tried to open her room but the door would not budge. He repeatedly turned the knob until it finally opened. The room was in darkness. Then Michael saw his mother sprawled on the floor just below the bed. He lifted her to her bed. Her body was stiff and her neck bore a linear abrasion on the anterior aspect.[9]

Meanwhile, at around eight o'clock that evening Marita arrived at the house of Estrellita and Renante. Both were in. They talked about the couple's plan to spend a vacation in Bacolod. An hour later they were surprised when their co-employees at Le Mars arrived and informed them that Leticia was dead. Estrellita, Marita and appellant rushed to Le Mars. By the time they arrived the policemen were already conducting an investigation.

Dr. Marcial Cenido of the Medico-Legal Office of the Western Police District who autopsied the body of Leticia Perez found the cause of death as asphyxia consistent with strangulation.[10]

On 6 March 1992 appellant was held for questioning by Sgt. Lucio Margallo and SPO1 L. Buluran of the WPD Homicide Section. Renante allegedly admitted having strangled the deceased and divested her of P6,005.00 as he needed the money for his trip with Estrellita to Bacolod. When apprised by the police of the supposed confession of Renante, Estrellita who was accompanied by her brothers and sisters proceeded to the Homicide Section and turned over P3,000.00, the amount left of the P6,000.00 she supposedly received from Renante on 4 March 1992. Estrellita claimed that she spent the rest of the money in shopping.[11]

Appellant Renante vehemently denied the charge. He invoked alibi instead. He testified that his family was from

Bacolod City although his brother Danilo worked as a technician in a prawn pond in Batangas under a certain Guevarra. Sometime in January 1990 he worked as cook at the Le Mars but that since his salary was so small and could not support a family he resigned in April 1991. He never found a good job although he managed to work as extra help at the Kamayan and Ihaw-Ihaw sa Calde-Caldero. Barely a year after she separated from her husband, Estrellita lived with appellant as his common-law wife. She worked as supervisor at the Le Mars owned by her half-sister Leticia Perez. Marita Banaban is also a half-sister and Amante Amante and Danilo Amante are her full-blood brothers, and Leticia Alejandria a full-blood sister. Although Renante had already resigned from Le Mars he would substitute Steve as cook on Sundays whenever the latter was not available. Le Mars had twenty-eight employees working in two shifts.

In December 1991 he and Estrellita decided to spend a vacation in Bacolod City. When Estrellita asked permission from Leticia, the latter informed Estrellita of a misunderstanding she had with her son Michael when she refused his demand for his share of his inheritance. Since she was not sure whether her son would help her in the restaurant, Leticia requested Estrellita to put off her vacation. Estrellita agreed to reset their trip either to the 6th or 10th of March 1992. Renante then told his brother Danilo through the latter's employer that he (Renante) would be going to Bacolod. Renante later received word that Danilo would see him at Le Mars on 4 March 1992 to send money for their mother in Bacolod City.

Renante further claimed that on 4 March 1992, at eight-thirty in the morning, he accompanied Aling Pin, a maid, to Le Mars upon Leticia's request. He stayed in the restaurant until ten o'clock that morning while Estrellita went to Divisoria to shop. She spent P1,200.00 on that occasion. Estrellita went home and took her lunch with Renante who by then had already finished washing clothes. Estrellita went to Divisoria again while appellant returned to Le Mars to wait for Danilo. Renante arrived at two o'clock in the afternoon, then went to the second floor to talk with Jean, Samuel and Luz. He told them that he was going to wait for Estrellita and Danilo.

At three o'clock he went to the ground floor and saw Mary Yurag who was on duty as cashier. He also saw Marita on the ground floor and spoke to her. He would go in and out of the eatery while waiting for his brother.

At four o'clock that afternoon, Danilo finally arrived on board a Nissan Patrol jeep accompanied by the driver and another passenger. Danilo handed to Renante an envelop containing P6,000.00 and explained to him that P3,000.00 was for him while the balance was for their mother. Renante then told Richard Depante, an employee at Le Mars who saw Danilo arrive, that he (Renante) was already leaving. He also requested Richard to inform Leticia that he and Estrellita would be leaving for their vacation.

According to Renante he left the restaurant and reached home at around five o'clock in the afternoon. He told Estrellita that his brother Danilo gave him P6,000.00, P3,000.00 of which was for their mother. They then went to Carriedo, Quiapo, where they bought two pairs of shoes for Renante for the total price of P2,500.00. At eight o'clock in the evening, Marita arrived in their house and they talked about the planned trip to Bacolod City but not about the money.

