

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CORNELIO CABUG, ACCUSED-APPELLANT.

G.R. No. 123149. March 27, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 36, General Santos City, finding accused-appellant Cornelio Cabug guilty of the crime of parricide and sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties provided by law and ordering him to pay P70,000.00 to the children of the deceased as indemnity.

The information against accused-appellant alleged ^¾

That on or about 11:30 o'clock in the evening of August 15, 1992, at Roca Subdivision, Apopong, General Santos City, Philippines, within the jurisdiction of this Honorable Court, said accused willfully, unlawfully and feloniously, with intent to kill and with evident premeditation and treachery, armed with a hammer and a screw driver, attack, assault, strike, hit, and stab Liwanag Cabug, with whom he was united in lawful wedlock, who sustained wounds and injuries on her head and other parts of her body which resulted [in] her death.

CONTRARY TO LAW.[2]

The case was originally assigned to the Regional Trial Court, Branch 23, General Santos City presided over by Judge Jose L. Orlino, who, after hearing six (6) prosecution witnesses, inhibited himself from further consideration of the case. The case was reraffled to the RTC, Branch 36, presided over by Judge Apolinario F. Estoque. However, after hearing the testimonies of three (3) defense witnesses, Judge Estoque was re-assigned to Butuan City. Judge Teodoro A. Dizon then took over the case.

The prosecution presented eight (8) witnesses, namely, Nestor Lopeña, Cynthia Isla, Luzviminda Roca, Charlito Isla, Lealyn Cabug, Dr. Benjamin Pagarigan, SPO3 Bernard Rafanan, Luzviminda Roca, and Alexander Sarabia, whose testimonies are summarized below:

Accused-appellant Cornelio Cabug, then 37 years old, is the husband[3] of the deceased Liwanag Roca Cabug, 32 years old at the time of her death. They have three children, Lealyn, Wilfred, and Grace, aged 14, 9, and 2, respectively at the time material to this case. The Cabug family lived in Roca Subdivision, Apopong, General Santos City. Cynthia Isla, a niece of the deceased, lived with them.

On August 15, 1992, at around 11:30 p.m., while asleep in the room which she shared with Lealyn, Cynthia was awakened by the cries of her aunt from the adjacent room, asking her for help. Cynthia woke Lealyn up. They knocked on the door, but nobody answered it. They tried to open it, but it was locked.[4]

While Lealyn stayed behind, Cynthia ran to the house, 75 to 80 meters away, of Florita Roca, mother of the deceased, shouting "Lola, Auntie Minda, si Auntie Liwanag ug si Nong Cornelio nag-away na sab." ("Lola, Auntie Minda, Auntie Liwanag and Nong Cornelio are quarreling again.")[5] Florita Roca lost no time. She went

with Cynthia to the house of the Cabug spouses. Luzviminda Roca, a sister of the deceased who lived with Florita Roca, went back to bed.[6]

Cynthia said that when they arrived at the house she could hear the deceased saying, "Nay, sakit, nay." ("Ma, it's painful, Ma.") She said she went out to the front porch, pulled a table, and placed it below the high window which overlooked the room of the Cabug spouses. She stepped on the table and peeped through the small window. The room was lighted by a 20-watt fluorescent light. Cynthia saw blood in the room and accused-appellant sitting on the floor beside the bed, his head between his bended knees which he grasped with his hands. She also saw Grace Cabug lying on the bed, sucking her thumb. Cynthia said she did not see the deceased from her perch.

Cynthia went back to the house of Florita Roca to fetch Luzviminda Roca, shouting, "Auntie Minda, na-ay dugo." ("Auntie Minda, there is blood.")[7] This time, Luzviminda Roca got up from her bed and went with Cynthia.[8]

Upon reaching the house of the Cabug spouses, Luzviminda went to the door of the master's bedroom and kicked it open. They found accused-appellant and the deceased lying bloodied on the floor.[9] Lealyn, who was behind Luzviminda at this time, also saw the same.[10] Horrified, Luzviminda shouted, "Unsa mo, nagpatyanay na mo?" ("What is happening to you? You are already killing each other!") Accused-appellant kicked the door shut. Luzviminda then shouted for help.[11]

