

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. YIP WAI MING, ACCUSED-APPELLANT.

G.R. No. 120959. November 14, 1996

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Yip Wai Ming and victim Lam Po Chun, both Hongkong nationals, came to Manila on vacation on July 10, 1993. The two were engaged to be married. Hardly a day had passed when Lam Po Chun was brutally beaten up and strangled to death in their hotel room. On the day of the killing, July 11, 1993, Yip Wai Ming, was touring Metro Manila with Filipino welcomers while Lam Po Chun was left in the hotel room allegedly because she had a headache and was not feeling well enough to do the sights.

For the slaying, an Information was lodged against Yip Wai Ming on July 19, 1991, which averred:

That on or about July 11, 1993, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously with intent to kill with treachery and evident premeditation, did then and there attack, assault and use personal violence upon one Lam Po Chun by then and there mauling and strangling the latter, thereby inflicting upon her mortal and fatal wounds which were the direct and immediate cause of her death thereafter.

On May 15, 1995, Branch 44 of the Regional Trial Court of the National Capital Judicial Region stationed in Manila and presided over by the Honorable Lolita O. Gal-lang rendered a decision in essence finding that Yip Wai Ming killed his fiancée before he left for the Metro Manila tour. Disposed thus the trial court:

WHEREFORE, in view of the foregoing established evidence, judgment is hereby rendered convicting the accused Yip Wai Ming beyond reasonable doubt of the crime of Murder as charged in the information and as defined in Article 248, paragraph 5 of the Revised Penal Code, and in accordance therewith the aggravating circumstance of evident premeditation which attended the commission of the offense, the said accused Yip Wai Ming is hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided for by law.

Accused is likewise ordered to pay the heirs of the deceased Lam Po Chun of Hongkong the death indemnity for damages at Fifty Thousand (P50,000.00) Pesos; Moral and compensatory damages of Fifty Thousand (P50,000.00) Pesos each or a total of One Hundred Thousand Pesos (P100,000.00); plus costs of suit.

The accused being detained, he is credited with the full extent of the period under which he was under detention, in accordance with the rules governing convicted prisoners.

SO ORDERED.

(p. 69, Rollo.)

There was no eyewitness to the actual killing of Lam Po Chun. All the evidence about the killing is circumstantial. The key issue in the instant appeal is, therefore, whether or not the circumstantial evidence linking

accused-appellant to the killing is sufficient to sustain a judgment of conviction beyond reasonable doubt.

The evidence upon which the prosecution convinced the trial court of accused-appellant's guilt beyond reasonable doubt is summarized in the Solicitor-General's brief as follows:

On or about 7 o'clock in the evening of July 10, 1993, appellant and his fiancée Lam Po Chun who are both Hongkong nationals, checked in at Park Hotel located at No. 1032-34 Belen St., Paco, Manila. They were billeted at Room 210. Angel Gonzaga, the roomboy on duty, assisted the couple in going up to their room located at the second floor of the hotel (p. 14, tsn, October 13, 1993, p. 66, tsn, September 1, 1993). When they reached Room 210, appellant got the key from Angel Gonzaga and informed the latter that they do not need any room service, particularly the bringing of foods and other orders to their room (pp. 67-69, tsn, September 1, 1993).

After staying for about an hour inside Room 210, the couple went down to the lobby of the hotel. Appellant asked the front desk receptionist on duty to call a certain Gwen delos Santos and to instruct her to pick them up the following day, July 11, 1993, a Sunday at 10 o'clock in the morning (pp. 21-25, tsn, September 8, 1993).

At about past 8 o'clock in the same evening of July 10, 1993, Cariza Destreza, occupant of Room 211 which is adjacent to Room 210, heard a noise which sounds like a heated argument between a man and a woman coming from the room occupied by appellant and Lam Po Chun. The heated discussions lasted for thirty (30) minutes and thereafter subsided.

In the following morning, that is, July 11, 1993, at around 9:15, the same Cariza Destreza again heard a banging which sounds like somebody was thrown and stomped on the floor inside Room 210. Cariza, who became curious, went near the wall dividing her room and Room 210. She heard a cry of a woman as if she cannot breathe (pp. 23-24, tsn, August 30, 1993).

