

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO ABUEG, ACCUSED-APPELLANT.

G.R. No. 54901. November 24, 1986

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

In Criminal Case No. CCC-VII-Cavite of the former Circuit Criminal Court, Seventh Judicial District of Metro Manila (Pasig) Ricardo Abueg and Deogracias San Pedro were accused of the crime of robbery with homicide, alleged to have been committed as follows:

"That on or about November 1, 1973 in the Municipality of Rosario, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed respectively, with a deadly weapon known as "chaco" and a piece of wood, conspiring, confederating together and mutually helping one another, by means of violence and intimidation and force upon things, assault, attack and thrust the door of the house where Marciana Maraya and Diosdado Maraya were then living, with the piece of wood, one of the accused was then conveniently provided, hitting Marciana Maraya on her body thereby causing her instantaneous death, and once inside, with intent of gain and without the consent of the owner, did then and there, wilfully, unlawfully and feloniously break and smash the cabinet (aparador), and take, steal, rob and carry away pants, shirts and baby dresses with a total value of Three Hundred and Ninety Three (P393.00) Pesos, Philippine Currency belonging to Diosdado Maraya, thereby resulting to the damage and prejudice of said Diosdado Maraya and of the heirs of Marciana Maraya in the aforementioned amount.

"Contrary to law."

Upon being arraigned, both accused pleaded not guilty to the aforestated offense and the case proceeded to trial.

The prosecution evidence, as synthesized by the trial court and substantially adopted in the People's Brief, disclose the following:

"On November 1, 1973, at about 10:30 o'clock in the evening, Diosdado Maraya, his mother, Marciana Malaya and his cousin Norberto Alcaraz were in the house at Biak-na-Bato, Rosario, Cavite. They were eating "kalamay" (rice cake) as it was All Saint's Day. Momentarily, two persons whom they recognized as the accused Ricardo Abueg and Deogracias San Pedro unexpectedly entered the door of their house. Inside, Abueg asked the occupants if he could partake in eating "kalamay". Norberto Alcaraz answered that he could do so (pp. 3-5, tsn, April 23, 1975). While Diosdado Maraya was serving them with coffee, Abueg suddenly hit Norberto Alcaraz twice with a "chaco" on the head and on the eyebrow and blood oozed therefrom. Because the tie of the "chaco" was disengaged, Abueg and San Pedro retreated and left (pp. 3-7, tsn., February 17, 1975; pp. 4-9, tsn., April 23, 1975).

"Minutes later, Abueg and San Pedro returned. While Marciana Maraya was closing the door of the house, Abueg speared the door with a piece of wood about one (1) arm long and hit Marciana Maraya on the chest. Abueg struck the door again. When it opened, he and San Pedro entered. Carrying the piece of wood he used in striking the door, Abueg struck the plates and glasses on the table. He also struck Norberto Alcaraz on the

forearm and then destroyed the cabinet (aparador). Thereupon, Abueg demanded for money but he was told by the wife of Diosdado Maraya that they had none since her husband was jobless (pp. 8-12, tsn, February 17, 1975; pp. 9-12, tsn, April 15, 1975). After destroying the cabinet, San Pedro took the clothes inside. Thereafter, Abueg and San Pedro left (pp. 14-18, tsn, *ibid*; p. 19, tsn, *ibid*).

"The victim was brought to the Maternity Hospital in Rosario, Cavite where she was pronounced dead on arrival (pp. 15-16, tsn, February 17, 1975). Dr. Nieto Salvador, NBI medico-legal officer, conducted postmortem examination on the cadaver of the victim. Based on the examination he conducted, Dr. Salvador found the victim suffered fractured ribs on the left chest. He testified that there was a complete fracture of the sternum resulting in the extensive contusion of the base of the heart. The Necropsy Report issued by Dr. Nieto Salvador shows that the cause of death of Marciana Maraya was due to "shock and traumatic" (Exh. "C", p. 126, Rec., pp. 34-36, tsn, April 3, 1975).