Cynthia ran to the bunkhouse of the carpenters, 50 meters away, for help. One of the carpenters, Nestor Lopeña, went with her. Upon reaching the house of the Cabug spouses, Nestor peeped through the window of the master's bedroom. Nestor testified that he saw the deceased lying bloodied on the floor face down with the accused-appellant's head near the right thigh of his wife. Grace Cabug was sitting on the bed.[12]

Charlito Isla, a.k.a Bulilit, was also summoned from another bunkhouse. He likewise found the master's bedroom locked, but through the high window, he saw the accused-appellant inside the room lying on the floor on his back, arms pressed against the door while his legs were pressed against the bed.[13] He, Nestor, and Charlito kicked the door and pushed it with their bodies until the lock was broken and the door was detached from its hinges.[14]

They found the victim on the floor lying face down in a pool of blood, as accused-appellant staggered to move towards a corner of the room. Grace Cabug was sitting on the bed.[15] Nestor said he asked accused-appellant, "Why did you do this?," to which the latter allegedly answered, "Engineer is the cause." Nestor testified that he found a hammer and a screwdriver near the body of the victim.[16]

Charlito and Nestor carried the body of Liwanag Roca Cabug outside the house and loaded it into the vehicle of one Engineer de Guzman which was parked near the house of the Cabug spouses.[17] According to Cynthia Isla, the engineer, who is a business partner of the deceased, usually parked his car near their house.[18] Luzviminda Roca, on the other hand, testified that the vacant space near the house of her sister, the deceased, served as a parking lot since the bunkhouse where the engineer stayed whenever he was in the subdivision did not have a parking space.[19]

Charlito testified that when they took the deceased to the hospital, the latter was still breathing although her condition was serious.[20] Accused-appellant was left inside the room of their house because he refused to be brought to the hospital. Later on, however, he was persuaded by one Saturnino Aragoncillo to go to the hospital after the latter's repeated assurances of protection.[21]

The certificate of death (Exh. D)[22] of the deceased, prepared by Dr. Benjamin Pagarigan, stated:

Cause of Death

Immediate Cause: a. Hypovolemic Shock 2[o]

Antecedent Cause: b. Multiple Hacking Wounds

Underlying Cause: c. Multiple Fracture with Brain Evisceration

Other significant conditions

contributing to death: (Tempo-frontal occipital), puncture wound right buccal sec. to trauma

Dr. Gervacio Posadas, city health officer of General Santos City, conducted a postmortem examination on the deceased. His report (Exh. E) stated:

1. Contused laceration

-

right upper eyelid, 5 cm. by 2 cm. deep;

2. Contused laceration

-

with depressed fracture, 5 cm. by 1 cm. by 1.5 cm. deep left eyebrow;

3. Depressed fracture

-

right parietal area, 7.2 cm. in circumference;

4. Contused laceration

-

10 cm. by 2.5 cm., scalp deep, left occipito-mastoid area;

5. Contused laceration

-

9 in number, 3.7 cm. by 1.5 cm., scalp deep, scattered over right & left parietal area, 5 are sutured;

Note: 1. Patient was admitted in St. Elizabeth hospital for 2 hrs. and given treatment by Dr. Pagarigan;

2. presence I.V. open method (cut down) right leg lower 3rd with plaster;

3. I.V. site with plaster right wrist joint.

Cause of Death:

Death was due to shock, hemorrhage, fracture of head, multiple.[23]

Accused-appellant testified in his own behalf. He testified that when he arrived home from a birthday party on the night of August 15, 1992, he was hit on the head and rendered unconscious. When he regained consciousness he found himself already in the hospital. He could not remember talking with anyone from the time he was clubbed up to the time he regained consciousness. He also denied quarreling with his wife on that fateful night. When asked if he knew who clubbed him, the counsel of accused-appellant objected as this was not taken up in the direct examination. The court sustained the objection, and there were no more questions propounded to accused-appellant.[24]

Saturnino Aragoncillo, a neighbor, testified for the defense. He said that at around 1 o'clock in the morning of August 16, 1992, he was fetched from his house by three men who told him that something happened in the Cabug residence and his help was needed. When he went to the house of the Cabug family, he observed that the door to the master's bedroom showed no signs of being forcibly opened, while the bed was in disarray and there was blood in the ceiling. Accused-appellant was lying on the floor, bloodied as if dead. There was a bloodstained sack under the television set inside the room and a hammer which was also bloodstained. Aragoncillo then checked the pulse of the accused-appellant and upon finding him still alive, tried to wake him up. He testified that when accused-appellant came to, he asked, "Where is Neneng?," referring to the deceased. Aragoncillo answered that he did not know and told accused-appellant that he needed to be brought to the hospital. The latter initially refused because someone might kill him outside, but later agreed to be treated in the hospital.[25] Aragoncillo took him to General Santos Doctor's Hospital where he was treated for "open connect fracture of frontal wound." [26]