At about 10 o'clock a.m., Gwen delos Santos, together with two lady companions, arrived at the lobby of the Park Hotel. The receptionist informed appellant by telephone of her arrival. In response, appellant came down without his fiancée Lam Po Chun. After a while he together with Gwen delos Santos and the latter's companions, left the hotel. Before leaving, he gave instruction to the front desk receptionist not to disturb his fiancée at Room 210. He also ordered not to accept any telephone calls, no room cleaning and no room service (pp. 37-43, tsn, October 18, 1993).

When appellant left, the front desk receptionist, Enriqueta Patria, noticed him to be in a hurry, perspiring and looking very scared (p. 32, tsn, September 22, 1993).

During the whole morning of July 11, 1993, after appellant left the hotel until his return at 11 o'clock in the evening, he did not call his fiancée Lam Po Chun to verify her physical condition (p. 44 tsn, October 18, 1993, p. 18, tsn, November 23, 1993).

When appellant arrived at 11 o'clock p.m. on that day, he asked the receptionist for the key of his room. Then together with Fortunato Villa, the roomboy, proceeded to Room 210. When the lock was opened and the door was pushed, Lam Po Chun was found dead lying face down on the bed covered with a blanket. Appellant removed the blanket and pretended to exclaim 'My God, she is dead' but did not even embrace his fiancée. Instead, appellant asked the room boy to go down the hotel to inform the front desk, the security guard and other hotel employees to call the police (pp. 8-27, tsn, October 18, 1993).

When the police arrived, they conducted an examination of the condition of the doors and windows of the room as well as the body of the victim and the other surroundings. They found no signs of forcible entry and they observed that no one can enter from the outside except the one who has the key. The police also saw the victim wrapped in a colored blanket lying face down. When they removed the blanket and tried to change the position of her body, the latter was already in state of rigor mortis, which indicates that the victim has been dead for ten (10) to twelve (12) hours. The police calculated that Lam Po Chun must have died between 9 to 10

in the morning of July 11, 1993 (pp. 2-29), tsn, September 22, 1993).

Dr. Manuel Lagonera, medico-legal officer of the WPD, conducted an autopsy of the body of the victim. His examination (Exh. V) revealed that the cause of death was 'asphyxia by strangulation.' Dr. Lagonera explained that asphyxia is caused by lack of oxygen entering the body when the entrance of air going to the respiratory system is blocked (pp. 6-19, tsn, December 14, 1993).

Prior to the death of the victim, her brother, Lam Chi Keung, learned that her life was insured with the Insurance Company of New Zealand in Causeway Bay, Hongkong, with appellant as the beneficiary. The premium paid for the insurance was more than the monthly salary of the deceased as an insurance underwriter in Hongkong (Exh. X).

It was on the bases of the foregoing facts that appellant was charged before the Regional Trial Court in Manila for the crime of murder committed against the person of Lam Po Chun.

(pp. 3-7, Appellee's Brief, ff. p. 176, Rollo.)

In his brief, accused-appellant offers explanatory facts and argues that the findings of fact of the trial court are based mainly on the prosecution evidence displaying bias against accused-appellant. He contends that the court made unwarranted and unfounded conclusions on the basis of self-contradictory and conflicting evidence.

Accused-appellant, at the time of the commission of the crime, was a customer relations officer of Well Motors Company in Kowloon, Hongkong. He met Lam Po Chun at a party in 1991. Both were sportsminded and after a short courtship, the two began to have a relationship, living together in the same apartment. The two toured China and Macao together in 1992. In April, 1993 the two decided to get married. In May 1993, they registered with the Hongkong Marriage Registry. The wedding was set for August 29, 1993.

An office-mate of accused-appellant named Tessie "Amay" Ticar encouraged him and Lam Po Chun to tour the Philippines in celebration of their engagement. After finishing the travel arrangements, the two were given by Ticar the names (Toots, Monique, and Gwen) of her cousins in Manila and their telephone number. Photos of their Manila contacts were shown to them. In addition to his Citibank credit card, accused-appellant brought P24,000.00 secured at a Hongkong money exchange and HK\$4,000.00. Lam Po Chun had HK\$3,000.00.

