

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAUL BERIBER Y FUENTES, @ “JERRY FUENTES Y IGNACIO,” @ “GERRY BERIBER,” @ “BONG,” @ ‘RAUL FUENTES,’ APPELLANT.

G.R. No. 151198. June 08, 2004

Ponente: TINGA, J.

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TINGA, J.:

The apex of criminal punishment is the extinguishment of life. Human life is so invaluable and irreplaceable that the Constitution, law and jurisprudence ensure the imposition of the death penalty only when so it should be and what could be meted is no other penalty.

Before the Court on automatic review is the Decision of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 12621-SP (00)[1] finding appellant Raul Beriber y Fuentes guilty of Robbery with Homicide and imposing upon him the penalty of death.

The Second Amended Information against appellant reads:

That on or about October 3, 2000, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to gain, did then and there willfully, unlawfully and feloniously enter the premises of SPOUSES HENRY and MA. LOURDES VERGARA, located at Brgy. San Cristobal, this city, and once inside and finding an opportune time, did then and there take, steal and carry away cash money amounting to P2,000.00, Philippine Currency, belonging to said Spouses Henry and Ma. Lourdes Vergara, by means of violence against or intimidation of persons and by reason of or on occasion of the robbery, said accused attack and stab to death his immediate employer Ma. Lourdes Vergara with a bladed weapon with which the accused was then conveniently provided, thereby inflicting wounds upon the person of said Ma. Lourdes Vergara which caused her immediate death.

CONTRARY TO LAW.[2]

During his arraignment, appellant, assisted by the Atty. Nena Palencia of the Public Attorney’s Office, whom the trial court appointed as appellant’s counsel de oficio, pleaded not guilty to the charge against him. Thereafter, trial ensued.

The prosecution presented six (6) witnesses, as well as documentary evidence, to prove its case.

The first witness for the prosecution was Dr. Lucy Andal Celino (Celino), the physician who examined the remains of the victim, Lourdes Vergara. Celino is the Health Officer of San Pablo City. She testified that she conducted a necropsy of the victim on October 3, 2000 at 4:15 p.m., and that she prepared a Necropsy Report[3] which states that the victim died of shock and hemorrhage secondary to multiple stab wounds all over her body, some of which damaged her heart, lungs and liver. Celino also stated that the location stab wounds, abrasions and lacerations on the victim’s body indicated that the latter struggled against her killer. The physician added that the perpetrator used two kinds of instruments in inflicting wounds on the victim: a sharp pointed instrument and a

pointed rounded instrument.[4]

On cross-examination, Celino confirmed that the wounds sustained by the victim were inflicted using two different pointed instruments.[5]

The prosecution also presented police officer Armando Demejes (Demejes) who testified that while he was on duty on October 3, 2000, he went to the house of Henry Vergara (Henry) in Barangay San Cristobal, San Pablo City to investigate a stabbing incident which occurred thereat. When Demejes arrived at the scene of the crime, Vergara informed him that Henry's wife, Lourdes, was stabbed to death. Demejes entered the house and saw a cadaver lying on a bamboo bed. He also looked around the house and saw that the place was in disarray. In the sala, about five to six meters away from the corpse, was an open drawer containing coins,[6] and on the floor near said drawer were more coins.[7] Another drawer was pulled out from its original location and left on a couch.[8] Demejes likewise found a blue tote bag on top of the center of a table[9] and a passbook on top of the bed.[10] He also saw that the door leading to the stairs was open.[11] Demejes prepared a sketch of the crime scene to document what he saw during his investigation.[12]

Thereafter, the prosecution presented Neville Bomiel, a resident of Barangay San Cristobal, San Pablo City. Bomiel testified that he had known the appellant for less than a month prior to October 3, 2000. He knew that the appellant was working for the Vergaras and resided at the latter's rice mill. Bomiel recalled that while he was standing in front of his house in the morning of October 3, 2000, at around 10:00 a.m., he saw the appellant leave the house of the Vergaras and walk towards the direction of the school. When appellant passed by Bomiel's house, he asked the appellant where the latter was going. Appellant replied that he was on his way to Batangas for medical treatment. Bomiel noticed that appellant was wearing a yellow collared t-shirt, blue denims and shoes. Later, he saw appellant return to the house of the Vergaras and enter the place. Afterwards, appellant left the house and passed by Bomiel's residence a second time. Bomiel again greeted the appellant and asked him why he (appellant) had not yet left for Batangas. Appellant replied that he was still waiting for Henry. Appellant again proceeded to the direction of the school. Subsequently, Bomiel saw the appellant return to the house of the Vergaras a third time. That was the last time Bomiel saw him.[13] Bomiel observed that on that day, appellant looked restless ("balisa at hindi mapakali").[14]