Aragoncillo testified that three days later, he visited accused-appellant in the hospital. Accused-appellant told him that he had been clubbed on the forehead as a result of which he lost consciousness and did not wake up until he was brought to the hospital. This matter was not formally reported to the police by Aragoncillo. He said that he only told a certain policeman, Aniando Lendio, about the incident, but he does not know whether the report was entered in the police blotter. He never bothered to formally report the matter to the police, explaining that it was not his job to do so and that he also had to keep his identity secret as he is a government employee holding a highly sensitive and highly confidential position. He said he waited for the police investigators to question him, and since no one approached him, he kept quiet about the incident and only talked about it when he was subpoenaed to testify in court.[27]

Two other defense witnesses were presented. Dr. Mario Y. Dideles testified on the injuries sustained by the accused-appellant.[28] On the other hand, SPO3 Lolita Basbas presented the police blotter with an entry regarding the death of the deceased on the night of August 15, 1992.[29]

The prosecution then presented four rebuttal witnesses to refute the testimony of accused-appellant that (1) the police did not make any investigation on the incident, (2) the door to the bedroom of the Cabug spouses showed no signs of having been forcibly opened, and (3) accused-appellant told a certain Alexander Sarabia that he was clubbed in the head and lost consciousness that night.

SPO3 Bernard Rafanan testified that he conducted the investigation of the incident in the afternoon of August 16, 1992. When he took pictures of the crime scene, he noticed that the master's bedroom no longer had a door. He also visited accused-appellant in the hospital to ask him questions regarding the incident. He only accomplished this the next day when he was permitted by the doctors to see accused-appellant. During his visit, SPO3 Rafanan said that he learned from accused-appellant that on that fateful night, he quarreled with the deceased because he suspected the latter and her business partner, a certain Engineer de Guzman, of having an affair. The fight allegedly got emotional, and accused-appellant used the hammer and screwdriver against his wife. Realizing that he had killed his wife, accused-appellant allegedly hit himself on the head with the hammer in order to kill himself. SPO3 Rafanan said that after hearing this, he did not ask further questions, thinking that at that point, accused-appellant needed the assistance of counsel.[30]

Luzviminda Roca was again presented as a witness to deny the allegation of Saturnino Aragoncillo that she threatened him the day after he testified for the defense.[31] Alexander Sarabia of the Philippine National Police in General Santos City, on the other hand, denied that accused-appellant told him that he (accused-appellant) had been hit on the head that night.[32] Eduardo Lopeña was the last witness to refute the observation of Aragoncillo that the door to the master's bedroom of the Cabug house was intact.[33]

The defense presented two witnesses in sur-rebuttal. The two, however, did not refute anything said by the prosecution witnesses but instead corroborated their testimonies in rebuttal. Roque Paye, the police officer who stood guard in the hospital while the accused-appellant was confined, confirmed that SPO3 Rafanan visited the accused-appellant. Presented for the second time, Saturnino Aragoncillo admitted that he did not actually understand what Luzviminda Roca had told him after he gave his testimony in court. He thus retracted his prior claim that Luzviminda Roca had threatened him.

After considering the evidence of the parties, the trial court rendered judgment finding accused-appellant guilty of parricide. The dispositive portion of its decision reads:

WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Parricide and hereby sentences him to suffer the penalty of RECLUSION PERPETUA with accessory penalties provided by law and to pay death indemnity of P70,000.00 to the legal heirs (children) of the deceased, Liwanag Roca Cabug, and the costs. He shall be credited in the service of his sentence with the full period of his preventive imprisonment.[34]

Hence, this appeal. Accused-appellant assigns the following errors as having been committed by the trial court:

- THAT THE COURT A QUO ERRED IN FAILING TO APPRECIATE [THE] SIGNIFICANCE OF THE MEDICAL CERTIFICATE ISSUED BY DR. BENJAMIN PAGARIGAN FOR THE DECEASED LIWANAG CABUG.
- THAT THE COURT A QUO ERRED WHEN IT MAINTAINED THAT THE PROSECUTION SATISFIED THE STANDARD PROVIDED FOR IN SECTION 5, RULE 133 OF THE NEW RULES OF COURT IN ORDER THAT AN ACCUSED MAY BE CONVICTED THRU CIRCUMSTANTIAL EVIDENCE.
- THAT THE TRIAL COURT BELOW ERRED IN CONVICTING THE ACCUSED BEYOND REASONABLE DOUBT.[35]

On July 6, 1998, for failure of accused-appellant to file the reply brief within the reglementary period, the Court dispensed with the same and deemed the case submitted for resolution. On April 27, 2000, accused-appellant moved to withdraw his appeal, reiterating his motion on March 21, 2000. On March 15, 2001, P/Col. Ricardo B. Macala (Ret.), Director, Bureau of Corrections, indorsed the withdrawal of accused-appellant's motion stating that the legal effect of the same had been adequately explained to accused-appellant and that the latter had filed the motion of his free will. In addition, a Certification was issued on March 15, 2001 by Atty. Roberto R. Sangalang, Chief of the Legal Office of the Bureau of Corrections, stating that he had personally examined accused-appellant and that he (Atty. Sangalang) was satisfied that accused-appellant had voluntarily executed the urgent motion to withdraw his appeal. The Solicitor General stated that he had no objection to the withdrawal of the appeal in this case.[36]

While the withdrawal of an appeal is allowed before the filing of appellee's brief, after a case has been submitted for decision, the withdrawal of the appeal may be granted only in the sound discretion of the court.[37] In this case, accused-appellant filed his motion of withdrawal on April 27, 2000 after the appellee's brief had been filed on January 26, 1998 and after the case had been submitted for decision on July 6, 1998. In addition, the withdrawal of appeal would preclude the Court from making the necessary modifications in accused-appellant's civil liability.[38] The Court therefore resolved to deny accused-appellant's motion to withdraw his appeal in this case.

Accordingly, a consideration of the merit of this case is in order.

First. In support of his first assignment of error, accused-appellant argues:

The trial court below did not only consider the fact that when [one] intends to commit a crime, it is farfetched that he will conceive of using three different instruments, that is after using one, he throws it away, use another, and in the same token, after using the second, he uses the third. Is this not contrary to human experience, if not logic? The trial court below did not only ignore the significance of the medical certificate issued by the physician who attended to the deceased Liwanag Cabug when she was brought at the St. Elizabeth, where she expired, but closed its mind and went to the extent of shallowly ruling that the injury sustained by the accused himself, which resulted to his near death was [self]-inflicted. Indeed, for the court below to have come up with this conclusion in its judgment convicting the accused for the crime charged, the said court could have tasked the prosecution to offer and present credible evidence to support the truth of such fact. The records of the case show the negative, as there [were] none that were offered to point that fact.[39]

To begin with, while a medical certificate may indicate the type of instruments used in killing a person and the probable manner by which the wounds were inflicted, it cannot conclusively indicate how the crime was committed or how many instruments were used to commit the crime.

The flaw in accused-appellant's argument is that it assumes that there were three different instruments used in killing the deceased. However, all that the testimonies of the physicians in this case show is that there could have been one or two instruments which caused the different injuries sustained by the victim. Dr. Benjamin Pagarigan testified:

FISCAL

Q Now we have here the punctured wound in the last item. What could have caused this?

A

A sharp object.

Q

How about these multiple fractures from the frontal and even to the occipital portion of the head, what could have caused this?

A A hard object.

Q How about this multiple hacking wound?

A It can be caused by a sharp object.

....

Q

Could it be possible Doctor that the object that caused the fractures can also be the object that caused the hacking wounds?

A

I have that feeling that it is possible that it is the same object but I just want to cite a hypothetical example. The sharp edge of the bolo can cause the hacking wound while the back portion of the bolo can cause the multiple fracture.

Q How about a hammer Doctor?

A

The hammer can cause more of the fractures and it can cause injury but not a clean-cut wound. Usually there is

an indication that she is being hit by a hard object.

Q That is also the same with the multiple hack wounds?

A Yes, sir.

Q

Could it be possible that the object which caused the hacking wounds can be the same object which caused the punctured wounds?

A No, sir.

Q So they are different objects?