The two arrived in Manila on July 10, 1993 at about 5:40 P.M. on board Cathay Pacific Flight CX 903. They arrived at Park Hotel around 7 P.M. From their hotel room, accused-appellant called their contact, Gwen delos Santos, by telephone informing her of their arrival. The two ate outside at McDonald's restaurant

Accused-appellant woke up the following morning - Sunday, July 11, 1993 - at around 8 o'clock. After the usual amenities, including a shower, the two had breakfast in the hotel restaurant, then they went back to their room. At around 10 o'clock that same morning, accused-appellant received a phone call from the hotel staff telling him that their visitors had arrived.

He then went to the lobby ahead of Lam Po Chun, introduced himself to the delos Santos sisters, Gwen and Monique, and their mother. A few minutes later, Lam Po Chun joined them. Two bottles of perfume were given to the sisters as arrival gifts.

Gwen delos Santos invited the couple to tour the city but Lam Po Chun decided to stay behind as it was very hot and she had a headache. She excused herself and went up to her room, followed later by accused-appellant to get another bottle of perfume.

Accused-appellant claims that before leaving, he instructed the clerk at the front desk to give Lam Po Chun some medicine for headache and, as much as possible, not to disturb her.

Accused-appellant, Gwen, Monique, and the sisters' mother took a taxicab to Landmark Department Store where they window shopped. Accused-appellant states that from a telephone booth in the store, he called Lam Po Chun but no one answered his call. From Landmark where they had lunch, the four went to Shoemart Department Store in Makati. Accused-appellant bought a Giordano T-shirt at Landmark and chocolates at Shoemart. Gwen delos Santos brought the group to the house of her aunt, Edna Bayona, at Roces, Quezon City. From Roces St., Gwen delos Santos brought the group to her home in Balut, Tondo. Using the delos Santos telephone, accused-appellant called his office in Hongkong. The PLDT receipt showed that the call was made at 6:44 P.M. on July 11, 1993. Accused-appellant claims that, afterwards, he called up Lam Po Chun at their hotel room but the phone just kept on ringing with nobody answering it. The group had dinner at the delos Santos house in Tondo. After dinner, Gwen delos Santos' brother and sister-in-law arrived. They insisted in bringing their guest to a restaurant near Manila Bay for coffee, but it was full so they proceeded to Tia Maria, a Mexican restaurant in Makati.

Finally, the delos Santos family brought Andy Yip back to the Park Hotel, arriving there at around 10:30 PM. Before the delos Santos group left, there was an agreement that the following morning accused-appellant and Lam Po Chun would join them in another city tour.

After accused-appellant's knocks at the door of their room remained unanswered, he went back to the hotel front desk and asked the hotel staff to open the door for him. The room was dark. Accused-appellant put on the light switch. He wanted to give the roomboy who accompanied him a P20 or P30 tip but his smallest bill was P100. He went to a side table to get some smaller change. It was then when he noticed the disordered room, a glass case and wallet on the floor, and Lam Po Chun lying face down on one of the beds.

Accused-appellant tried to wake Lam Po Chun up by calling her name but when she did not respond, he lifted up her face, moving her body sideways. He saw blood. Shocked, he shouted at the roomboy to call a doctor.

Several people rushed to Room 210. A foreigner looked at Lam Po Chun and said she was dead. The foreigner placed his arms around accused-appellant who was slumped on the floor and motioned for him to leave the room. Accused-appellant refused, but he was made to move out and to go to the lobby, at which place, dazed and crying, he called up Gwen delos Santos to inform her of what happened. Gwen could not believe what she heard, but she assured accused-appellant that they were going to the hotel. Policemen then arrived.

In the instant appeal, accused-appellant, through his new counsel, former Justice Ramon C. Fernandez, assigns the following alleged errors:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ARRESTED WITHOUT WARRANT, WAS TORTURED AND WAS NOT INFORMED THAT HE HAD THE RIGHT TO REMAIN SILENT AND BE ASSISTED BY INDEPENDENT AND COMPETENT COUNSEL DURING CUSTODIAL INVESTIGATION.