At nine o'clock that evening, Jun, Edwin, Alex, all employees of Le Mars, arrived at the house of Renante and broke the news of Leticia's death to them. Renante, Estrellita and Marita all rushed to Le Mars. Renante and Estrellita went directly to the third floor. Estrellita saw the drawer of Leticia's cabinet already on the floor together with loose changes scattered all over. Leticia's bag was on top of her dresser. According to appellant, at that time Jean, Lito, Jun, Mary, Richard, Erwin, Alex, Ricky and Marita, all employees of the restaurant, were already being investigated by the police but not Renante and Estrellita. Lito was handcuffed after the police investigators found some dollars in his bag.

The following day, 5 March 1992, Renante went to Le Mars and accompanied Michael in buying clothes for his

mother and other things. In the afternoon of the same day policemen arrived and invited appellant to Police Station No. 5 for questioning. They theorized that he killed Leticia. From then on he was placed under detention.

On 6 March 1992 Renante was asked by the police if he had any money. He replied that he was given P6,000.00 by his brother Danilo and that money was already with his wife Estrellita. Sgt. dela Rosa who was grilling Renante called up Amante Amante to get the money from Estrellita. Estrellita was then asked by her brothers and sisters to explain where Renante got the P6,000.00. She told them that according to appellant the money came from his brother Danilo. Even so, Estrellita was advised by her family to turn over the money to the police. Subsequently, together with Michael and her family, Estrellita went to the police station where Michael entrusted the money to Sgt. Salvador Fradejas.

Renante also testified that Sgt. Alfredo dela Rosa ordered him to sign his name on a piece of paper and to have his fingers printed on two blank sheets of paper. When he refused, Sgt. dela Rosa hit him on his side with the butt of a gun and boxed him. The following day, 7 March 1992, Sgt. dela Rosa directed him to sign the Booking Sheet and Arrest Report and when he refused he was again maltreated. Appellant claimed that it was only that day that Estrellita was allowed to see him in his detention cell. She told Renante that she gave the remaining P3,000.00 to the police operatives. Renante chided Estrellita and asked her why she gave the money when it actually belonged to them. Estrellita told him that she planned to see his brother Danilo in Batangas to verify if the money had really come from him. She eventually received confirmation from Danilo, but this notwithstanding, she was advised by her family to leave the matter to the court.

In this appeal Renante strongly argues that the lower court erred in convicting him solely on the basis of the testimony of Jean Santollo that he was present at the Le Mars Food House on 4 March 1992, and of Marita Banaban that he told her that the money given by the deceased to him and Estrellita for their vacation was "barya lang." He claims that during the entire period that Jean saw him on the second floor of the restaurant until she left him, he was with Luz and Samuel repacking noodles. Hence they could have easily seen him going up the stairs to the third floor and acting strangely or suspiciously. The failure of the prosecution to satisfactorily explain its inability to call Luz and Samuel to the witness stand necessarily creates the presumption that their testimonies if presented would not be favorable to the prosecution.

Appellant likewise asserts that the statement of Jean that it took her some time to look for him when he had a telephone call and then he suddenly appeared in the kitchen was the only basis for the court a quo to conclude, rather precipitately, that he must have gone up to the bedroom of Leticia, divested her of cash and in the process strangled her, after which he hurried down to the ground floor and into the kitchen. He maintains that the conclusion is unfounded. Even as Jean had spoken with him personally and thus could have observed his agitated state, i.e., he appeared exhausted or was perspiring profusely, she nonetheless testified that there was no indication of any abnormal behavior resulting from his alleged unusual exertion of energy in going up to the third floor, strangling the victim, robbing her and rushing back to the ground floor. Finally, he contends that the evidence of the prosecution does not prove beyond reasonable doubt that he robbed and killed Leticia.[12]

Indeed the guilt of the accused has not been proved beyond reasonable doubt, hence, he must be acquitted.