"Upon being informed of the incident, a team of policemen led by Pat. Wilfredo Perrera repaired to the scene of the crime at about 10:00 o'clock that same evening of November 1, 1973. At the crime scene, the policemen noticed that the door of the house was punctured. Pat. Herrera made an inquiry from the children of the victim and he was told that their mother was speared with a piece of wood by Ricardo Abueg and Deogracias San Pedro (pp. 4-7, tsn, July 1, 1975).

"The policemen hunted for the two suspects. They later spotted Abueg and San Pedro at the road talking with each other. They apprehended the two and brought them before the family of the victim who confirmed that they were the ones who speared the victim to death. Sgt. Rodel Hernandez found two (2) pieces of wood (Exhs. "D" & "D-1") at the crime scene. Then they brought Abueg and San Pedro along with Diosdado Maraya and Norberto Alcaraz to the Municipal building for investigation (pp. 11-13, tsn, July 1, 1975).

"At the police precinct, Pat. Joaquin Vargas, Jr. of the Rosario Police, conducted an investigation on the suspects, Ricardo Abueg and Deogracias San Pedro. He also investigated the witnesses, Diosdado Maraya and Norberto Alcaraz, and took their respective statements (Exhs. "D" & "D-1", pp. 6-7, Rec.; pp. 6-10, tsn, April 29, 1975).

"During the investigation, Maraya and Alcaraz identified the two (2) pieces of wood (Exhs. "D" & "D-1") and the "chaco" (Exhs. "E" & "E-1") as the weapons used by Abueg and San Pedro in assaulting them. They also identified therein the pieces of clothes taken by the accused as theirs (pp. 34-38, tsn., April 29, 1975). Pat. Vargas prepared criminal complaint for robbery with homicide (Exh. "F") against Ricardo Abueg and Deogracias San Pedro and filed the same with the Municipal Court of Rosario, Cavite (pp. 18-20, tsn, *ibid*)."

On the other hand, the version of the incident as submitted by the two accused, is as follows:

"On November 1, 1973 at about 10:30 P.M., the two accused, Ricardo Abueg and Deogracias San Pedro, though uninvited, went inside the residence of Diosdado Maraya which is also the residence of Marciana Maraya. It was Ricardo Abueg who went ahead while Deogracias San Pedro was left behind near the doorway. As is the usual custom, being All Soul's day, the Maraya family have prepared a "kalamay" (powdered rice cake cooked in coconut milk and sugar). Upon seeing the "kalamay", Ricardo Abueg asked the occupants of the house if he could partake of the same to which he was told that he could do so. Whereupon, Ricardo Abueg stepped out of the house in order to invite Deogracias San Pedro to join him. The latter readily accepted the invitation and went inside.

"Suddenly and for no reason at all, Deogracias San Pedro hit Norberto Alcaraz (cousin of Diosdado Maraya) with a "chaco" (a two-piece club linked at the mid-section with a string used in Martial Arts) hitting said Norberto Alcaraz on the head. As soon as Alcaraz was hit on the head, San Pedro ran away leaving behind Ricardo Abueg. It was perhaps due to the poor lighting (perok-perok lamps were used) and the suddenness of the attack that prompted Alcaraz and Maraya to conclude that it was Abueg who did the act. As a result, both Maraya and Alcaraz ganged up at Ricardo Abueg. It should be mentioned that when San Pedro hit Alcaraz

with the "chaco", the other part of the chaco was disengaged and was lying on the floor. It was this part of the "chaco" that was not recovered anymore. As Ricardo Abueg proved to be no match to the combined strength of Alcaraz and Maraya, the former retreated and ran out of the house. As soon as Abueg was outside of the house, he saw San Pedro still holding the other portion of the "chaco". It was this portion that Abueg grabbed from San Pedro. Abueg went back to the house and hit Norberto Alcaraz after which he ran away.

"As the duo started to leave the vicinity, Alcaraz and Maraya started to shout unprintable words at San Pedro and Abueg. Angered by the invectives hurled upon them, Abueg and San Pedro took pieces of wood from a fence nearby and returned to the Maraya residence. As the door was already closed when they returned, they rammed the door panel several times unaware that behind the door was Marciana. After the door rammed several times by both the herein accused, a hole was created and in the process, Marciana Maraya who must have been standing behind the door, was pierced with a piece of wood. She fell to the floor. Thereupon, the door was forced open and both Abueg and San Pedro were once more able to gain entrance. Once inside, and probably bereft of reason due to excessive drinking, the two accused began smashing the wooden cabinet (aparador) with the pieces of wood they have previously used in ramming the door. The wooden cabinet was broken and according to Norberto Alcaraz, it was San Pedro alone who took some clothes from said cabinet.