II

THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD THE VICTIM APPLE INSURED AND LATER KILLED HER FOR THE INSURANCE PROCEEDS.

III

THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT COMMITTED A CRIME OF MURDER AGGRAVATED BY EVIDENT PREMEDITATION.

IV

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF OFFICER ALEJANDRO YANQUILING, JR.

V

THE TRIAL COURT ERRED IN RELYING ON THE TESTIMONY OF CARISA DESTREZA WHO INCURRED SERIOUS CONTRADICTIONS ON MATERIAL POINTS.

VI

THE TRIAL COURT ERRED IN RELYING ON THE TESTIMONIES OF THE OTHER PROSECUTION WITNESSES THAT CONTRADICTED EACH OTHER ON MATERIAL POINTS.

VII

THE TRIAL COURT ERRED IN HOLDING THAT THE TESTIMONIES OF THE WITNESSES OF THE ACCUSED ARE INCREDIBLE.

VIII

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS ESTABLISHED THE GUILT OF THE ACCUSED-APPELLANT BY PROOF BEYOND REASONABLE DOUBT.

IX

THE TRIAL COURT ERRED IN NOT COMPLETELY ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION.

(pp. 80-82, Rollo.)

The trial court, in arriving at its conclusions, took the various facts presented by the prosecution, tied them up together like parts of a jig-saw puzzle, and came up with a complete picture of circumstantial evidence depicting not only the commission of the crime itself but also the motive behind it.

Our review of the record, however, discloses that certain key elements, without which the picture of the crime would be faulty and unsound, are not based on reliable evidence. They appear to be mere surmises and assumptions rather than hard facts or well-grounded conclusions.

A key element in the web of circumstantial evidence is motive which the prosecution tried to establish. Accused-appellant and Lam Po Chun were engaged to be married. They had toured China and Macao together. They were living together in one apartment. They were registered with the Hongkong Marriage Registry in May 1993. Marriage date was set for August 29, 1993. This date was only a month and a half away from the date of death of Lam Po Chun. In the absence of direct evidence indubitably showing that accused-appellant was the perpetrator of the killing, motive becomes important. The theory developed by the prosecution was not only of a cold-blooded crime but a well-planned one, including its timing up to the half hour. It is not the kind of crime that a man would commit against his wife-to-be unless a strong motive for it existed.

The trial court would have been justified in finding that there was evident premeditation of murder if the story is proved that Lam Po Chun insured herself for the amounts of US \$498,750.00 and US \$249,375.00 naming accused-appellant as the beneficiary.

There is, however, no evidence that the victim secured an insurance policy for a big amount in US dollars and indicated accused-appellant as the beneficiary. The prosecution presented Exhibit "X", a mere xerox copy of a document captioned "Proposal for Life Insurance" as proof of the alleged insurance. It is not a certified copy, nor was the original first identified.

The authenticity of the document has thus not been duly established. Exhibit "X" was secured in Hongkong when Lam Chi Keung, the brother of the victim, learned that his sister was murdered in Manila. It is not shown how and from whom the information about any alleged insurance having been secured came. There is no signature indicating that the victim herself applied for the insurance. There is no marking in Exhibit "X" of any entry which

purports to be the victim's signature. There is a signature of Apple Lam which is most unusual for an insurance application because the victim's name is Lam Po Chun. To be sure nobody insures himself or herself under a nickname. The entries in the form are in block letters uniformly written by one hand. Below the printed name "Lam Po Chun" are Chinese characters which presumably are the Chinese translation of her name. Nobody was presented to identify the author of the "block" handwriting. Neither the prosecution nor the trial court made any comparisons, such as the signature of Lam Po Chun on her passport (Exh. "C"), with her purported signature or any other entry in the form.

It needs not much emphasis to say that an application form does not prove that insurance was secured. Anybody can get an application form for insurance, fill it up at home before filing it with the insurance company. In fact, the very first sentence of the form states that it merely "forms the basis of a contract between you and NZI Life." There was no contract yet.

