

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO LAGTU Y VILLALUNA @ 'TIKBOY LAGTU';
DEFENDANT-APPELLANT.**

G.R. No. 52237. September 30, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appeal by Roberto Lagtu who was convicted of murder for the death of Rizal Benedicto and sentenced to “cadena perpetua” in Criminal Case No. 721 of the Court of First Instance of Batangas.

The information against the appellant reads:

“(That) on or about the 20th day of October, 1975, in Barrio Wawa, Municipality of Nasugbu, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a pointed-bladed instrument, a deadly weapon, together with one John Doe, whose identity and whereabouts are still unknown, conspiring and confederating together, acting in common accord and mutually aiding each other, with intent to kill and with the qualifying circumstances of treachery and abuse of superior strength, attack, assault, stab and hit, suddenly and without warning, with the said weapon, one Rizal Benedicto, thereby inflicting upon the latter stab wounds in the different vital parts of his body, causing severe hemorrhage and/or profuse bleeding which directly caused his death.

“That the aggravating circumstance of nighttime deliberately sought was present in the commission of the crime.”

The judgment under appeal reads as follows:

“In view of the foregoing, this Court finds the accused, ROBERTO LAGTU Y VILLALUNA @ 'TIKBOY LAGTU,' guilty beyond reasonable doubt of the crime of murder qualified by treachery with the aggravating circumstance of nocturnity deliberately sought, and without any mitigating circumstance, and accordingly imposes on him the penalty CADENA PERPETUA and to indemnify the heirs of the victim in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency and to pay the cost of the suit.”

The evidence for the prosecution established that at about 2:15 o'clock in the morning of October 20, 1975, a wounded person, wet and soaked in his own blood, was found in the yard of the Bayani family at Washington Street, Nasugbu, Batangas.

Gaudencio Calinawan, Felipe and Rodolfo Bayani (relatives-in-law of Gaudencio), and Jaime Caparas who found the wounded man, recognized and identified him as Rizal Benedicto.

According to Gaudencio Calinawan and Jaime Caparas, Rizal Benedicto had several stab wounds. Jaime Caparas said that in answer to his question, Rizal Benedicto told him that the group of "Tikboy Lagtu" ("sina 'Tikboy Lagtu'") stabbed him and threw him from a bridge in Bo. Wawa, Nasugbu.

Calinawan and company brought Rizal Benedicto to Apacible Memorial Hospital in Nasugbu. And at around 2:45

o'clock that same morning Patrolmen Anselmo Madrid and Ramos of the Nasugbu Police Force went to the hospital at the request of Calinawan. Seeing Rizal Benedicto on a stretcher, Patrolman Madrid asked him questions which together with the answers were embodied in Exhibit B, thumb-marked by Rizal Benedicto and witnessed by Geronimo Torres.

Exhibit B reads as follows:

"1. T - Malinaw ba and pagiisip mo?

S - Opo.

2. T - Anong pangalan mo?

S - Rizal Benedicto y Dimaisip po.

3. T - Taga saan ka?

S - Taga Bo. Talagan po, Nasugbu, Batangas.

4. T - Bakit ka may sugat?

S - Sinaksak po ako.

5. T - Sino and sumaksak sa iyo?

S - Si Tikboy Lagtu po at ang mga kasama niya na hindi ko alam ang pangalan.

6. T - Saan nangyari ito?

S - Duon po sa tulay ng Bo. Wawa, Nasugbu, Batangas.

7. T - Ano ang isinaksak sa iyo?

S - Hindi ko po alam, basta't matutulis na bagay ang ramdam kung tumama sa katawan ko.

8. T - Bakit ka sinaksak?

S - Hindi ko po alam, basta na lamang ako hinarang at sinaksak.

9. T - Kailan nangyari ito?

S - Kanina po, Oct. 20, 1975.

10. T - Anong pakiramdam mo sa sugat mo?

S - Masakit po. Masama po.

(THUMBMARKED) RIZAL D. BENEDICTO"

At around 3:30 o'clock also that same morning, Rizal Benedicto was transferred to St. Francis Hospital for surgery. He was operated on by Dr. Luis Montemar, who later testified that the victim sustained eight (8) stab wounds inflicted with a sharp-pointed instrument, the wound reaching the liver being the most dangerous.

For more than 11 hours after the operation, Rizal Benedicto fought for his life, and lost. He expired at around 3:15 o'clock in the afternoon of October 20, 1975. The death certificate (Exhibit E) shows that he died of severe hemorrhage and shock due to multiple stab wounds.

These facts were testified to by Gaudencio Calinawan, Jaime Caparas, Dr. Luis Montemar and Patrolman Anselmo Madrid.

The prosecution bolstered its case against Roberto Lagtu with the testimony of Patrolman Madrid that he was indeed "Tikboy Lagtu."

"FISCAL FLORENCIO LANDICHO: Just one re-direct, Your Honor.

Q: With the permission of this Honorable Court Mr. Witness, when you conducted that investigation you were told that Tikboy Lagtu stabbed the victim, is it not?

A: Yes, sir.

Q: Do you know this Tikboy Lagtu personally?

A: Yes, sir.

Q: If, he is here in the court room, will you please point to him?