The fourth witness for the prosecution, Rolando Aquino (Aquino), likewise a resident of Barangay San Cristobal, San Pablo City, testified that he had known appellant for less than a month on October 3, 2000. He knew that appellant was hired by the Vergaras as a helper in their rice mill. In the morning of October 3, 2000, Aquino was able to talk to the appellant at the house of a certain Lola Rosy, the victim's mother. Appellant told Aquino that he was going to Batangas that day for medical treatment. Thereafter, appellant, then wearing short pants and a t-shirt with cut-off sleeves, left the house of Lola Rosy to go to the rice mill. At around 8:30 a.m., Aquino again saw appellant at Lola Rosy's house, but appellant was already wearing a mint green-colored shirt and khaki pants. Aquino asked appellant why he had not yet left, but the latter did not answer and appeared restless. Later that morning, at around 11:30 a.m., Aquino learned that Lourdes had been killed. He rushed to the house of the Vergaras and saw the victim lying on a bamboo bed, drenched in blood. Aquino then noticed that appellant's personal belongings which were kept by appellant underneath the bamboo bed were no longer there. He further testified that he did not see appellant return to San Cristobal after October 3, 2000.[15]

Henry also testified before the trial court. He said that he and the victim hired appellant as a helper in their rice mill in September, 2000. Appellant slept in the house of Henry's mother-in-law, Rosy, but kept his personal belongings in their (the Vergaras) house, specifically under the bamboo bed where the Lourdes' corpse was discovered on October 3, 2000 at past 11:00 a.m..[16]

At around 5:30 in the morning of October 3, 2000, appellant asked Henry for permission to go to Batangas. Henry asked appellant to fetch a certain Junjun to be his replacement as Henry's helper in their store in Dolores, Quezon that day. Henry left their house in San Cristobal at 6:00 a.m. to tend their store in Quezon and stayed in the store until 11:00 a.m. before heading back home.[17]

When he arrived at their house in San Cristobal, he noticed that the door was slightly open. He called for Lourdes, but nobody answered. He immediately entered their house and saw that the door of their rice mill was closed. This caused him to suspect that something was wrong. He then noticed that coins were scattered on the floor. He proceeded to the kitchen and saw Lourdes lying on the bamboo bed, lifeless and bloodied in the chest and stomach areas.[18]

Henry thereafter ran to the house of his brother-in-law, Wanito Avanzado (Avanzado), who also resided in San Cristobal. Henry told Avanzado that Lourdes was already dead. Avanzado then ran to the house of the Vergaras.[19]

Henry recalled that before he left for their store in Quezon that day, he left appellant, his wife and their children in their house.[20] He also remembered that cash amounting to Two Thousand Pesos (P2,000.00) was left inside the drawer in their rice mill. However, when he looked for the money after he discovered that his wife was killed, he could no longer find it.[21]

Henry also testified that he did not see appellant in their house when he went home from Quezon and that appellant's personal effects were no longer under the bamboo bed where appellant used to keep them. He did not see appellant anymore after he left their house on October 3, 2000.

Lastly, the prosecution presented as witness Avanzado, the brother of the victim. Avanzado testified that at around 11:00 a.m. on October 3, 2000, he saw his brother-in-law, Henry, running towards his (Avanzado's) house and shouting "Si Aloy", the victim's nickname. He ran to the house of the Vergaras and saw his sister's bloodied body on the bamboo bed. Avanzado tried to lift her body, but her neck was already stiff. After he was sure that Lourdes was indeed dead, he called up the police and requested them to investigate the incident. When the police arrived, they took pictures of the crime scene and conducted an investigation.[22]

Avanzado further stated that he knew that appellant was a helper of the Vergaras. He said that he was told by several residents of San Cristobal that they saw appellant leaving the scene of the crime with a bag.[23]

He also narrated that as Barangay Chairman of San Cristobal, he coordinated with the police for the apprehension of the appellant. Avanzado went with some police officers to Talisay, Batangas to search for appellant in the house of his uncle, but appellant was not there. Later, Avanzado received information that appellant was apprehended in Capiz, but was released by police authorities because the latter were worried that they would be charged with illegal detention. Avanzado then sought the assistance of the staff of Kabalik, a program aired by the ABS-CBN Broadcasting Company. Appellant was subsequently apprehended and brought back to San Pablo City to face the charge against him.[24]

The defense waived its right to cross-examine Demejes, Bomiel, Aquino, Vergara and Avanzado.