There is evidence in the record that the family of Lam Po Chun did not like her relationship with accused-appellant. After all the trouble that her brother went through to gather evidence to pin down accused-appellant, the fact that all he could come up with is an unsigned insurance application form shows there was no insurance money forthcoming for accused-appellant if Lam Po Chun died. There is no proof that the insurance company approved the proposal, no proof that any premium payments were made, and no proof from the record of exhibits as to the date it was accomplished. It appearing that no insurance was issued to Lam Po Chun with accused-appellant as the beneficiary, the motive capitalized upon by the trial court vanishes. Thus, the picture changes to one of the alleged perpetrator killing his fiancée under cold-blooded circumstances for nothing.

There are other suspicious circumstances about the insurance angle. Lam Po Chun was working for the National Insurance Company. Why then should she insure her life with the New Zealand Insurance Company? Lam's monthly salary was only HK \$5,000.00. The premiums for the insurance were HK \$5,400.00 or US \$702.00 per month. Why should Lam insure herself with the monthly premiums exceeding her monthly salary? And why should any insurance company approve insurance, the premiums of which the supposed insured obviously can not afford to pay, in the absence of any showing that somebody else is paying for said premiums. It is not even indicated whether or not there are rules in Hongkong allowing a big amount of insurance to be secured where the beneficiary is not a spouse, a parent, a sibling, a child, or other close relative.

Accused-appellant points out an apparent lapse of the trial court related to the matter of insurance. At page 33 of the decision, the trial court stated:

Indeed, Yip Wai Ming testified that he met Andy Kwong in a restaurant in Hongkong and told Yip and Lam Po Chun should be married and there must be an insurance for her life . . .

(p. 33, RTC Decision; p. 66, Rollo.)

The source of the above finding is stated by the court as "tsn hearing Sept. 22, 1992." But accused-appellant Yip Wai Ming did not testify on September 22, 1992. The entire 112 pages of the testimony on that date came from SPO2 Yanquiling. The next hearing was on September 29, 1993. All the 100 pages of the testimony on that date came from Yanquiling. The next hearing on October 13, 1993 resulted in 105 pages of testimony, also from Yanquiling. This Court is at a complete loss as to the reason of the trial court sourcing its statement to accused-appellant's alleged testimony.

Lam Po Chun must have been unbelievably trusting or stupid to follow the alleged advice of Andy Kwong. It is usually the man who insures himself with the wife or future wife as beneficiary instead of the other way around. Why should Lam Po Chun, with her relatively small salary which is not even enough to pay for the monthly premiums, insure herself for such a big amount. This is another reason why doubts arise as to the truth of the

insurance angle.

Another key factor which we believe was not satisfactorily established is the time of death. This element is material because from 10 A.M. of July 11, 1993 up to the time the body was discovered late that evening, accused-appellant was in the company of Gwen delos Santos, her sister Monique, and their mother, touring Metro Manila and going from place to place. This much is established.

To go around this problem of accused-appellant being away from the scene of the crime during the above mentioned hours, the prosecution introduced testimonial evidence as to the probable time of death, always placing it within the narrow 45-minute period between 9:15 and 10 A.M. of July 11, 1993, the time when Cariza Destresa, the occupant of the adjoining room, heard banging sounds coming from the room of accused-appellant, and the time accused-appellant left with his Filipino friends.

The prosecution alleges that at 10 A.M., Lam Po Chun was already dead. However, Gwen delos Santos who never saw the couple before was categorical in declaring that she met both of them at the lobby before the group left for the tour (tsn, Feb. 14, 1994, p. 64; p. 20, RTC Decision; p. 150, Rollo), but Lam Po Chun asked to be excused because of a headache. In fact, delos Santos was able to identify Lam Po Chun from pictures shown during the trial. She could not have done this unless she really saw and met the victim at the hotel lobby at around 10 A.M. of July 11, 1993.

