

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO JUELA, ACCUSED-APPELLANT.

G.R. No. 35521. February 20, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from a judgment of the defunct Court of First Instance of Misamis Occidental in Criminal Case No. 19 sentencing FERNANDO JUELA to reclusion perpetua for the crime of robbery with homicide.

The information against Juela reads as follows:

"That on or about the 13th day of February, 1970, at about 11:00 o'clock p.m. more or less, at barrio Cebulin, municipality of Plaridel, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together with one whose whereabouts is unknown and still at-large, with the use of force and by means of violence upon things, did then and there wilfully, unlawfully and feloniously and with intent of gain and against the consent of the owners thereof, namely: Ruperta Vda. de Carnalna and her late husband Juan Carnalna take and carry away the following personal properties to wit: (1) clothes, (2) jewelries and (3) cash money, all totaling the value of P250.00 Philippine Currency, to the damage and prejudice of the said owners in the said total sum; that on the occasion of the aid robbery and for the purpose of enabling them to take, steal and carry away the articles above mentioned, the herein accused, used force and violence by breaking open the main door of the house of the owners, by the use of an ax; that said accused in pursuance of the conspiracy, wilfully, unlawfully and feloniously and with evident premeditation and taking advantage of their superior strength and with intent to kill, treacherously attack and shot Juan Carnalna which directly and necessarily caused his instantaneous death." (Expediente, p. 18.)

The trial court, as aforesaid, sentenced the accused to suffer the penalty of reclusion perpetua, to indemnify the heirs of Juan Carnalna the sum of P12,000.00 and to pay the costs. (Id. p. 188.)

The defense of the appellant was alibi and in this appeal he questions the credibility of the prosecution witnesses while he claims the quality for himself as shown by the following assignment of errors, to wit:

"I. THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDIT TO THE TESTIMONY OF PROSECUTION WITNESS MARCIANO QUICOY.

II. THE TRIAL COURT ERRED IN GIVING DUE WEIGHT AND CONSIDERATION TO THE TESTIMONY OF THE SURVIVING SPOUSE RUPERTA CARNALNA.

III. THE TRIAL COURT ERRED IN NOT GIVING DUE WEIGHT AND IMPORTANCE TO THE POLICE REPORTS STATING THAT THE DECEASED JUAN CARNALNA WAS ROBBED BY UNKNOWN PERSONS." (Brief, pp. 1-2.)

The People's version of the facts is as follows:

"There is no question that at about 11 o'clock at night, on February 13, 1970, Juan Carnalna and his wife were

robbed of their valuables and that Juan Carnalna was shot in the abdomen and on the thigh from which he died two days later. The crime was committed in Barrio Sibulin, Plaridel, Misamis Occidental. The robbers broke into the house of the couple by destroying the door. As Juan Carnalna rose, he was shot by one of the intruders. In panic, Juan ran to the kitchen door and jumped out. (Transcript 35-37, Oct. 6, 1970). Juan was taken to the Immaculate Concepcion Hospital in Plaridel, Misamis Occidental shortly after he was shot and wounded. On February 15, 1970, at 9 o'clock in the morning, he died. (Transcript 12, Sept. 2, 1970)

The dispute turns on the identity of the culprits. The widow Ruperta Carnalna pointed to the accused as the one who shot her husband and afterward, at the point of the gun and a knife, took from her P250 in cash, a man's jacket belonging to her husband, worth P35.00, a necklace valued at P60.00, two gold rings worth P20.00 each and a pair of earrings worth P20. 00 (Transcript 34, 40-43, Oct. 6, 1970) The widow testified that she was able to identify the accused as one of the two robbers because they had a gas lamp lighted all night long and because she had known the accused, the latter having been their neighbor in Sibulin for five years before the accused moved to Barrio Luzaran, Lopez Jaena in the same province. (Transcript 55-57, 61, Oct. 6, 1970) According to her the accused wore a yellow shirt and dark pants and had a grass hat on with its brim tilted down. She testified that aside from the illumination provided by the gas lamp, she was able to recognize the accused because the latter and his companion had flashlights with them.

At the hospital, Juan Carnalna told his wife and Marciano Quicoy and Teofilo Hugtas that he had been shot by the accused Fernando Juela.

On the other hand, the accused claims that on the night in question, he was at home in Luzaran, Lopez Jaena, Misamis Occidental (Transcript 100, April 14, 1971). In support he presented Ignacio Antipuesto who testified that he knew the accused stayed home on the night in question because he (Ignacio Antipuesto) slept in the house of the accused in preparation for the 'hunglos' (cooperative farm work) the following day. (Transcript 22-23, Dec. 1, 1970)" (Brief, pp. 3-5.)