On August 21, 2001, when the defense was scheduled to commence the presentation of its evidence, counsel for the appellant waived his right to present evidence.

The trial court ordered both parties to submit their respective memoranda, but both parties failed to comply with the court's order. Thus, the trial court resolved the case on the basis only of the evidence presented by the prosecution.[25]

On October 22, 2001, the RTC rendered its Decision, the dispositive portion of which states:

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds accused RAUL BERIBER y FUENTES @ JERRY FUENTES y IGNACIO @ GERRY BERIBER @ “Bong”, @ “Raul Fuentes” guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294 of the Revised Penal Code and he is hereby sentenced the supreme and capital penalty of DEATH, with costs.

He is further sentenced to pay the heirs of the deceased:

- a) the sum of P50,000.00 as death indemnity;
- b) the sum of P2,000.00 representing the stolen cash;
- c) the sum of P200,000.00 as moral and exemplary damages; and
- d) the sum of P100,000.00 representing burial and other incidental expenses of the victim.

SO ORDERED.[26]

In his Brief, appellant assigns the following errors:

I

THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT RAUL BERIBER GUILTY BEYOND REASONABLE DOUBT DESPITE THE INSUFFICIENCY OF THE PROSECUTION’S EVIDENCE.

II

THE COURT A QUO ERRED IN NOT ASCERTAINING THE VALIDITY OF ACCUSED-APPELLANT’S WAIVER TO CROSS-EXAMINE THE PROSECUTION’S WITNESSES AND TO PRESENT EVIDENCE.

III

THE COURT A QUO ERRED IN AWARDING P100,000.00 FOR BURIAL AND OTHER INCIDENTAL EXPENSES.[27]

Appellant contends that the trial court convicted him on the basis of circumstantial evidence which do not establish beyond reasonable doubt that it was he who killed the victim. He insists that his presence at the house of the Vergaras and the fact that his personal belongings were no longer there when Lourdes was killed does not necessarily lead to the conclusion that he killed her. Appellant points out that it was not unusual for him to be at the Vergara residence because he was working for them. Moreover, he stresses that none of the prosecution’s witnesses saw him carrying a bag when he left Barangay San Cristobal on October 3, 2000; nobody saw him bloodied or carrying an instrument consistent with the description of the instruments used in taking the life of the victim.[28]

Appellant further argues that the trial court should have ascertained whether he fully understood the consequences of his decision to waive his right to cross-examine the witnesses for the prosecution.[29] He avers that the trial court should have taken steps to protect his rights, considering that his counsel de officio waived his right to cross-examine five of the six prosecution witnesses.[30] Appellant likewise faults his counsel de officio for failing to discharge her duty of protecting his rights by: (1) establishing, through cross-examination, his innocence considering that the only link between him and the killing of Lourdes was his presence in the house of the Vergaras hours prior to the discovery of the death of the victim; and (2) presenting evidence on his behalf, or filing a demurrer and explaining why he was not presenting evidence to prove his innocence.[31]

Finally, appellant asserts that the trial court erred in awarding the amount of One Hundred Thousand Pesos (P100,000.00) as burial and incidental expenses in favor of the victim's heirs despite failure on the part of the prosecution to present proof of the actual damages incurred by the victim's heirs.[32]

The Office of the Solicitor General (OSG) filed a Manifestation and Motion in lieu of an Appellee's Brief. In its Manifestation and Motion, the OSG recommended that the case be remanded to the trial court for reception of evidence for the appellant.[33]

The OSG calls the Court's attention to the fact that the appellant waived his right to cross examine five out of the six prosecution witnesses although none of the witnesses saw the killing and/or robbery.[34]

The OSG also laments the absence of evidence on the part of the defense, and the absence in the records of the transcript of stenographic notes of the hearing on August 21, 2001 when appellant's counsel de oficio allegedly waived the appellant's right to present evidence to prove that he is innocent of the charge against him.[35]

The Court agrees with the OSG that there is a need to remand the case to the RTC for reception of evidence for the appellant.