The alleged extrajudicial admission of appellant that he was the one who robbed and killed the deceased cannot be used as evidence against him. The trial court correctly held this confession to be inadmissible in evidence for being constitutionally infirmed. The prosecution failed to demonstrate that appellant while under custodial investigation was duly informed of his constitutional rights to counsel and to remain silent or that he waived said rights, if indeed he did so, in writing and with the assistance of counsel. According to the prosecution, on 5 March 1992, while Sgt. Fradejas was investigating appellant, Estrellita arrived with a lawyer for appellant. Forthwith,

Sgt. Fradejas stopped the questioning but appellant remained in detention. The following day, 6 March 1992, Sgt. Margallo and SPO1 Buluran of the WPD Homicide Section resumed the investigation and in the course thereof appellant orally admitted that he strangled Leticia to death after divesting her of cash amounting to P6,005.00.[13]

Under Sec. 12, par. 1, Art. III, of the 1987 Constitution, any person under custodial investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. The right to be informed carries with it the correlative obligation on the part of the investigator to explain, and contemplates effective communication which results in the subject understanding what is being conveyed. Since what is sought to be attained is comprehension, the degree of explanation required will vary and depend on the education, intelligence and other relevant and personal circumstances of the person being investigated. In further ensuring the right to counsel, it is not enough that the subject be informed of that right; he should also be asked whether he wants to avail himself of the same and should be told that he can hire a counsel of his own choice if he so desires or that one will be provided him at his request. If he decides not to retain a counsel of his choice or avail himself of one to be provided for him and, therefore, chooses to waive his right to counsel, such waiver, to be valid and effective, must be made with the assistance of counsel. That counsel must be a lawyer.[14]

Even assuming that in the instant case the extrajudicial confession made by appellant spoke the truth and was not extracted through violence or intimidation, still the failure of the police investigators to inform appellant of his right to remain silent, coupled with the denial of his right to a competent and independent counsel or the absence of effective legal assistance when he waived his constitutional rights, rendered the confession inadmissible under Sec. 12, par. 3, Art. III, of the 1987 Constitution.

To sustain a conviction for the complex crime of robbery with homicide, which is primarily an offense against property, it is essential that the robbery itself be proved beyond reasonable doubt. Proof of the homicide alone is not sufficient to support a conviction for the crime of homicide with robbery.[15] The taking with intent to gain of personal property belonging to another by means of violence against or intimidation of person or using force upon things are the essential elements of robbery. There is robbery with homicide when by reason or on the occasion of a robbery with the use of violence against or intimidation of persons, the crime of homicide shall have been committed.[16]

In the instant case, two things must be borne in mind: first, there was no eyewitness either to the robbery or to the homicide; and second, none of the things allegedly stolen was ever recovered. If there was any proof to support the charge, the same was entirely circumstantial in character. The circumstances which were made the basis for appellant's conviction were: (1) the admission of appellant that he and his live-in partner Estrellita were leaving for Bacolod City for their vacation; (2) the testimony of the doctor who examined the cadaver of the victim that the latter died by strangulation at about five o'clock in the afternoon of 4 March 1992; (3) the testimonies of prosecution witnesses and the admission of appellant that he was present at the restaurant at four o'clock that afternoon of 4 March 1992; (4) the testimony of prosecution witness Mary Yurag that after she turned over the earnings for that day to the deceased inside her bedroom on the third floor, she went down to the second floor and found appellant there at about four o'clock in the afternoon talking to Samuel Terrado, an employee of the restaurant; (5) the testimony of Jean Santollo that at about four-thirty in the afternoon of the same day she saw appellant inside the restaurant standing by the stairway but fifteen minutes later, just when he was needed on the phone, he was nowhere to be seen although thereafter he abruptly appeared in the kitchen; (6) the testimony of Michael Perez, son of the deceased, that while inside the restaurant he placed P4,000.00 in 100-peso bills in his mother's bag and that he saw, aside from the P4,000.00, smaller denominations of about P2,000.00; (7) the

testimonies of police investigators that they saw the lifeless body of Leticia on the bed and that her bag was lying on top of her dresser about a meter from the bed already open and, without any money or jewelry but only a woman's personal things; (8) the admission of appellant and his common-law wife Estrellita who testified in his behalf that he received P6,000.00 from his brother Danilo who came over to Le Mars, and that half of the amount was for him while the other half was for their mother in Bacolod City.

As there were no eyewitnesses to the alleged robbery, and although the evidence already showed that at the time of the killing the money in the bag of the deceased was missing, it cannot be presumed that there was robbery.[17] It is essential to prove intent to rob. This necessarily includes evidence to the effect that the accused carried away the effects or personalty of the deceased. In the instant case, there is absence of positive proof that appellant intended to rob the deceased or that he was the one who carried away the money belonging to the victim. His mere presence at the locus criminis is not sufficient to implicate him.[18]

The admission of appellant that he had in his possession P6,000.00 allegedly given to him by his brother cannot lend support to the prosecution's theory that he robbed the deceased. While the evidence of the defense that the P6,000.00 really belonged to the accused is rather weak, the burden of proof still rests on the prosecution to establish that the P3,000.00 turned over to the police by his live-in partner was part of the loot. It is essential in robbery that the personalty taken from the accused does not belong to him but to complainant or another.[19] In failing to discharge such burden of proof, the court cannot rely on mere presumptions and conjectures to convict the accused.