And now to the assignment of errors:

1. Marciano Quicoy testified that he was a good friend of Juan Carnalna; that on February 14, 1970, he was informed by Juan's daughter that her father had been shot and robbed the night before; that he Visited Juan at the hospital; that he conversed with Juan who told him that he was shot by Fernando Juela. (TSN, Mancao, pp. 23-28.)

The appellant contends that the testimony of Quicoy was presented only to prove that he had a conversation with Juan Carnalna but not as to the truth of Juan's statement. This contention is well-taken. In fact, the People's brief concedes this point thus:

"Indeed, we may grant the contention of the accused that since the testimony of prosecution witnesses Marciano Quicoy and Teofilo Hugtas (to the effect that the deceased had told them that he had been shot by the accused) was offered merely to prove the tenor of the conversation rather than the truth thereof and that therefore the testimony of those witnesses could not be used for any other purpose." (Brief, pp. 6-7.)

2. Ruperta Carnalna, the widow of Juan, was the only witness who gave direct evidence on the robbery and slaying. She testified in part as follows:

"FISCAL BLANCO:

Q You said that you are a widow, who was your husband?

A Juan Carnalna.

Q Where is he now?

A Deceased.

Q What was the cause of his death?

A He was shot.

Q When was he shot?

A Last February 13, 1970.

Q Who shot him?

A Fernando Juela.

Q Is Fernando Juela around in Court?

A He is here.

Q Will you please come down and touch him?

A (Witness going down and touched the right shoulder of Fernando Juela.)

Q How long have you known Fernando Juela?

A About five years because we are neighbors.

Q Do you remember where were you? I withdraw that question.

On February 13, 1970, your husband was still alive or already dead?

A Already dead.

Q On the night of February 13, 1970, do you know where your husband slept?

A I know.

Q Where?

A In our sala.

Q How about you, where did you pass the night of February 13, 1970?

A Also.

Q At about, more or less, 11:00 o'clock in the evening of February 13, 1970, do you know what happened to your house?

A I know.

Q What happened and please tell the Court?

A What happened to our house in the evening was that the door of our house was forced open with the use of wood.

Q What happened to the main door of your house when it was being hit and forced open?

A I awaken my husband.

Q You did not answer my question. What happened to the door of your house?

A It was destroyed.

Q You stated a while ago that the door of your house was destroyed ,forced open and you wake up your

husband?

COURT:

Was the battering down of your door continuous or only one instant and then it gave way?

A Many times.

COURT:

Proceed.

FISCAL BLANCO:

Q And because of that continuous battering of the door of your house you said you wake your husband, is that correct?

A Yes, sir.

Q And when you were awoken, did I get you correctly that you woke up your husband the late Juan Carnalna?

A That is correct.

COURT:

Was he not awoken by himself without your prodding?

A No, sir, I was the one who awaken my husband.

Q Was he not awoken by that continuous thudding of the door of your house?

A No, sir, I alone.

Q What was wrong by your husband that he could not be awakened by such noise created?

A Because he was drunk that time. He was working and he got tired and drunk.

COURT:

Proceed.

FISCAL BLANCO:

Q Now did your husband woke up when you awaken him?

A Yes, sir.

Q What did you tell your husband when he woke up?

A I said Juan wake up Juan because the door is already destroyed.

Q Was he able to approach the destroyed door?

A Yes, sir.

Q What happened to him when he reached the destroyed door?

A He was shot by Fernando Juella.

Q When you said that your husband was shot by Fernando Juella, do you refer to the accused Fernando Juella who shot your husband?

A Yes, sir, he is the one.

Q Was your husband hit by the shooting of Fernando Juella, the accused.

A Yes, sir, he was hit.

Q After he was hit, where did your husband go?

A He ran towards the kitchen door and jumped out.

Q How about you?

A He jumped through the kitchen door. He passed through the kitchen door and then jumped passing the stairs.

COURT:

How did he go down the house from the kitchen door, did he go down the stairs or he jumped from the top of the stairs to the ground?

A He jumped down.

C Did you see this?

A I saw.

C At 11:00 o'clock almost midnight?

A I saw.

C From where you were in the living room, could you see the kitchen door?

A Yes, sir.

C How?

A There was light.

C I mean to say, could you see the kitchen door from the living room?

A Yes, sir, it can be seen.

