

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RHODESA SILAN Y BORQUE, ALIAS “DADA”, AND VIRGILIO GARCIA, ALIAS “BILLY GARCIA”, ACCUSED-APPELLANTS.

G.R. No. 116011. March 07, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellants were prosecuted for the special complex crime of robbery with homicide in Criminal Case No. 93016 of the Regional Trial Court, Branch 163, of Pasig, Metro Manila upon an indictment filed on June 17, 1992 and alleging -

That on or about the 1st day of June, 1992, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with John "Tol", whose true nam(e), identity and present whereabouts (are) still unknown and all of them mutually helping and assisting one another, by means of force, violence and intimidation employed upon the person of Evangeline Gargantos, did then and there willfully, unlawfully and feloniously take, steal and carry away complainant's personal belongings and valuables all amounting to P6,500.00, to the damage and prejudice of the offended party in the aforementioned amount of P6,500.00; that on the occasion of the said robbery, the above-named accused, conspiring and confederating together with John Doe @ "Tol", whose true name, identity and present whereabouts (are) still unknown and they all mutually helping and assisting one another, with evident premeditation and treachery, with the use of superior strength and during nighttime, while armed with bladed weapon, with intent to kill, did then and there willfully, unlawfully and feloniously attack assault, strangle with a cord of an electric stove, and stab said Evangeline Gargantos, thereby inflicting upon her fatal injuries which caused her death.[1]

They were both found guilty as charged in the decision of said court, dated October 21, 1993, which adjudged as follows:

WHEREFORE, foregoing premises considered, this Court finds both accused, Rhodesa Silan and Virgilio Garcia guilty as principal(s) of the crime of Robbery with homicide defined in Article 293 and penalized under Article 294. And, considering the aggravating circumstance of the crime having been committed in the dwelling of the offended party and there being no mitigating circumstance on record this Court sentences them to suffer the penalty of reclusion perpetua with its accessories provided for by law, to restitute to the heirs of Evangeline Gargantos the value of the article stolen from her house in the amount of P6,500.00; to indemnify said heirs (in) the sum of P50,000.00 and to pay the cost.

If accused has signed a written conformity to abide with the rules on convicted prisoner, their detention service if any should be deducted from this sentence computed as provided for by law.[2]

We have carefully and thoroughly reviewed the records of this case, especially the transcripts of the stenographic notes taken at the trial, the documentary evidence, and the respective presentations of the parties, and we find that these findings of the court below which were adopted in the People's brief provide us sufficient and accurate

bases for this appellate review:

Investigation conducted by police investigator Ricardo Domingo revealed that Rhodesa Silan was seen by Carol Concepcion about 2:00 P.M. on either 31 May or 1 June 1992. Silan inquired from Carol as to whether or not there was anyone in the house of her auntie. Carol told her that there is nobody there because they are (o)n vacation. Silan told Carol that she would like to get something inside the house. About 7:00 o'clock in the evening of the same day Carol while fetching water, again saw Silan with a male companion going to the house of Evangeline Gargantos at the back. Carol did not recognize the male companion of Silan (TSN page 4, dated 23 Sept. 1992).

Investigator Domingo took the statement of Rhodesa Silan who at the time was assisted by Atty. Salvador Navarro. (p. 5, November 4, 1992, TSN). In her extra-judicial statement (Exh. "H") Silan stated that she went to the house of her auntie Vangie in the late afternoon of 1 June 1992. (p.4. July 1, 1993, TSN). Her companions in going to Vangie's house were Virgilio 'Billy' Garcia and a certain Tol. (p. 4, *ibid.*) They went to Vangie's house to get her things so they can sell them as Billy needed money. (p. 4, *ibid.*) Upon reaching the house of Vangie they found it closed. They went to the back portion where Billy used a screw driver in destroying the padlock of the kitchen door. (p. 5, *ibid.*) Once the kitchen door was opened, they entered the house, Silan going to her room while Billy and Tol went upstairs. (p. 5, *ibid.*) While Silan was arranging her things she heard a loud sound of objects falling. She went up the house and found that an electric fan fell on the floor. She saw Billy and Tol searching something. (p. 5, *ibid.*) She also notice (sic) that the room was in disarray. It was at this juncture that Billy told her to get things that she wants. She then got two jackets, coleman, colored blue dress of Remia, perfume, make-up kit, t-shirt, girdle of Remia and plate with saucer. When they went down from the second floor of the house Billy talked with her and forced her to go to her former room where he forced her to have sex with him. It was at that instance when her auntie Vangie arrived and knocked at the door. (p. 6, *ibid.*) Billy then ordered her to stand up in one corner and told her he will take care of things. He then put off the light and opened the door and allowed her auntie to come in. (p. 6, *ibid.*) After her auntie entered the house there was a commotion. (p. 6, *ibid.*) She heard her auntie shouting 'Who are you, why did you enter the house' followed by shouts for help 'Aling Lina, Aling Lina, tulungan ninyo ako, may gustong pumatay sa akin.' (p. 6, *ibid.*) Soon thereafter silence followed. Then Billy returned for her and pulled her out the house. (p. 7, *ibid.*)