Similarly, the circumstances presented by the prosecution are inadequate to demonstrate clearly and persuasively that it was appellant who killed Leticia. The proffered justification for the killing is an affirmative allegation that must be proved with certainty by sufficient, satisfactory and convincing evidence.[20] The mere presence of appellant on the second floor does not even indicate that he went up to the third floor with the intention to rob the deceased and that by reason of the robbery he strangled her to death. It should be emphasized that in all the instances when the prosecution witnesses saw appellant on the second floor he was always in the company of one or two employees of the restaurant. None of these witnesses testified that they actually saw appellant going up to the third floor just before Leticia was slain. In fact, his presence in the eatery was a usual and ordinary occurrence since his live-in partner was employed there and was also a half-sister of the deceased. Moreover, even if he had already resigned from Le Mars, he would work there on Sundays whenever the regular cook was absent. Indeed, there is paucity of evidence indicating that other than appellant, no other person had or could have had access to Leticia's bedroom on the third floor where the money was kept. The prosecution has not completely discounted the possibility that there could have been other intruders. In the final analysis, the circumstances demonstrated by the prosecution have engendered doubt rather than moral certainty on the guilt of Renante Parel.

It is a fundamental evidentiary rule in criminal law that the prosecution has the onus probandi of establishing the guilt of the accused. *Ei incumbit probatio non qui negat*. He who asserts - not he who denies - must prove. As oft-repeated, the conviction of the accused must rest not on the weakness of his defense but on the strength of the prosecution. Hence, circumstantial evidence which has not been adequately established, much less corroborated, cannot by itself be the basis of conviction.[21]

Circumstantial evidence must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent. Furthermore, to sustain a conviction upon circumstantial evidence alone, the circumstances proved should form an unbroken chain leading to one fair and reasonable conclusion proving that the accused is the author of the crime, to the exclusion of all others.[22] These requirements are not met in the instant case. This Court finds that although the evidence for the defense is dismally weak, the evidence for the prosecution is no better. It is not strong enough to justify a finding

of guilt beyond reasonable doubt.

It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[23] This doubt, combined with the constitutional presumption of innocence which can only be overthrown by the strength of the prosecution's own evidence, leads us quite irretrievably to a judgment of acquittal for appellant.

WHEREFORE, on reasonable doubt, the conviction by the court a quo of accused-appellant RENANTE PAREL y TEJAMO is REVERSED and SET ASIDE and a new one entered ACQUITTING him of the crime charged. He is ordered immediately released from custody unless detained for some other lawful cause. Costs de oficio.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Records, pp. 132-133.

[2] Id., p. 132.

[3] Id., p.133.

[4] Ibid.

[5] Id., pp.133-134.

[6] Id., p. 134.

[7] Ibid.

[8] Id., p.135.

[9] Ibid.

[10] Id., pp. 136-137.

[11] TSN, 15 June 1992, pp. 16-18.

[12] Appellant's Brief, Rollo, pp. 87-110.

[13] Decision penned by Judge Romeo J. Callejo, RTC-Br. 49, Manila (now Associate Justice, Court of Appeals).

[14] People v. Agustin, G.R. No. 110290, 25 January 1995, 240 SCRA 541.

[15] See People v. Pagal, No. L-32040, 25 October 1977, 79 SCRA 570.

[16] People v. Barlis, G.R. No. 101003, 24 March 1994, 231 SCRA 426; People v. Pacala, No. L-26647, 15 August 1974, 58 SCRA 370.

[17] People v. Ambahang, 108 Phil. 325 (1960).

[18] Rollo, p. 93.

[19] Aquino, Ramon C., The Revised Penal Code, 1988 ed., Vol. III, p.95; see People v. Pacala, Note 15.

[20] People v. Osigan, G.R. No. 102980, 28 June 1993, 223 SCRA 742.

[21] People v. Ilaoa, G.R. No. 94308, 16 June 1994, 233 SCRA 231.

[22] People v. Genobia, G.R. No. 110058, 3 August 1994, 234 SCRA 699.

[23] People v. Salangga, G.R. No. 100910, 25 July 1994, 234 SCRA 407.

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