A Yes, sir.

FISCAL:

That is all Your Honor.

COURT:

Cross Attorney Carino.

....

ATTY. CARINO:

Q You saw the hack wounds prominently from the head?

A Yes, sir.

Q When you say hack wounds you are referring to a clean-cut wound?

A Yes, sir.

Q

And with your experience in dealing with body wounds it is safe to say that the hack wounds could have been caused by a sharp-edged instrument?

A Yes, sir.

Q Like the bolo?

A

Yes, sir.

Q You also stated in your report that the deceased, Liwanag Roca Cabug suffered multiple fractures on the head?

A Yes, sir.

Q And what could have been the instrument used?

A I think it is more of a hard object rather than a sharp object.

Q You also said that you found puncture wounds?

A Yes, sir.

Q And what could have been the instrument used in inflicting the punctured wounds?

A A sharp-pointed object.

Q Could it be an icepick?

A You see it must be a sharp-pointed object.

Q

With the thorough examination you made on the deceased Liwanag Roca Cabug, can it be safe to say that there were three different instruments used in inflicting the wounds on her?

A

No, I would like to make a statement that a simple sharp-pointed bolo can inflict the three types of injuries. If you use the sharp edge it can cause a clean-cut wound and the back can cause a fracture.

Q

With that findings or with that comment, did you try to examine the shape of the fracture on the skull of Liwanag Roca Cabug, the deceased?

A The skull of Mrs. Cabug was almost mutilated.

Q Because of the hack wounds?

A

Yes sir, and at the same time there were fractures on the head and if you try to see the skull, it was soft and there was blood.

Q

But as far as you are concerned, per your examination, what could have caused the almost mutilation of the skull of Mrs. Cabug, was it because of the hack wounds or because of the fracture?

A Because of the hack wounds.[40]

....

On the other hand, Dr. Gervacio Posadas testified:

FISCAL:

Q In injury No. 1 which is a contused laceration, what could have caused this Doctor?

A Probably a blunt instrument.

Q What for example?

A It can be a hammer or something blunt and a hard instrument.

Q What about the second injury, what could have caused this?

A

This second injury which is also a contused laceration with depressed fracture on the left eyebrow, it can be

also caused by a blunt heavy instrument.

Q Like what for example Doctor?

A Maybe a hammer and some blunt hard object.

Q Are you telling the Honorable Court that a blunt hard object like a hammer can cause a laceration?

A

Yes, sir, because somewhere in this area, the bone is somewhat protruding and if it will be hit, there will be a contusion but not sharp.

Q On injury No. 3, what could have caused this one Doctor?

A

This injury No. 3, this has a specific description. I placed here the circumference. That means the deceased had a fracture on the right side of her head which is lacerated and the measurement is 7.5 cms.

Q This injury no. 4, what could have caused this?

A

The same, a heavy or blunt instrument. This is a big injury and the length here is 10 cms. which is quite long. I placed here the word contused and it can be caused by a blunt instrument like a screwdriver or other blunt instruments but not a hammer.

Q How about this Injury No. 5, what could have caused this laceration Doctor?

A

In this injury number 5, there are nine (9) in number and they are contused lacerations on the right and left parietal area which are already sutured and this can be caused by a sharp instrument.

Q Like what?

A Maybe a bolo or maybe a screwdriver, something like that. And these are already sutured.

Q Doctor, what could have caused the death of that person?

A The cause here was due to shock, hemorrhage, fracture of the head, multiple.

FISCAL:

That is all with the witness Your Honor.

COURT:

Cross Attorney Carino?

....

CROSS-EXAMINATION

ATTY. CARINO:

Q

When you said contused laceration, you are referring to the breakage of the surface of the skin, am I correct

Doctor?

A Yes, sir.

Q And the breakage on the surface of the skin may be caused by a blunt instrument?

A Blunt, heavy instrument.

Q

In Item No. 2, you said contused laceration with depressed fracture, 5 cm. by 1 cm. by 1.5 cm. deep, left eyebrow?

A Yes, sir.

Q

Now, when you said depressed fracture, you are referring to the depressing or the knocking down of the bone immediately below the broken skin surface?

A Yes, sir.

Q And you found it to be 5 cms. by 1 cm.?

A I think that is the measurement of the laceration.

Q Or that is the measurement of the depressed area?

A The depressed contused laceration.