"Immediately thereafter, both accused ran out of the house. Some hours thereafter, both accused were arrested by Pat. Wilfredo Pereyra of the Rosario Police Force and both were booked for implication for the death of Marciana Maraya and for robbery for having allegedly carted away some clothes belonging to Diosdado Maraya." (Appellant's Brief, pp. 3-5)

After trial, the court below rendered on March 23, 1976 judgment finding the accused Ricardo Abueg and Deogracias San Pedro guilty as charged. The dispositive part of said decision reads:

"WHEREFORE, finding the accused Ricardo Abueg and Deogracia San Pedro, both guilty, beyond reasonable doubt, of the crime of Robbery with Homicide under Art. 293 of the Revised Penal Code, in relation to Sec. 1, Art. 294 thereof, as charged in the information, the Court hereby sentences them to suffer the penalty of DEATH; to pay the amount of P393.00 and to indemnify the heirs of the victim the amount of TEN THOUSAND P10,000.00); to pay moral damages in the amount of FIVE THOUSAND PESOS (P5,000.00) as exemplary damages and to pay their proportionate shares of the costs.

"xxx xxx xxx

"However, pursuant to Section 192 of Presidential Decree No. 603, considering that accused Ricardo Abueg and Deogracias San Pedro were both 19 years old at the time of the commission of the crime, the execution of their sentence is suspended and said accused are ordered confined at the Camp Sampaguita Youth Center, New Bilibid Prison, Muntinlupa, Rizal. If said accused violate any of the rules and regulations of said institution, or if their continued stay in the training institution is inadvisable, the Court shall order the Director or any of his duly authorized representatives to produce the bodies of said accused before this Court for them to serve their sentence." (Rollo, pp. 13-14)

From the case records, it appears that on June 4, 1977, Ricardo Abueg, escaped from the Youth Rehabilitation Center of the New Bilibid Prison at Muntinlupa, Metro Manila but was recap-tured. On June 28, 1977, Ricardo Abueg was returned to the committing court. The judgment of conviction rendered against him in the subject criminal case was then pronounced and the trial court further ordered the transfer of Ricardo Abueg from the Rehabilitation Center to the Death Row of the New Bilibid Prison (Tsn, p. 69, Hearing of June 28, 1977).

The records indicate that Deogracias San Pedro, the other accused in this case, was also returned to the trial court on June 28, 1977. However, in his case, no pronouncement of the judgment against him was made by the trial judge because after interrogation it was shown that he had not participated nor was involved in the escape of his co-accused, Ricardo Abueg. The records also disclose that subsequently, the motion of the counsel of Deogracias San Pedro that custody of said accused be given to the latter's parents, without prejudice to further interviews

being made by the probation officers, was granted by the trial judge on October 19, 1977 (Case Records, pp. 382-383).

The present case is before this Court by way of an automatic review of the judgment of conviction rendered against Abueg and the penalty imposed on him. Ricardo Abueg attributes to the trial court the commission of the following errors:

"I.

THE LOWER COURT ERRED IN CONVICTING THE APPELLANT OF THE CRIME OF ROBBERY WITH HOMICIDE NOTWITHSTANDING THE FACT THAT CONSPIRACY HAS NO BEEN DULY ESTABLISHED;

"II.

THE LOWER COURT ERRED IN NOT CONVICTING THE APPELLANT FOR THE CRIME OF HOMICIDE ONLY, IT APPEARING THAT THIS IS THE ONLY CRIME, IF AT ALL, WHICH WAS DULY ESTABLISHED AGAINST THE APPELLANT;

"II.