Some of the articles taken by Silan from the house of Evangeline Gargantos were recovered from the house where she is now living with her live-in partner. Said articles were identified in Court by SPO 1 Celso Cruz, the evidence custodian to whom the recovered articles were turned over after the same were recovered. (p. 3, October 22, 1992, TSN.) Remia Gargantos Gillo, a niece of the victim who also lived with Vangie in #29 Sable St., SSS Village, identified the blouse, the t-shirt, a bottle of perfume and powder case as that belongin(g) to the family of the deceased. (p. 6, October 22, 1992, TSN)

Atty. Salvador Navarro affirmed before the Court the fact that he assisted Rhodesa Silan when she gave her extra-judicial statement before police investigator Ricardo Domingo. (pp. 5-7, *ibid.*) (pp. 2-3, Decision)[3]

It is appellant Silan's position, as articulated in her lone assignment of error, that the lower court erred in convicting her of the crime of robbery with homicide without proof of conspiracy between her and appellant Garcia having been sufficiently established by the prosecution.[4] Parenthetically, appellant Silan also presented herself as the sole witness in her defense.

Appellant Garcia has a more extended assignment of errors in his brief,[5] contending that the court below erred (1) in relying on the testimony and extrajudicial confession of appellant Silan in convicting him; (2) in failing to consider that appellant Silan had sufficient motive to implicate him in the crime charged; (3) in quickly dismissing his defense of alibi; and (4) in not considering the illegality of his arrest by the police.

We absolve the trial court of the aforesated errors imputed to it and which we shall discuss seriatim conjointly

with our reasons for rejecting the same, starting with the submissions of the lady appellant first.

1. Appellant Silan leads off with the argument that her only intention in going to the house of her aunt, the victim Evangeline Gargantos, was to get some of her things which she had left behind when she left the place. She claimed that she intended to sell the same and give the money to appellant Garcia because of his threat to kill her brother if she did not do so. She denied that there was any prior agreement between her and appellant Garcia or his companion, called "Tol", to rob and kill her aunt, and that those crimes were committed by the latter two without her participation or consent.

We reject this hand washing attempt. It is established that the three of them first agreed to meet at a specific place on an appointed time and, from there, they then proceeded together to the victim's house at 29 Sable Street, SSS Village, Marikina, Metro Manila. The events that transpired after they had forced their way into the house clearly revealed how they cooperated with each other to successfully loot the house and escape undetected through the back door. When appellant Silan was in her former room, she said she heard noises coming from upstairs and that when she went up and saw Garcia and Tol taking things from the room of her aunt, she asked them to desist but they refused. According to her, this proved that she did not consent to those larcenous acts of her companions.

We believe otherwise. Her simple admonition, even if true, is not evidence of a true intent to prevent her associates from taking valuables from the house. She could and should have insisted, for apparently there was no danger to her at that moment, but she did not do so. Further belying her supposed solicitude is the fact that she readily accepted the white bag containing part of the items taken from the room of the victim. If she really had no intention to gain, she should have returned the white bag which she admittedly opened and wherein she discovered valuables belonging to her aunt and the latter's two sons.[6]

On the contrary, the extrajudicial admissions in her sworn statement[7] which she voluntarily executed on June 15, 1992 at the Marikina Police Station, with the legal safeguards discussed hereinafter, clearly spell out in detail that she and her aforesaid confederates planned the robbery. Her act of taking things when she was allegedly instructed by appellant Garcia to take whatever she liked necessarily made her a principal by direct participation through confederacy in the robbery.