Q So that the shape of the contused laceration is elongated, not circular?

A Yes, sir, for that particular area because the laceration is elongated in figure or in character.

Q So it could not have been the round portion of the hammer head that can cause this?

A

No, sir, and I did not place it there because this bone here, when it is hit by a blunt object, the injury will be contused and elongated.

Q The third injury Doctor which is a depressed fracture, right parietal area, 7.2 cm. in circumference, correct?

A Yes, sir.

Q Where is that?

A On the right side of the head, almost at the top.

Q Can you illustrate to the Honorable Court how big could have been 7.2 cms. in circumference?

A It is almost 1 and a half inches because 1 inch is 2.5 cms.

Q

Injury No. 4, you identified it as a contused laceration, 10 cms by 2.5 cms., scalp deep, left occipito-mastoid area, where is this found Doctor?

A This is at the back of the head.

Q So at the back of the head to what?

A We used our posterior part. . . .

Q Up to what area?

A Occipito-mastoid, here (pointing to the back of the head up to the right ear).

Q And it could be characterized as a hack wound?

A Maybe it can be caused by the back part of the bolo.

Q You found it to be sutured?

A Yes, sir.

Q And there is no way for you to determine whether the wound is a clean-cut wound or a lacerated wound?

A You can differentiate it even with the suture.

Q

Did you try to determine exactly what the nature of that wound was, whether it is a clean-cut wound or a lacerated wound?

A Lacerated wound.

Q

Will it not be possible that because of the suture, the aim is to close the wound, the edge of the wound could have been perforated?

A

We don't use the word "perforate" because perforation refers to an organ that is hollow inside. My term there is punctured laceration, meaning the edges of the wound are not sharp.

Q When you said the edge of the wound is not sharp, you mean it is not clean?

A Yes.[41]

Accused-appellant is likewise mistaken in assuming that the only way by which he could use three different instruments in killing his wife was by using one after the other. As the Solicitor General points out in the brief for the appellee:

In all possibility, appellant was armed with one (1) weapon, while the deceased was armed with the other weapon. After inflicting injuries on the deceased using his weapon, appellant could have grabbed from the deceased the weapon she was holding and inflicted more injuries on her, this time using the weapon he grabbed from the deceased.[42]

Considering the two bloodstained instruments found at the scene of the crime and the testimonies of the examining physicians, we find the Solicitor General's theory on how the killing occurred as more probable.

Second. Accused-appellant contends that the evidence for the prosecution is insufficient to prove that he committed the crime. We find this contention without merit.

It is settled that the trial court's evaluation of the credibility of witnesses must be accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence which, if reconsidered, would alter the result of the case.[43] In this case, despite the rigorous cross-examination of the defense counsel, the eight (8) witnesses presented by the prosecution were unwavering in their testimonies.

They had one story to tell, as their separate accounts of the incident perfectly fitted to recreate what transpired on the fateful night of August 15, 1992.

It is also settled that an accused can be convicted even if no eyewitness is available, provided that enough circumstantial evidence has been established by the prosecution to prove beyond reasonable doubt that the accused committed the crime.[44] Circumstantial evidence will be considered sufficient if the following are shown:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[45]

These requisites are present here. The trial court enumerated these circumstances supporting the conclusion that accused-appellant killed his wife:

- The spouses Cornelio Cabug and Liwanag Roca Cabug and their two year old daughter were the only persons inside the room when the incident happened on the night of August 15, 1992. The presence of the accused inside the room of the scene of the crime has been adequately proven.
- The room has only one door located inside the house and all the windows have iron grills properly installed and have not been removed or destroyed.
- There was nobody who entered or came out of the room from the time the witnesses Cynthia Isla and Lealyn Cabug were awoken[ed] by the call for help by Liwanag Cabug until the door of the room was forcibly opened by Nestor Lopena. Lealyn Cabug who is 14 years old and daughter of the couple who was staying at the house at the time the incident happened stayed at the sala in front of the door of the room, while Cynthia Isla went out to call for help. The sala and the room of the spouses are close to each other and any person who enters or leaves the room will have to pass through the sala. Lealyn Cabug witnessed the opening of the door by Nestor Lopena and saw her parents and sister inside the room.

....

When Nestor Lopena asked the accused: "Kune, why did you do this?" and the accused answered: "Engineer is the cause." One of the witness, Charlito Isla heard this too as they entered the room to bring Liwanag Cabug out of the room and to the hospital.