The Constitution ordains that due process must be observed in cases involving a possible deprivation of life, liberty or property.[36] More important than convicting the guilty and acquitting the innocent is the courts' duty of ensuring that justice is done.[37] Hence, courts must proceed with extreme caution and observe strictly the rules on criminal procedure in cases where the possible penalty is in its severest form; that is, death, because the execution of such a sentence is irrevocable.[38] Any departure from the regular course of trial should be probed into to protect an accused from deprivation of liberty or worse, life itself, on the basis of evidence which cannot establish his guilt beyond reasonable doubt.

Thus, a waiver by the accused of his right to present evidence should never be taken lightly and should always be subjected to careful scrutiny by the court. To be upheld as valid, it must be established that the waiver is made voluntarily, knowingly, intelligently and with sufficient awareness of the relevant circumstances and possible consequences.[39]

It is not clear from the records of this case whether appellant fully comprehended the consequences of his waiver of the right to present evidence. The Court notes that the transcript of stenographic notes of the trial on August 21, 2001, when the accused allegedly waived his right, does not form part of the records. Thus, it cannot determine the manner by which the alleged waiver was made and the circumstances surrounding such waiver. It cannot ascertain whether the accused understood the effects thereof, and whether the trial court made sure that the accused was apprised of and fully understood the consequences of not presenting evidence to prove his innocence, especially considering that the imposable penalty for robbery with homicide is reclusion perpetua to death,[40] and that appellant pleaded not guilty to the charge against him.

Although there is no specific provision in the law requiring the trial court to conduct an inquiry into the voluntariness of an accused's waiver of the right to present evidence, the circumstances of the present case, the gravity of the imposable penalty and the plea of "not guilty" entered by the accused should have prompted the trial court to conduct a thorough inquiry into the reasons behind such waiver, the voluntariness thereof, and the sufficiency of appellant's knowledge and understanding of the effects of his waiver. The procedure to be observed by the trial court in instances where an accused waives his right to present evidence, as outlined by the Court in *People v. Bodoso*,[41] is instructive:

- The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.

- The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.
- During the hearing, it shall be the task of the trial court to—
 - ask the defense counsel a series of questions to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.
 - inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time for this purpose.
 - elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.
 - all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.[42]

There is nothing in the records to show that the trial court asked the appellant searching questions to ascertain whether he was waiving his right to present evidence voluntarily and whether he understood what such waiver meant and the consequences of his failure to present evidence.[43]

Furthermore, the defense also failed to explain why it chose to waive the right to present evidence. Neither did it file a demurrer to evidence (with leave of court) identifying the weaknesses of the prosecution's evidence.

The Court likewise notes that the defense opted not to cross-examine the prosecution's witnesses, except for Dr. Celino. This, taken together with the waiver of the right to present defense evidence, the failure to file a manifestation explaining such waiver or a demurrer to evidence, and the failure to file a memorandum for the appellant as ordered by the trial court, gives rise to the suspicion that the counsel de oficio assigned to the appellant did not perform her duty of protecting appellant's rights. In *People v. Bermas*,[44] the Court expounded on the nature of an accused's right to counsel and the corresponding duty of a lawyer for an accused:

The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.[45]

The inadequacy of the legal assistance rendered by the counsel de oficio to appellant during the course of the trial is manifest from the records. Although appellant's counsel de oficio was aware of her client's plea of "not guilty" to the offense charged, she exerted very little effort in convincing the trial court of appellant's innocence. She subjected only one out of six prosecution witnesses to cross-examination, to test their accuracy, truthfulness

and freedom from bias, and to elicit facts and information relevant to the appellant's defense. Moreover, after appellant waived his right to present evidence, presumably with Atty. Palencia's assistance, or upon her advice, she did not explain to the trial court, by way of manifestation or demurrer to evidence, why they were not presenting evidence to prove that appellant is not guilty.