ASSUMING GRATIA ARGUMENTI, THAT ROBBERY WHICH HOMICIDE HAS IN FACT BEEN COMMITTED AND ITS COMMISSION DULY ESTABLISHED, THE LOWER COURT ERRED IN NOT CONSIDERING THE MITIGATING CIRCUMSTANCES OF: (1) THAT THE OFFENDER (APPELLANT) HAD NO INTENTION TO COMMIT SO GRAVE A WRONG AS THAT COMMITTED; (2) THAT THE OFFENDER (APPELLANT) IS SUFFERING FROM A MENTAL DEFECT AS WOULD DIMINISH HIS WILL-POWER IN METING OUT THE PROPER PENALTY."

Appellant does not deny that he should be responsible for the death of Marciana Maraya. In fact, in his handwritten letter sent to this Court on August 24, 1981 (p. 80, Rollo) from the New Bilibid Prison, he admitted that the killing of Maraya was accidental as he was not aware that the victim was behind the lawa-nit door when he speared the same. He claims that at most he should be convicted of homicide only and not robbery with homicide since it was his co-accused Deogracias San Pedro alone who took the clothes and the conspiracy to take the same was not duly established. Appellant argues that he returned to the victim's house, armed with a piece of wood to get even with Norberto Alcaraz and Diosdado Maraya who beat him but that there was no previous plan or agreement to commit a robbery.

Appellant's claim of absence of conspiracy is without merit. Conspiracy need not be proved by direct evidence; it may be inferred from acts of assailants. Appellant and Deogracias San Pedro went back to the house of the victim each carrying a piece of wood. With these, they struck the lawanit door with the wood hitting Marciana Maraya inside who was closing the door. Upon gaining entrance, they destroyed the wooden cabinet and obviously for the purpose of taking the things therein. In the Statement of Facts appearing in Appellant's Brief, We find the following:

"x x x. Once inside, and probably bereft of reason due to excessive drinking, the two accused began smashing the wooden cabinet (aparador) with the pieces of wood they have previously used in ramming the door. The wooden cabinet was broken and according to Norberto Alcaraz, it was San Pedro alone who took some clothes from said cabinet." (Appellant's Brief, pp. 4-5).

The fact that the two assailants destroyed the wooden cabinet was attested to by Norberto Alcaraz when he

testified:

"FISCAL SALCEDO

"Q

What other things in the house was hit by this piece of wood which was used by Ricardo Abueg in hitting the house?

"A

Glasses and plates.

"Q

What else?

"A

The aparador. They used the piece of wood in hitting the aparador.

"Q

As a result what happened to the aparador?

"A

The door of the aparador was destroyed.

"Q

After the door of the aparador was destroyed what happened?

"A

After the door of the aparador was destroyed Deogracias San Pedro took the clothes.

"Q

And after those clothes were taken by Deogracias San Pedro what happened next?

"A

After he has taken the clothes they left.

"Q

Who left?

"A

The two Ricardo Abueg and Deogracias San Pedro. (Tsn, April 23, 1975, pp. 17-19)

Appellant's claim that he had no previous knowledge that San Pedro would steal the clothes is belied by his

admission that he demanded money from the Marayas and even threatened them with death if they would not give their money. Appellant testified, thus:

"COURT -

"Q

By the way, is it not a fact that you and Deogracias San Pedro ransacked the house of Diosdado Maraya?

"A

We did not ransack the house. They were the ones who gave the clothes to us.

"Q

What is the logical reason why the clothes were given to you?

"A

Because clothes could be sold there on relief.

"Q

Is it not a fact that you asked money?

"A

I was just threatening them. I am just motioning as if I have a gun so that they will give us.

"Q

What did you say when you threaten them?

"A

I said 'putang ina ninyo, pahingi ng pera'.

"Q

What else?

"A

They answered they have no money and they would borrow money. I said if you will not give money I will kill you (witness making a gesture as if to point something). Then when they did not give money, Deogracias San Pedro said 'sigui patayin mo na William.'

"Q

What did you do?

"A

So they gave the clothes.

"Q

When they gave the clothes, what did they say?