COURT:

Proceed.

FISCAL BLANCO:

Q You said that there was light that night of February 13, 1970, what was the kind of light that you have that night?

A Standard lamp.

Q Aside from your husband and yourself, was there any other person that night in your house?

A None, sir, the two of us only.

Q Now, how many persons encountered your husband when he was shot?

A Two.

Q You only identified the accused as one of those who shot your husband. How about the other person, do you

know him?

A I did not know him.

Q After your husband was shot, those two persons, what did they do inside your household?

A I was threatened with a hunting knife and gun.

Q Who threatened you with the gun?

A Fernando Juela.

Q You spoke of the gun. Could you, more or less, demonstrate to the Court how long was that gun you are talking about which was being threatened to you?

A (Witness indicating the length of the gun used in threatening which is the length of which is about 9 and a half inches.)

COURT:

Could you describe the gun you saw? What color?

A It was black.

C Did you see the handle of the gun?

A I saw.

C What was its color?

A Also black.

C What else do you remember about the gun?

A Only those.

COURT:

Proceed.

FISCAL BLANCO:

Q You said that you were threatened by the accused with a gun. How did he threaten you?

A (Witness demonstrating to the Court how she was threatened by raising her right hand and pointing to the Interpreter and said, get your money now or else You will be killed now.)

Q When you were threatened by the accused pointing the gun to you and telling you to get your money, what did you feel?

A I pleaded to him and said, Dong, don't kill us because we only have a few amount of money and the culprit said, go ahead, get the money. If you will not get, you will be killed now. So I entered the room.

Q How about the two robbers, did they also enter your room?

A He alone entered while the other one waited by the door.

COURT:

Who?

A Fernando Juela.

Q Fernando Juela entered your room?

A Yes, sir, he entered our room.

Q With you?

A Yes, sir.

Q He told you?

A Yes, sir.

COURT:

Proceed.

FISCAL BLANCO:

Q Then was the accused Fernando Juela able to get the money?

A Yes, sir, because I opened our aparador.

Q How much money was Fernando Juela able to get from you?

A P250.00

Q Where did you place that money of P250.00 which the accused got from you?

A The drawer of our aparador.

COURT:

He opened it with your key?

A I opened all the drawers of the aparador because if I don't the hunting knife was always pointing to me at my abdomen.

FISCAL BLANCO:

Q What kind of money was that that you had given or was taken by accused Fernando Juela?

A Loose old coins in denominations of P0.20, P0.50 and P0.10.

COURT:

No paper bills?

A None, sir.

C Where was this kept, this coins?

A Inside the aparador.

C It was kept in a particular container inside the aparador?

A In the drawer and it was contained in a tin can.

C You gave the tin can to the accused?

A Yes, sir.

COURT:

Proceed.

FISCAL BLANCO:

Q Aside from the amount of P250.00 that you gave to accused Fernando Juela, were there other things taken by him and his companions?

A There were.

Q What were they? Will you please tell the Court?

A Jacket of my husband.

Q How much, more or less, if you know, the value of the jacket of your husband that was taken by the accused?

A P35.00.

COURT:

What kind of jacket is this, ordinary cotton jacket?

A Vonnel jacket brought by my brother.

C With a zipper?

A Yes, sir, with a zipper.

C What is the color?

A Red.

C All red?

A Yes, sir.

COURT:

Proceed.

FISCAL BLANCO:

Aside from the money of P250.00 and the jacket which according to you was one colored red given by your brother to your husband, were there any other thing taken by the accused?

A There was.

Q What was that?

A Jewelries, my necklace, ring and earrings were snatched.

Q You said that among the jewelries taken was your necklace. Will you please tell the Court how much is the value of that necklace?

A The value of that necklace was P60.00 that was brought and bought by my husband from Cebu.

Q How about the ring which you said was taken from you. Will you please tell the Court how much was the value of that?

A The cost per ring was P20.00.

COURT:

What kind of ring?

A Gold ring.

C Plain or designed?

A Plain gold ring.

C Whose ring is this?

A My ring.

C What is the value of these two rings?

A P20. 00 each.

FISCAL BLANCO:

Q You said that your earring was snatched from your ears. How much is the value of those earrings?

A That earring when bought by my mother was only P20.00. But now that could not be bought for P50. 00.

COURT:

You said your earrings were snatched from your ears? So your ears must have been injured? When the accused snatched from your ears, were your ears injured?

A No, sir.

COURT:

Proceed.