That Atty. Palencia was merely counsel de oficio does not excuse her lack of zeal and vigor in defending appellant. The duty of a lawyer to serve his client with competence and diligence^[46] applies without distinction to counsel de parte or de oficio, and becomes even more compelling when the client is accused of a grave crime and is in danger of forfeiting his life if convicted.^[47]

However, the invalidity of the waiver by an accused to present evidence does not automatically vacate a finding of guilt in the criminal case and cause the remand thereof to the trial court. There must be a showing that the invalid waiver resulted in the inadequate presentation of facts by either the prosecution or the defense during the trial.^[48]

In the present case, the Court finds that the alleged waiver by appellant of his right to present evidence has affected the presentation of facts in favor of the accused during the trial, because only the prosecution's story of Lourdes' killing was heard by the trial court.^[49] The latter had nothing other than the prosecution's evidence upon which to determine the appellant's innocence or guilt.

The Court is therefore constrained to remand the case to the trial court for reception of the evidence of the appellant.

WHEREFORE, the Decision of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 12621-SP (00), is hereby VACATED and SET ASIDE, and the case REMANDED to said court for its proper disposition, including the conduct of further appropriate proceedings and the reception of evidence. For this purpose, the proper law enforcement officers are directed to TRANSFER appellant RAUL BERIBER y FUENTES from the New Bilibid Prison where he is presently committed to the BJMP Jail in San Pablo City, with adequate security escort, where he shall be DETAINED for the duration of the proceedings in the trial court.

The Regional Trial Court of San Pablo City, Branch 32, is directed to dispose of the case with dispatch.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] *People of the Philippines v. Raul Beriber y Fuentes @Jerry Fuentes y Ignacio @ Gerry Beriber @ Bong, @ Raul Fuentes*.

[2] Rollo, p. 8

The Information against appellant was amended twice to include all his aliases. In the original Information (Rollo, p.6), he was identified only as "Jerry Beriber y Ignacio alias Gerry Beriber/Bong." In the Amended Information (Rollo, p.7), he was identified "Jerry Beriber y Ignacio alias Gerry Beriber/Bong." In the Second Amended Information, the alias "Jerry Fuentes y Ignacio" was added to appellant's names.

[3] Exhibits "F" to "F-2".

[4] TSN, July 10, 2000, pp. 5-31.

[5] *Id.* at 33.

- [6] Exhibit “E-2”.
- [7] Exhibit “E-3”.
- [8] Exhibit “E-6”.
- [9] Exhibit “E-4”.
- [10] Exhibit “E-9”.
- [11] Exhibit “E-8”.
- [12] Exhibit “E”.
- [13] TSN, August 2, 2001, pp. 4-15.
- [14] *Id.* at 16.
- [15] *Id.* at 17-25.
- [16] TSN, August 3, 2001, pp. 3-4.
- [17] *Id.* at 4-5.
- [18] *Id.* at 6-7.
- [19] *Id.* at 8.
- [20] *Id.* at 7.
- [21] *Id.* at 8-10.
- [22] *Id.* at 16-18.
- [23] *Id.* at 18.
- [24] *Id.* at 18-22.
- [25] Rollo, p. 21.
- [26] *Id.* at 25.
- [27] *Id.* at 56-57.
- [28] *Id.* at 62-65.
- [29] *Id.* at 65-69.
- [30] *Id.* at 70.
- [31] *Ibid.*
- [32] *Id.* at 71.
- [33] *Id.* at 111, 119-120.
- [34] *Id.* at 112.
- [35] *Id.* at 114.
- [36] Section 1, Article III of the Constitution provides:

No one shall be deprived of life, liberty or property without due process of law.

[37] Webb v. de Leon, G.R. Nos. 121234, 121245, 121297, August 23, 1995, 247 SCRA 652.

[38] People v. Pastor, G.R. No. 140208, March 12, 2002, 379 SCRA 181.

[39] People v. Bodoso, G.R. Nos. 149382-83, March 5, 2003, 398 SCRA 642.

[40] Article 294, Revised Penal Code.

[41] Supra note 39.

[42] People v. Bodoso, supra, at 653-654.

[43] See People v. Flores, G.R. No. 106581, March 3, 1997, 269 SCRA 62.

[44] G.R. No. 120420, April 21, 1999, 306 SCRA 135.

[45] Id. at 136.

[46] Canon 18, Code of Professional Responsibility.

[47] People v. Sta. Teresa, G.R. No. 130663, March 20, 2001, 354 SCRA 697.

[48] People v. Bodoso, supra.

[49] RTC Decision, Rollo, p. 21.

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