"A

When the clothes were given to me, we ran to the sea." (pp. 58-60, tsn, September 4, 1975)

The acts of the two accused in destroying the cabinet for the obvious purpose of taking the contents therein show a continuity of criminal design. Although no previous agreement to commit the robbery has been proven, such is not essential. It is sufficient that the malefactors acted in concert pursuant to the same objective. The tacit and spontaneous cooperation and coordination by the two accused in breaking the cabinet show the existence of a conspiracy. This is bolstered by the fact that appellant did not even prevent San Pedro from stealing the clothes and running away with the same.

To at least mitigate his criminal liability, the appellant now claims that he is suffering from a mental defect as shown by the psychological report, dated September 26, 1976 of Nieto Latorre Vitto, Guidance Psychologist & Acting Social Welfare Analyst, Bureau of Your Welfare, Department of Social Services & Development (p. 267, Records). It is stated therein that in the test administered by her, appellant "yielded I.Q's of 68, 68, 66 for the verbal per-formance and full scale, respectively, and which classified him in the mentally defective group."

The psychological examinations were conducted on September 26, 1976 while appellant was already detained at the New Bilibid Prison, about three years after the crime was committed on November 1, 1973. In going over the records of the case, We find that when appellant testified on September 4, 1975, which was almost two years after the commission of the crime, he was able to narrate clearly and accurately the incidents that took place. He was able to recall the place where he and Deogracias San Pedro went before and after the incident. He even remembered the name of Pat. Wilfredo Perrera as the policeman who arrested him as well as the time of his arrest. Appellant likewise recalled that they were confined at the Municipal Jail of Rosario, Cavite for two months and two weeks; thereafter, they were transferred to Trece Martires (pp. 14-57, tsn, September 4, 1975). Considering appellant's ability to narrate vividly the details of how the crime was committed and the other incidents that transpired thereafter, his assertion that he is mentally defective must fail.

Aside from this consideration, it is shown that Dr. Romeo Y. Tating, Chief, Neuro-Psychiatric Service of the National Bureau of Investigation conducted a psychiatric evaluation of the appellant when the latter was detained at Camp Sampaguita Youth Rehabilitation Center, New Bilibid Prison. His findings on appellant's physical and neurological examinations submitted to the court on February 10, 1977, place Ricardo Abueg within normal limits (pp. 286-287, Records).

Finally, appellant argues that he had no intention to commit so grave a wrong as that committed because the intention of the two accused in ramming the door with pieces of wood was but to force it open, and they did not know that Marciana Maraya was behind the door. As this may well be, We are disposed to agree that under the given facts of this case, the mitigating circumstance of lack of intent to commit so grave a wrong may be appreciated in appel-lant's favor. It has not been satisfactorily established that in forcing entrance through the door which was then closed, with the use of pieces of wood, the two accused were aware that Marciana Maraya was behind the door and would be hurt. Even as they sought to enter the house to retaliate against the male occupants or commit robbery, there is no clear showing that they ever desired to kill Marciana Maraya. In People

versus Gardon, et al., 104 Phil. 371, it was held that, "Considering however the circumstances under which the crime was committed wherein it does not appear that appellants have deliberately intended to harm their victims though incidentally two of them laid hands on some who apparently wanted to prevent their flight, x x x, the application of life imprisonment would be commensurate to the crime committed x x x." Article 13, par. 3 of the Revised Penal Code, addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act (People vs. Boyles, 11 SCRA 88). As the attendant circumstances in this case indicate that the death of Marciana Maraya was not deliberately intended, the penalty that was Imposed by the trial court on the accused-appellant may be lessened.

Nevertheless, Ricardo Abueg remains liable for the crime of robbery with homicide because it is enough that a homicide result by reason of or on the occasion of the robbery. Even assuming that the two accused, as alleged by them, only sought to wreak vengeance on the male persons inside the house of the Marayas, this does not exclude the fact that they went further and proceeded to rob the said family.

WHEREFORE, the judgment of the court below is hereby **AFFIRMED** with modification as to the penalty imposed on the accused-appellant Ricardo Abueg, which is hereby reduced to reclusion perpetua but the indemnity to be paid to the heirs of Marciana Maraya is, how-ever, increased to Thirty Thousand (P30,000.00) Pesos.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, and Feliciano, JJ., concur.

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