FISCAL BLANCO:

Q After the accused got the money from you in the amount of P250. 00, the jacket, the jewelries, where did he go?

A He went down.

Q How about his companion?

A His companion also went down because he was hurrying him by saying, hurry Bay, hurry Bay.

Q Could you tell this Court if you could remember what kind of clothing did the accused wear that night?

A Yellow.

COURT:

Yellow what?

A Yellow vonnel.

FISCAL BLANCO:

Q Is it a polo shirt, a shirt or what kind of clothing?

A A shirt.

COURT:

What was his pants?

A Black color.

FISCAL BLANCO:

Q Did you remember whether he was wearing anything on the head?

A Yes, sir, he was wearing hat tilted down.

COURT:

What kind of hat?

A I cannot recognize what kind of hat was it but he was wearing he tilted down.

COURT:

What color?

A I did not notice.

C Is this a grass hat, either abaca, buri or what not?

A Hat made of ticog." (TSN, Mancao, pp. 34-44.)

The appellant claims that Ruperta could not have identified him as one of the robbers because "The facts to which this witness testified took place in rather rapid succession and were attended by hurry and excitement, and moreover, the house was dimly lighted." This claim is not well-taken for as the above-quoted testimony shows: (a) She had known Fernando Juela, the appellant, for about five years because they were neighbors [on cross-examination she added that "his physical and his movement is familiar to me"]; (b) at the time of the incident the house was lighted with a Standard lamp [on cross-examination she said, "We cannot sleep without a light"]; and (c) she was able to describe what the appellant wore, namely: a yellow shirt, black pants and a hat made of ticog.

3. The appellant makes much of two reports.

Exhibit 4 is a spot report sent by the PC detachment in Plaridel to the PC Headquarters in Oroquieta City which reads: "460PC 102-116. Spot report robbery in band with frustrated homicide. Unsolved. On or about 132400 February 13, 1970, at barrio Sibulin, Plaridel, this Province, for unknown persons armed with ax, pistol, caliber 25 and 22 caliber revolver, robbed the house of one Juan Carnalna, 48 years old, married and a resident of said barrio. Robbers get away cash amount P200.00; P150.00 worth jewelries and assorted cloths and before leaving, he shot victim three times hitting two in the stomach and left thigh. Victim was brought to the Mendoza Hospital at Plaridel for treatment while case presently investigated by joint PC-police. Progress report follows." (TSN, Suan, pp. 119-120.)

Exhibit 5 is an entry in the police blotter of Plaridel, Misamis Occidental, dated February 14, 1970, which reads: "At about 12:05 midnight at barrio Sibulin, this municipality, Juan Carnalna was robbed by unknown robbers. The said victim was shot by the said robbers three times hitting his stomach and thigh. The robbers were able to bring with them valuables including cash money in the amount of P350.00. The said victim is now confined at the Immaculate Concepcion Hospital in this municipality." (Id., p. 121.)

It should be noted that the reports were made immediately after the incident and the only eye-witness thereto was Ruperta, the widow. The trial court correctly observed:

"xxxThe widow, Ruperta, denied she was ever investigated by said police officers [Sgt. Prado and Patrolman Angeles], because all the time she was beside her seriously wounded husband in the Mendoza clinic up to his death on February 15, 1970, in the morning. That this must be so is more than possible, for she could not, in conscience, leave her husband who was hovering between life and death. Moreover, the robbery was already an accomplished fact. Even granting that she was investigated, cases are replete wherein the identities of perpetrators of crimes are not immediately disclosed by the victims for fear of reprisal. In his case she later on publicly (in the town hall of Plaridel) pointed out accused Fernando Juella as one of the robbers, and executed a sworn statement, Exhibit "4" ["1"] and Exhibit "C" the searching questions and answers by municipal judge Pacito Mutia, relative to the shooting of her husband and the robbery as well as the identity of Fernando Juella as the assailant and one of the robbers. Her direct testimony jibes with said affidavit and statements before said Judge. Though her affidavit was executed a week after the robbery the value given to is not in the least diminished." (Expediente, pp. 185-186.)

The appellant's defense of alibi - that throughout the evening of February 13, 1970, he was in his house at Luzuran, Lopez Jaena, Misamis Occidental - a defense which can easily be fabricated, must be rejected because he was positively identified as one of the perpetrators of the crime.

WHEREFORE, the judgment of the trial court is hereby affirmed with the sole modification that the appellant shall pay the amount of P30,000.00 as indemnity to the heirs of Juan Carnalna. Costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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