

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SABENIANO LOBETANIA, ACCUSED-APPELLANT.

G.R. No. 56973. August 30, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

Sabeniano Lobetania appealed from the decision of the Court of First Instance of Agusan del Sur, convicting him of robbery with homicide, sentencing him to reclusion perpetua and ordering him to pay the heirs of Santos Cabutaje a total indemnity of P14,920 (Criminal Case No. 548).

The prosecution's evidence shows that in the evening of August 3, 1972, Teonito Cordita, Sabeniano Lobetania, 31, and a person known as Sebastian appeared at the house of the spouses Santos Cabutaje, 43, and Nelia Gerona, 38, located at Barrio Bunaguit, Esperanza, Agusan del Sur and offered to buy a pig from the spouses.

Nelia knew Cordita because he had gone to her house in January, 1972 and introduced himself as Nelia's cousin. His mother's surname is allegedly Gerona. On that evening Cordita introduced Lobetania to Nelia as a man named Rudy Sumuok. The Cabutajes offered supper to the three visitors and invited them to spend the night in their house so that they could consummate the sale of the pig on the following day. The three guests slept in the abode of the Cabutaje spouses.

At about four o'clock in the morning of August 4, Nelia and her son, Wencefredo, 11, were awakened by the groans of Santos Cabutaje who was standing unsteadily and was bleeding. Santos apprised Nelia that he had been stabbed. He had a stab wound in the chest (p. 4, Record). He sat on the floor and then lay down on it and died.

Lobetania and his two companions approached Nelia and demanded money from her. Fearing that she and her son would be killed, Nelia gave three thousand pesos to the three malefactors. But before leaving the house, they threw eighty pesos to Nelia out of pity for her.

Nelia informed the barrio captain of the incident. That functionary reported the tragedy to the police authorities. Nelia and Wencefredo executed sworn statements about the incident. On the basis of those statements, the chief of police filed a complaint for robbery with homicide against Rudy Sumuok and John Doe.

The chief of police filed an amended complaint dated August 16, 1972 wherein he charged with robbery with homicide Teonito Cordita, Rudy Sumuok and Sebastian Doe. It was based on the amended affidavits of Nelia and her son Wencefredo.

It was more than two years after the incident, or in January, 1975, when Lobetania was arrested in Barrio Kahayagan, Tagbina, Surigao del Sur, in the house of Rodrigo Lanorias. Lobetania was a new resident in that place. He told the barrio captain that his name was Benben Sanipa (9 tsn March 30, 1976). (Cordita and Sebastian are at large.)

In the course of the preliminary examination on February 17, 1975 wherein Lobetania was present, Nelia and

Wencefredo executed new statements wherein they identified Lobetania as one of the malefactors who took part in the robbery with homicide and who used the alias Rudy Sumuok (Exh. A). He waived the second stage of the preliminary investigation.

In a confrontation at the Constabulary headquarters at Lianga, Surigao del Sur, Lobetania, after his arrest, was spontaneously identified by Nelia and Wencefredo as one of the malefactors who ate and slept in their house (17 tsn December 4, 1980; 55 tsn February 12, 1976).

The chief of police of Esperanza testified that when Lobetania was brought to his office for investigation, he asked Lobetania about the incident. Lobetania did not say anything.

In this appeal, Lobetania's counsel contends that the lower court erred in giving credence to the testimonies of Nelia and Wencefredo and in convicting him of robbery with homicide.

Lobetania pleaded an alibi. He testified that at the time the incident occurred he was working as a carpenter in Valderrama's band sawmill at Compostela, Davao del Norte. To prove his employment, he presented several charge invoices (Exh. 7 to 13), the earliest of which was dated September 15, 1972 or forty-two days after the commission of the robbery with homicide. No witness corroborated Lobetania's alibi. His identification card, showing that he was employed as a carpenter in the Valderrama Lumber Manufacturers Co., Inc., does not bear his signature (Exh. 6).

It bears the date "7-1972" but it is not conclusive that that identification card was issued in July, 1972, considering that Lobetania testified that he allegedly started working in the company in "June, 1972" (5 tsn December 4, 1980) and from its appearance, the date "7-1972" might have been interpolated by somebody and was not written by the company official who issued the card.

The decisive issue is whether Lobetania was indubitably identified as one of the participants in the robo con homicidio. Appellant's counsel impugns the identification made by the victim's widow and son as unreliable and untrustworthy.

That contention is not well-taken because Lobetania was in the victim's house for about eight hours. He ate and slept there. The widow and her son had sufficient time to observe and remember his countenance and features. The two eyewitnesses did not have a mere brief and fleeting encounter with the malefactors on a dark night. The two eyewitnesses remembered the features of Lobetania because they were with him for several hours in their domicile.

Nelia testified that she remembered Lobetania because of his figure, his build, the mole in his cheek and the scar on his ear (28-31 tsn February 12, 1976). Considering that the accused was unhesitatingly identified by the victim's widow and son, his uncorroborated alibi appears to be a fabrication.

The other contention of appellant's counsel that there is no sufficient evidence proving that the killing was perpetrated on the occasion of the robbery is unmeritorious. The malefactors first liquidated Santos Cabutaje so that they could consummate the robbery without any hindrance or opposition.

Appellant's counsel calls attention to the discrepancy in the affidavits of Nelia and Wencefredo wherein they declared that there were only two robbers (Exh. 1 and 5), whereas, they testified in court that there were three robbers. Nelia and Wencefredo declared in court that they told the police that Cordita was one of the robbers but the police investigator did not include him as one of the accused. Hence, in their affidavits it appears that there were only two robbers (42-43 tsn Feb. 12, 1976).

The fact that there is a person named Lito Sumuok, alias Rudy Placido Salazar, who was accused of theft of large

cattle before the same trial judge who heard the instant case (Exh. 15) would not mean that Lobetania's identity as one of the robbers in this case has not been established beyond doubt. It is easy to use as an alias another person's name.

Criminals have no compunction in using aliases just to mislead their victims and the law-enforcing authorities. In fact, Lobetania, at the time he was arrested, admitted that he was using the alias, Benben Sanipa.

The robbery with homicide was aggravated by treachery (the victim was assaulted while asleep), craft, dwelling and obvious ungratefulness. (See *People vs. Talorong*, G. R. No. 52516, May 31, 1982, where the accused and his companions also killed their host after they had supper and slept in his house.)

The death penalty should be imposed on the accused (he has been under detention for more than six years). However, for lack of necessary votes, it should be commuted to reclusion perpetua.

WHEREFORE, the trial court's judgment is affirmed. Costs against the appellant.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.
Barredo, and Guerrero, JJ., on leave.

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