What also caught our attention is the testimony of prosecution witness Carol Concepcion that she saw and talked to appellant Silan not only on June 1, 1992 but also prior thereto, that is, in all probability on May 31, 1992 likewise near the very house of the victim at Marikina. On May 31, 1992 when witness Concepcion saw appellant Silan at around 2:00 P.M., the latter asked her whether there was a man in the house, informing the former that she was going inside the house to get a few things which she had left behind.[8]

Viewed from the events that transpired thereafter, her testimony that the reason why she went with her companions to the house of her aunt on June 1, 1992 was just to get her things is extremely doubtful and obviously contrived for she could have taken everything that she left behind the first time that witness Carol Concepcion saw her on May 31, 1992. It would, therefore, not be far-fetched to assume that during this first meeting with Carol Concepcion at the residence of Evangeline Gargantos, appellant Silan was actually conducting a surveillance of the place prior and consequent to the plan to ransack the same on June 1, 1992.

It is likewise plausible to assume that she had reason to be angry with her aunt for she was practically thrown out of the house, because of her having stolen the camera of the latter and pawning the same, aside from previous similar incidents. In her testimony, she admitted that the reason why she left the house was because she was forced out due to the argument with her aunt regarding that camera.[9] It is apparent that she had every opportunity to return the things which she took from her aunt's house but she did not.

With regard to the killing of her aunt, it is indeed out of the ordinary for appellant Silan not to even bother to find out what happened to her own aunt when, in fact, the last that she heard from the victim was the latter's cries for help after appellant Garcia and Tol went to intercept her at the door. Appellant Silan may not have participated in the actual killing of Evangeline Gargantos for in truth there is no evidence specifically showing who actually tied the electric cord around the victim's neck and stabbed her twice. However, the series of events prior to the June 1, 1992 incident, the testimony of witness Carol Concepcion, and the manifest concerted acts of appellant Silan and her two confederates as recounted by the appellant Silan herself, irresistibly suggest that appellant Silan did participate in the planning and commission of the composite crime charged.

Although the killing of Evangeline Gargantos may just have been an unfortunate complication and was not part of the original plan of the group to commit robbery, there being conspiracy among the three malefactors, the crime of one is the crime of all. Reiterating our previous holdings on this issue, *People vs. Nunag, et al.*[10] stressed the rule that whenever homicide has been committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals for the special complex crime of robbery with homicide, although they did not actually take part in the homicide.

2. We are not at all impressed by appellant Garcia's exculpatory attempt to attribute his being enmeshed in this criminal case to the extrajudicial statement of appellant Silan. He assails the same for allegedly having been obtained by the police authorities without appellant Silan having been provided with counsel. Ironically, this claim was likewise belatedly made by Silan in a tragicomic deviation after she had voluntarily narrated in her aforesaid statement the details of her participation in the events that took place in the victim's residence.

How appellant Silan came to give that statement, and how it was reduced to its present form as submitted in evidence, is vividly reported in the testimony of SPO4 Ricardo S.L. Domingo, the police investigator.[11] The statement was taken down in the presence of this appellant's own mother, Catalina Silan, as indicated therein and whose signature is affixed to the pages thereof. Said appellant was assisted by Atty. Salvador Navarro, whose appearance and attendance during the interrogation and preparation of this document is also specifically mentioned therein and on the first page whereof he also affixed his signature. On top of that, said Atty. Navarro testified in court[12] on his assistance given to appellant Silan throughout the entire proceeding and how the constitutional injunctions mentioned in the sworn statement were duly observed.

And, if that would not be enough, appellant Silan herself took the witness stand and affirmed to the trial court her participation in the crime, virtually reiterating what she stated in her extrajudicial statement, thus:

Q

Ms. witness, on June 1, 1992 at about 5:30 P.M., you remember where you were?

A

Yes, ma'm.

Q

Where were you?

A

At Caloocan, Quezon City in Bonifacio.

Q

What were you doing in Bonifacio?

A

I was with "Billy" Garcia and his friend (whom) he used to call Tol.

xxx xxx xxx

Q

What happened?

A

He (was) asking for (a) sum of money.

Q

Did you give him money?

A

No, ma'm.

Q

Why?

A

Because I (did) not have money.

Q

So, when you did not give him money, what did you do?

A

I remembered that when I left Sable Street, and I have few belongings left behind and then he asked me if we can go there?

Q

What is that place?

A

Sable St., SSS Village, Marikina, Metro Manila.

Q

Who owns that house at SSS Village?

A

My auntie.

xxx xxx xxx

Q

Were you able to go to that house?

A

Yes, ma'm.

Q

You said you went to that SSS Village, who were your companion(s)?

A

Billy Garcia.

Q

Only?

A

And a certain friend of hi(s) which I don't know the name. He just called him "Tol."

xxx xxx xxx

Q

Were you able to reach that house of Mrs. Gargantos?

A

Yes, ma'm.