The prosecution introduced an expert in the person of Dr. Manuel Lagonera to establish the probable time of death. Dr. Lagonera, medico-legal officer of the PNP Western Police District, after extensive questioning on his qualifications as an expert witness, what he discovered as the cause of death (strangulation), the contents of the deceased's stomach, injuries sustained, and the condition of the cadaver, was asked to establish the time of death, to wit:

Q. If we use thirty six (36) hours to forty eight (48) hours, will you agree with me that it is possible that the victim was killed in the morning of July 10, 1993?

A. I cannot, I have no basis whether the victim was killed in the morning or in the afternoon.

(tsn, Dec. 14, 1993, p. 31.)

Dr. Lagonera's testimony on the number of assailants was similar. He had no basis for an answer, thusly:

ATTY. PASCUA:

Q. Would you be able to determine also based on your findings your autopsy whether the assailants, the number of the assailants?

WITNESS:

A. I have no basis, Sir.

ATTY. PASCUA:

Q. You have no basis. And would it also have been possible, that there were more than one assailants?

WITNESS:

A. It is possible also.

ATTY. PASCUA:

Q. It is possible also, who simultaneously inflicted the wounds of the victim?

WITNESS:

A. It is possible.

ATTY. PASCUA:

Q. Based also on your autopsy report, were there signs that the victim put a struggle?

WITNESS:

A. There were no injuries in the hand or forearms or upper arms of the victim. So, there were no sign of struggle on the part of the victim.

ATTY. PASCUA:

Q. And your basis in saying that there was no struggle on the part of the victim was that there were no apparent or seen injuries in the hands of the victim?

WITNESS:

A. Yes, sir.

ATTY. PASCUA:

Q. But you did not examine the fingernails?

WITNESS:

A. No, I did not examine, Sir.

ATTY. PASCUA:

Q. Were there also injuries at the back portion of the head of the victim?

WITNESS:

A. No injuries at the back, all in front.

ATTY. PASCUA:

Q. All in front, meaning in terms of probability and based on your professional opinion, the attack would have come from a frontal attack or the attacker would have come from behind to inflict the frontal injuries of the victim?

WITNESS:

A. It can be the attack coming from behind in the front or both, sir.

ATTY. PASCUA:

Q. But in your professional opinion or in your experience, based on the injuries sustained including the location of the injuries on the body of the victim, would it be more probable that the attack came from in front of the victim?

WITNESS:

A. Yes, it is possible, Sir.

(tsn, Dec. 14, 1993, pp. 60-63.)

Dr. Lagonera placed the probable time of death as July 10, 1993 (tsn, Dec. 14, 1993, p.108). It is undisputed that at around 8:30 A.M. of July 11, 1993 accused-appellant and Lam Po Chun took breakfast together at the hotel restaurant. She could not have been killed on July 10, 1993. The autopsy conducted by Dr. Lagonera and the testimony of accused-appellant coincided insofar as the food taken at breakfast is concerned. The couple ate eggs, bacon, and toasted bread. But the doctor was insistent that the death occurred the previous day.

Where a medico-legal expert of the police department could not, with any measure of preciseness, fix the time of death, the police investigator was bold and daring enough to establish it. Surprisingly, the trial court accepted this kind of evidence. SPO2 Alejandro Yanquiling testified that he arrived at the Park Hotel at about 11:25 o'clock on the evening of July 11, 1993 to conduct the investigation of the crime. At the time, the victim showed signs of rigor mortis, stiffening of the muscle joints, with liquid and blood oozing from the nose and mouth. On the basis of his observations, he declared that the victim had been dead for 10 to 12 hours.

The trial court stated that if the victim had been dead from 10 to 12 hours at 11:35 o'clock in the evening, it is safe to conclude that she was killed between 9 and 10 o'clock on the morning of July 11, 1993. The mathematics of the trial court is faulty. Twelve hours before 11:35 P.M. would be 11:35 A.M.. Ten hours earlier would even be later -- 1:35 P.M.. Since accused-appellant was unquestionably with Gwen delos Santos and her group touring and shopping in megamalls between 10 A.M. and 11:35 P.M., the assailant or assailants must have been other people who were able to gain entry into the hotel room at that time.