The accused, therefore, was not unconscious having made this answer to the witness.

....

- The accused was able to talk to people at the room of the incident specifically to:

Witness for the Prosecution:

- a. Nestor Lopena - "Kune, why did you do this?"

"Engineer is the cause"

Witness for the Defense:

- b. Saturnino Aragoncillo: "The first question he asked is where is Neneng" "Don't bring me outside because somebody will kill me."

The accused during testimony testified in Court that he was [clubbed] in the head when he entered the room and became unconscious and woke up later already in the hospital.

- When witness Luzviminda Roca kicked the door and was partially opened, she saw Cornelio Cabug sitting on the floor by the side of the bed, her sister Liwanag Roca Cabug, on the floor full of blood, and when witness shouted: "Unsa mo . . . nagpatyanay na mo"? (What is happening to you, you are killing each other?) the accused kicked the door, and [it] was locked up.

Furthermore, when accused was asked to be brought to the hospital, he refused to be given medical help or to be removed from the room, not until Aragoncillo arrived and convinced him to go to the hospital.[46]

These circumstances sufficiently indicate that accused-appellant indeed committed the crime. His version of the events simply cannot be believed. For one, there were several witnesses who attested to the fact that accused-appellant was conscious at the time of the killing. Moreover, the time it took him before telling Aragoncillo that he was clubbed on the head on the night of the incident shows that what he said was a mere afterthought in order to escape liability. Indeed, the testimonies of defense witnesses fail to cause a dent on the case for the prosecution. Aside from the flat denial of accused-appellant and the observation of Aragoncillo concerning the state of the room where the crime took place, the testimonies of the other defense witnesses concerned only circumstances which could have occurred after the incident.

Third. Accused-appellant argues that his alleged extra-judicial confession to SPO3 Bernard Rafanan is inadmissible for having been given without the presence of counsel. We find this contention to be meritorious.

The right to counsel attaches upon the start of investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused.[47] In this case, SPO3 Rafanan testified that he approached accused-appellant in order to make queries on what happened on the night of August 15, 1992. He further said that after this voluntary confession from accused-appellant, he ceased to ask questions because he knew that at that point that the latter appellant needed the assistance of counsel.

This confession of accused-appellant is inadmissible. The interrogation of accused-appellant by SPO3 Rafanan ceased to be a general exploratory investigation of a crime and entered the stage of custodial interrogation where Art. III, §12(1) of the Constitution applied. This is probably the reason why the trial court never fully relied on accused-appellant's extra-judicial confession, although it mentioned it in among the circumstances duly proven in court.[48] Instead, the trial court gave weight to the circumstantial evidences which point to accused-appellant's liability. For even disregarding the extra-judicial confession of accused-appellant, there is sufficient circumstantial evidence which would clearly establish his conviction.[49]

We think, however, that treachery and evident premeditation were not duly proven in this case. Aggravating circumstances must be established with the same quantum of proof as fully as the crime itself, and any doubt as to their existence must be resolved in favor of the accused.[50] In this case, since no eyewitness was presented, the manner in which the killing was committed was not proven.

Moreover, even if we look at the circumstantial evidence in order to establish treachery, we find that there is no treachery committed. Under the Revised Penal Code, there is treachery "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make." [51] The accounts of the witnesses show that the room where the deceased and accused-appellant were found was in disarray, with blood splattered on the ceiling, the floor and some objects. There were also testimonies of several witnesses that, on that fateful night, the couple quarreled. Aside from these, accused-appellant also had head injuries which could have been caused by a hard object, like the bloodstained hammer recovered therein. These circumstances indicate that a struggle between the spouses could have taken place, thus ruling out the possibility of treachery.

Nor is there evident premeditation, as no proof was presented to establish when accused-appellant determined to commit the crime.[52]

Since this crime was committed before the effectivity of R.A. 7659, or the Death Penalty Law, on December 31, 1993, the penalty of reclusion perpetua was properly meted by the trial court. However, the indemnity awarded by the trial court to the heirs of the victim must be reduced to P50,000.00 in line with our recent rulings.[53] On the other hand, moral damages be awarded in the amount of P50,000.00,[54] and, in addition, actual damages in the amount of P35,681.35, based on the receipts[55] presented by Luzviminda Roca, should be given to the heirs.[56]

WHEREFORE, the decision of the trial court is AFFIRMED with the MODIFICATIONS as above indicated.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Teodoro A. Dizon, Jr.