Q

What time did you arrive?

A

At around 7:00 o'clock in the evening, ma'm.

Q

Upon reaching the house, what did you do, the three of you?

A

When we reached the house the door was close(d) and I told them, we just leave the house.

Q

Did you leave the house?

A

No, ma'm, because he was insisting to enter the house.

Q

Who (was) insisting?

A

Billy Garcia.

Q

What did he tell you?

A

He told us, we just enter so that we can get my belongings.

Q

So, did you enter the house?

A

Not immediately, ma'm.

Q

Why?

A

Because the door (was) locked.

Q

(How) were you able to unlock the door?

A

He brought out a screw driver and unscrew(ed) the lock.

Q

The door was destroyed, (wasn't) it?

A

The padlock only was destroyed.

Q

Did you enter the house?

A

When we entered the house, I went to my room.

Q

How about the other 2, where did they go?

A

They also entered the house, and went upstairs(s).

Q

How did you know?

A

Because when I (was) in my room downstairs, I heard a noise upstairs, as if something fell, so I went upstairs(s) and saw that the door was also opened and unlocked.

Q

What did you notice?

A

Bill(y) Garcia and his friend (were) already upstairs and the room was in disarray.

Q

What did these two person do?

A

As if they are searching for something.

Q

What did you do, when you saw them as if they are searching for something?

A

I tried to stop them.

Q

And what was their reply?

A

Billy Garcia said, "Don't make any noise. Huwag kang makialam dito, kami na ang bahala dito."

Q

What did they do?

A

They kept on searching and I went downstairs, I continued arranging my belongings.

Q

After you were through in arranging your belongings, can you please tell us what happened next?

A

Billy Garcia handed me a white bag and we were about to leave.

Q

You were about to leave, what happened?

A

When we were about to leave, my auntie came.

Q

How did you know?

A

She was knocking at the door.

Q

Who open(ed) the door?

A

Before she enter(ed), Billy Garcia turned off the light in the house.

Q

After it was turned off, what happened next?

A

He told me not to panic because we can get out of the house.

Q

(Was) your auntie able to enter the house?

A

Yes, ma'm.

Q

What happened, if you know?

A

When I was in my room I heard there was a commotion, something happening.

Q

What is the commotion all about?

A

There was something happening in the house.

Q

What did you hear?

A

My auntie shouting.

Q

Shouting of what, what was her statement?

A

She was shouting, "Aling Lina, Aling Lina, please help me."

Q

What did you do, whe(n) she was asking for help?

A

None, ma'm.

Q

Why?

A

Because I ha(d) a mixed emotion at that time. I (was) afraid and nervous.

XXXXXXXXXX

Q

You said there was a commotion and your auntie shouting for help, what happened after that?

A

She (was) also shouting that somebody was trying to kill her and then after a few moments, there was silence. And Billy Garcia went to my room and told me we were leaving.

Q

So, after Billy Garcia entered your room, you left the house?

A

Yes, ma'm.

Q

Where did you pass?

A

The back door.

Q

Do you know what happened to your auntie before leaving the house?

A

No, ma'm.

Q

You said a while ago that your auntie (was) dead, when for the first time did you learn that she was dead?

A

Few days before my arrest.[13] (Corrections in parentheses supplied)

Give or take a few passages, the aforequoted testimony of appellant Silan is a repetition of what she declared in her sworn statement aforementioned. The same, however, is further challenged by appellant Garcia as being inadmissible in evidence as an extrajudicial statement which did not have all the requisites for its admission as an exception to the rule of *res inter alios acta*. Although we do not agree with his strained dissertation thereon, it would be pointless to further dwell on that objection since the contents of the same have been reproduced as

judicial admissions by appellant Silan's testimony in court. Her admissions having been laid open for cross-examination, as in fact she was cross-examined thereon, the initial objections of appellant Garcia have been rendered academic.

There being no legal obstacle, on either constitutional or evidentiary grounds, to our considering the inculpatory statements of appellant Silan both against her and appellant Garcia, we find said testimony of the former to be credible just as the trial court also lent its imprimatur thereto. Appellant Garcia's involvement and incrimination in this case, contrary to his desperate asseverations, rests on a firm basis. Significantly, the brief of appellee even confines its arguments to the representations made in appellant Garcia's brief, but does not even bother to make any substantial comment on that of appellant Silan.

Appellant Garcia contends that the trial court failed to consider the fact that appellant Silan had a sufficient motive to implicate him in the offense with which they both now stand charged. He refers to the amorous relationship between them and later, between her and his brother, both of which associations "turned sour." We likewise reject this speculative hypothesis.