The trial court stated that there was no sign of any forcible entry into the room, no broken locks, windows, etc. The answer is simple. Somebody could have knocked on the door and Lam Po Chun could have opened it thinking they were hotel staff. Unfortunately, Detective Yanquiling was so sure of himself that after pinpointing accused-appellant as the culprit, he did not follow any other leads. In the course of his interviews with witnesses, his purpose was simply to nail down one suspect. His investigation was angled towards pinning down Yip Wai Ming. In fact, Gwen delos Santos testified that Yanquiling talked to her over the telephone almost daily urging her to change her testimony.

Officer Yanquiling testified on cross-examination that he did not apply any mode of scientific investigation. If a medico-legal expert of the same police department who conducted an autopsy had no basis for giving the probable time of death, the police officer who merely looked at the body and saw the blood oozing out of the victim's nose and mouth must have simply guessed such time, plucking it out of thin air. The trial court accepted the erroneous timing, conveniently placing it where a finding of guilt would follow as a consequence.

Before a conviction can be had upon circumstantial evidence, the circumstances should constitute an unbroken chain which leads to but one fair and reasonable conclusion, which points to the accused, to the exclusion of all others, as the guilty person (U.S. vs. Villos, 6 Phil. 510 [1906]; People vs. Subano, 73 Phil. 692 [1942]). Every hypothesis consistent with innocence must be excluded if guilt beyond reasonable doubt is based on circumstantial evidence (U.S. vs. Cajayon, 2 Phil. 570 [1903]; U.S. vs. Tan Chian, 17 Phil. 209 [1910]; U.S. vs. Levente, 18 Phil. 439 [1911]). All the evidence must be consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt (People vs. Andia, 2 SCRA 423 [1961]).

The tests as to the sufficiency of the circumstantial evidence to prove guilt beyond reasonable doubt have not been met in the case at bar.

The chain of circumstances is not unbroken. The most vital circumstantial evidence in this case is that which

proves that accused-appellant killed the victim so he could gain from the insurance proceeds on the life of the victim. Another vital circumstance is the time of death precisely between 9:15 and 10 A.M. Both were not satisfactorily established by the prosecution. Where the weakest link in the chain of evidence is at the same time the most vital circumstance, there can be no other alternative but to acquit the accused (*People vs. Magborang*, 9 SCRA 108 [1963]).

Since the sentence of conviction is based on the crime having been committed within a short time frame, accused-appellant cannot be convicted on the strength of circumstantial evidence if doubts are entertained as to where he was at that particular time and reasonable conclusions can be had that other culprits could have entered the room after accused-appellant left with the delos Santos family. Other people could have killed the victim.

The trial court also relied heavily on the testimony of Cariza Destresa, a 19-year old cultural dancer occupying with her Australian boyfriend Peter Humphrey, the adjoining Room 211. Destresa testified that while she was in Room 211 at about 9:15 o'clock on the morning of July 11, 1993, she heard banging sounds in Room 210, as if somebody was being thrown, and there was stomping on the floor. The banging sounds lasted about thirty (30) minutes, an improbably long time to kill a woman. Destresa stated that she placed her ear near the wall and heard the cry of a woman having difficulty in breathing.

The witness heard the banging sounds between 9:15 and 9:45 A.M. of July 11, 1993, not before or after. The unreliability of Destresa's memory as to dates and time is shown by the fact that when asked as to the date of her Australian boyfriend's arrival in the Philippines, she stated, "July 29, 1993." Pressed by the prosecuting attorney if she was sure of said date, she changed this to "July 16, 1993." Pressed further:

Q. Are you sure that he arrived in the Philippines on July 16, 1993?

A. I can't exactly remember the date of the arrival of my boyfriend here in the Philippines because his coming was sudden, Sir.

(tsn, Sept. 30, 1993, p.10.)