[2] Records, p. 1.

[3] Marriage Contract (Exh. C), dated December 19, 1977, between Cornelio Cabug and Liwanag Roca. Records, p. 42.

[4] TSN, pp. 34-36, March 9, 1993; TSN, p. 154, March 26, 1993.

[5] TSN, p. 36, March 9, 1993.

[6] TSN, p. 84, March 23, 1993.

[7] Id., p. 39.

[8] Id., p. 85.

[9] Id.

[10] TSN, p. 156, March 26, 1993.

[11] TSN, p. 85, March 23, 1993; TSN, p. 156, March 26, 1993.

[12] TSN, pp. 4-6, Feb. 17, 1993.

[13] TSN, pp. 117-118, March 24, 1993.

[14] TSN, pp. 8-9, Feb. 17, 1993; TSN, pp. 119, March 24, 1993.

[15] Id., p. 10; id., pp. 119-120.

[16] TSN, p. 10, Feb. 17, 1993.

[17] Id., p. 11; TSN, pp. 120-121, March 24, 1993.

[18] TSN, p. 77, March 10, 1993.

[19] TSN, pp. 105-106, March 23, 1993.

[20] TSN, p. 121, March 24, 1993.

[21] TSN, pp. 26-27, Aug. 4, 1993.

- [22] Records, p. 43.
- [23] Id., p. 44.
- [24] TSN, pp. 74-87, March 15, 1994.
- [25] TSN, pp. 20-22, Aug. 4, 1993; TSN, pp. 34-41, Aug. 26, 1993.
- [26] Id., p. 9. See also Exh. 7, Records, p. 93.
- [27] TSN, pp. 34-59, Aug. 26, 1994.
- [28] See TSN, pp. 6-16, Aug. 4, 1993.
- [29] See TSN, pp. 65-69, Nov. 25, 1993.
- [30] TSN, pp. 102-114, June 2, 1994.
- [31] Id., pp. 114-115.
- [32] TSN, pp. 118-129, Aug. 1, 1994.
- [33] TSN, pp. 153-158, Nov. 21, 1994.
- [34] RTC Decision, p. 23; Rollo, p. 175.
- [35] Appellant's Brief, p. 1; id., p. 70.
- [36] Comment on Urgent Motion to Withdraw Appeal, p. 1; Rollo, p. 186.
- [37] *People v. Belaro*, 307 SCRA 591 (1999); *People v. Mendoza*, 93 Phil. 581 (1953).
- [38] *People v. Gatward*, 267 SCRA 785 (1997).
- [39] Appellant's Brief, p. 25; Rollo, p. 93.
- [40] TSN, pp. 172-175, March 30, 1993. (Emphasis added)
- [41] Id., pp. 178-181. (Emphasis added)
- [42] Appellee's Brief, p. 19; Rollo, p. 173.
- [43] *People v. Merino*, 321 SCRA 199 (1999).
- [44] *People v. Acuram*, G.R. No. 117954, April 27, 2000; *People v. Lagao*, 271 SCRA 51 (1997).

[45] RULES OF COURT, RULE 133, §4.

- [46] RTC Decision, pp. 19-21; Records, pp. 171-173.
- [47] *People v. Zuela*, 323 SCRA 589 (2000); *De la Torre v. Court of Appeals*, 294 SCRA 196 (1998).
- [48] See Rollo, p. 49.
- [49] See *People v. Abuyen*, 213 SCRA 569 (1992).
- [50] *People v. Gadin*, G.R. No. 130658, May 4, 2000; *People v. Cayago*, 312 SCRA 623 (1999).

[51] REVISED PENAL CODE, ART. 14 (16).

[52] People v. Tortosa, G.R. No. 116739, July 31, 2000; People v. Padama, Jr., 316 SCRA 152 (1999) .

[53] People v. Macoy, G.R. No. 126253, Aug. 16, 2000; People v. Cayago, supra.

[54] See People v. Lazarte, G.R. No. 113071, June 29, 2000.

[55] Records, pp. 38-41.

[56] People v. Ubaldo, G.R. Nos. 128110-11, Oct. 9, 2000; People v. Guillermo, 302 SCRA 257 (1999).

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