As the prosecution points out, the trial court relied upon the testimony of appellant Silan not only because of her extrajudicial statement but also because she categorically testified that appellant Garcia was one of the culprits in the offense charged. It was convinced, and so are we, that her aforesaid testimony, minus the understandable attempts at justification of her acts and mitigation of her liability, was credible and can be fully appreciated against appellant Garcia. He completely failed to present any evidence on the alleged ill motive of appellant Silan. Surprisingly, he even admits in his brief that, on the matter of the unrequited relationships between Silan and him or his brother, "there is no direct relation that would convince any court that this could have spur(r)ed Silan in implicating (him)" in the offense charged and now under review.[14]

Appellant Garcia further insists that although he was identified by appellant Silan as her co-conspirator and as one of the perpetrators of the offense, no prosecution witness made that positive identification, hence his alibi should be sustained. We do not believe that there is any logic to what he would now require in addition to the eyewitness account of his own co-conspirator declared in open court subject to such cross-examination as the defense desired to conduct.

We accordingly quote with approval what the trial court observed on this point:

As to the accused Virgilio Garcia, the extra-judicial confession of her co-accused Rhodesa Silan, implicating him, in the commission of the crime charged is admissible against him if such extra-judicial confession is used only as circumstantial evidence to show the probability of his participation (People vs. Victor, 181 SCRA 818). But in the case at bar, in addition to the extra-judicial confession of Rhodesa Silan, she also testified in open court pointing to her co-accused Virgilio Garcia as her companion in entering the house of the victim by opening its back door with the use of screw driver. She also pointed to Garcia as the person who ransacked the bedroom of the house of the victim. She likewise pointed to Garcia as the person who ordered her to stand by in her former room while he opens the door of the kitchen and allowed the victim to enter the house. She further stated that after the victim entered the kitchen door, there was a commotion and she heard the victim shouting for help and that when the victim became silent Garcia returned to where she was, pulled her and together they left the place.[15]

Finally, appellant Garcia bewails and assigns as reversible error the failure of the trial court to take into account his supposed illegal arrest which later culminated in the filing of the charges against him. We note, however, that he never objected thereto nor placed that matter in issue when, instead, he entered his plea on arraignment and went to trial. As the Solicitor General points out, even assuming that he was illegally arrested, this will not affect his culpability since an allegation of a warrantless arrest cannot deprive the State of its right to convict the guilty

when all the facts on record point to his culpability.[16]

We also agree with the advertence to our pronouncement in the aforecited case of Briones which could very well be said of this incident in the case at bar:

Immediately after their arrest, appellants x x x could have objected to the legality thereof due to the failure of the police officer to secure first a warrant for their arrest. Not only that, without having questioned the legality of their arrest, they even pleaded, on arraignment, to the information filed against them. Appellants' acts constitute a clear waiver of their right against unlawful restraint of liberty. Besides, it would be impractical, if not ridiculous, to order the court a quo to set the appellants free then issue a warrant for their arrest, and try them all over again when appellants themselves have waived their right to object to such irregularity and when their objection is truly based on overwhelming evidence.

ON THE FOREGOING CONSIDERATIONS, the appealed judgment of the court a quo is hereby **AFFIRMED** in toto, with costs against accused-appellants Rhodesa Silan y Roque and Virgilio Garcia.

SO ORDERED.

Romero, Puno and Mendoza, JJ., concur.

[*] Her first name is spelled "Rhodesia" in some parts of the Rollo and in the brief filed by her counsel.

[1] Original Record, 1.

[2] Ibid., 185-186; penned by Judge Aurelio C. Trampe.

[3] Rollo, 138-140.

[4] Brief for Accused-Appellant Silan, 1; Rollo, 73.

[5] Brief for Appellant Garcia, 9; Rollo, 109.

[6] TSN, July 7, 1993, 119.

[7] Exhibit H; TSN, October 6, 1992, 34-35.

[8] TSN, September 23, 1992, 19.

[9] TSN, July 8, 1993, 129.

[10] G.R. No. 92570, April 22, 1991, 196 SCRA 206.

[11] TSN, October 6, 1992, 17-19.

[12] Ibid., November 4, 1992, 82-89.

[13] TSN July 1, 1993, 3-7.

[14] Brief for Appellant Garcia, 15; Rollo, 115.

[15] Original Record, 185.

[16] Citing *People vs. Briones, et al.*, G.R. No. 90319, October 15, 1991, 202 SCRA 708.

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