On July 16 and July 19, 1993 Lam Po Chun was already dead. If Peter Humphrey was still in Australia on July 11, 1993, how could he occupy with his girlfriend the next door room, Room 211, on that date at the Park Hotel. If Destresa cannot remember the date her Australian boyfriend arrived, how could the trial court rely on her memory as to the 30-minute interval from 9:15 A.M. to 9:45 A.M. of July 11, 1993 when the alleged murder took place. Asked what time on July 13, 1993 she gave her sworn statement to the police, Destresa answered, "I am not sure, may be it was in the early morning between 2 or 3 o'clock of that day, Sir." Destresa was asked how she could be certain of July 13, 1993 as the date of her sworn statement. She answered that this was the day her boyfriend left for Australia (tsn, Aug. 31, 1993, p. 29). In her testimony given on the same day, Destresa states that she stayed in Room 211 for 3 months. She later changed her mind and said she stayed there only when Peter Humphrey was in the Philippines. According to the witness, Peter left on May 29, 1993; arrived in June and July; left in June; arrived in July; left on July 13, 1993. Destresa was confused and evasive not only as to dates, but also as to her employment, stating at the start of her testimony that she was jobless, but later declaring that she was a dancer with the "Rampage" group and performed in Dubai.

Destresa testified at one point that she heard an argument between a man and a woman in a dialect she could not understand. This was supposed to be on the evening of July 11, 1993. At that time, the victim had long been dead. Destresa gave various contradictory statements in her August 30, 1993; August 31, 1993; and September 1, 1993 testimony. To our mind, the trial court gravely erred in relying on her testimony.

Accused-appellant was arrested on July 13, 1993, two days after the killing. There was no warrant of arrest.

Officer Yanquiling testified that there was no warrant and he arrested the accused-appellant based on "series of circumstantial evidence." He had no personal knowledge of Yip Wai Ming having committed the crime. Accused-appellant stated that five police officers at the police station beat him up. They asked him to undress, forced him to lie down on a bench, sat on his stomach, placed a handkerchief over his face, and poured water and beer over his face. When he could no longer bear the pain, he admitted the crime charged, participated in a re-enactment, and signed an extrajudicial statement. All the while, he was not informed of his right to remain silent nor did he have counsel of his choice to assist him in confessing the crime.

The custodial interrogation of accused-appellant was violative of Section 12, Article III of the Constitution. The Constitution provides that "(3) Any confession or admission obtained in violation of this section or Section 17 hereof shall be inadmissible against him." Section 17, Article III provides: "No person shall be compelled to be a witness against himself." Any confession, including a re-enactment without admonition of the right to silence and to counsel, and without counsel chosen by the accused is inadmissible in evidence (*People vs. Duero*, 104 SCRA 379 [1981]).

This Court notes that accused-appellant did not file any complaint or charges against the police officers who allegedly tortured him. But he was a foreign national, a tourist charged with a serious crime, finding himself in strange surroundings. In Hongkong, there would have been family members and friends who could have given him moral support. He would have known that he was being questioned in his own country, being investigated under the laws of that country. The degree of intimidation needed to coerce a person to confess to the commission of a crime he did not commit would be much less if he is in a strange land. Accused-appellant states that his lawyers told him not to file any charges against the policemen. He followed their advice, obviously not wanting to get into more trouble.

This Court has carefully gone over the record of this case. We simply cannot state that the circumstantial evidence is in its entirety credible and unbroken and that the finding of guilt excludes any other possibility that the accused-appellant may be innocent.

Most of the circumstantial evidence in this case came from the investigation conducted by Officer Alejandro Yanquiling or from the prodding by him of various witnesses. The desire of a police officer to solve a high profile crime which could mean a promotion or additional medals and commendations is admirable. However, an investigator must pursue various leads and hypotheses instead of singlemindedly pursuing one suspect and limiting his investigation to that one possibility, excluding various other probabilities. The killing of a tourist is a blot on the peace and order situation in the Philippines and must be solved. Still, concentrating on pinning down an alien companion of the victim and not pursuing the possibilities that other persons could have killed the victim for her money and valuables does not speak well of our crime detection system. It is not enough to solve a crime. The truth is more important and justice must be rendered.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. Accused-appellant Yip Wai Ming is acquitted of the charge of murder on grounds of reasonable doubt and his immediate release from custody is ordered unless he is being held on other legal grounds.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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