INTERPRETER: (Witness pointed to the accused Roberto Lagtu).

FISCAL:

Q: Mr. Witness, since when have you known Tikboy Lagtu?

A: For a long time already, sir.

Q: And you fully know that Tikboy Lagtu and this Roberto Lagtu is one and the same person?

A: Yes, sir."

(TSN, March 1, 1977, pp. 13-14.)

The principal defense of Roberto Lagtu who was 31 years old when he testified in December, 1977, consists of his claim that he is not "Tikboy Lagtu." He said that his nickname is "Boy," by which he has been known in the community (Bo. Wawa) since childhood, and that he has never been called "Tikboy Lagtu." He further stated that "Tikboy Lagtu" is none other than his nephew Dominador Lagtu.

Roberto also offered an alibi. He claimed that he was sleeping in his house at Bo. Wawa from 8:00 o'clock in the evening of October 19, 1975 until 6:00 o'clock the next morning of October 20, 1975.

Dominador Lagtu was presented as defense witness. He stated that he is the real "Tikboy Lagtu", and the nephew of the accused whose nickname is "Boy."

Rosario Lagtu and Romeo Lising, the wife and close friend of the accused respectively, corroborated the testimony of Roberto and Dominador.

The court a quo gave credence to the evidence of the prosecution, and concluded that Roberto Lagtu was the "Tikboy Lagtu" who stabbed and killed Rizal Benedicto and sentenced him as aforesaid.

On appeal, the errors attributed by the accused-appellant to the trial court, boil down to the question as to whether or not the identity of the assailant of Rizal Benedicto was convincingly and conclusively established.

We have to answer the question in the affirmative.

Undoubtedly, the ante-mortem statement, Exhibit B, of the victim was properly admitted as dying declaration. It referred to the cause and surrounding circumstances of the declarant's death. And it was made under the consciousness of an impending death, considering that the declarant who was earlier found bathing in his own blood due to multiple stab wounds, must have naturally sensed the seriousness of his condition which eventually caused his death.

For the same reason, the revelation made by Rizal Benedicto to Jaime Caparas that "sina 'Tikboy Lagtu'" stabbed him, also has the nature of a dying declaration. Both declarations are therefore admissible in evidence as an exception to the hearsay rule.

That "Tikboy Lagtu" is no other than the accused Roberto Lagtu was convincingly established by Patrolman Anselmo Madrid. Madrid categorically declared that he had known "Tikboy Lagtu" personally, and for a long time, and that "Tikboy Lagtu" and Roberto Lagtu are one and the same person.

Between the testimony of Patrolman Madrid and those of Roberto and his witnesses, the former should command credence. Patrolman Madrid was a disinterested witness, and there is no showing that he had any ill motive in testifying against Roberto. On the other hand, the testimony of the defense witnesses, relatives and a close friend of the accused, were naturally tainted with bias.

What adds credibility to Madrid's assertion that he personally know Roberto as "Tikboy Lagtu" is the fact that in small rural communities, everybody knows almost everybody. And so it was, with a policeman who regularly performs his beat. More so, when it is considered that according to Roberto Lagtu himself, he worked at the Interlink Resort in Bo. Wawa. In this connection, it is significant that Roberto Lagtu even admitted that he knew Patrolman Madrid, though he said that he knew Madrid as "Max."

Additionally, the difficulty with Roberto Lagtu's disclaimer is that he signed a manifestation dated November 3, 1975, addressed to the Municipal Court of Nasugbu wherein he requested for a preliminary investigation proper. (Expediente, p. 12.) In that manifestation he actually admitted that he was "Tikboy Lagtu" by referring to himself as Roberto Lagtu alias "Tikboy Lagtu."

It having been shown that "Tikboy Lagtu" and Roberto Lagtu were one and the same person, the alibi of the accused has to fall because he has been positively identified as the assailant of Rizal Benedicto.

The court a quo held that treachery attended the slaying of Rizal Benedicto. The records, however, do not show facts upon which a finding of treachery can be sustained. And it cannot be presumed merely because the victim sustained 8 stab wounds.

Roberto Lagtu should, therefore, be held guilty of homicide only.

Although nighttime is alleged in the information, there is no evidence that nighttime was purposely sought to facilitate the commission of the crime.

There being no attendant aggravating nor mitigating circumstances in the commission of the crime of homicide, the appropriate penalty is reclusion temporal in its medium period.

WHEREFORE, the judgment of the court a quo is hereby modified by finding the appellant Roberto Lagtu guilty of the crime of homicide only and sentencing him to an indeterminate penalty of seven (7) years of prision mayor as minimum to fifteen (15) years of reclusion temporal as maximum; it is affirmed in all other respects.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and De Castro, JJ., concur.

Aquino, J., concurs. The trial court erred in imposing cadena perpetua. That penalty, which was imposed by the Spanish Penal Code of 1870, was repealed by the Revised Penal Code.

Convicts serving cadena perpetua "shall always carry a chain at the ankle, hanging from the waist; they shall be employed in hard and burdensome labor, and shall not receive any assistance whatsoever from without the institution" (Art. 106, Old Penal Code). That barbarous, cruel and unusual punishment belongs to a bygone era

and is no longer imposed in this enlightened age.

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