

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN NABALUNA Y LLAMOS AND EDGARDO EMPUERTO Y JUAREZ, DEFENDANTS-APPELLANTS.

G.R. No. 60087. July 07, 1986

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

In the decision dated September 26, 1981 rendered in Criminal Case No. CC-XIV-1805 by the former Circuit Criminal Court of Cebu City, the accused-appellants herein, Juan Nabaluna and Edgardo Empuerto, were found guilty beyond reasonable doubt of the crime of Robbery with Homicide and were sentenced to suffer the penalty of death. They were also ordered to indemnify the heirs of the offended party, Nazario Bendanillo, by way of actual and compensatory damages the sum of P15,000.00 as well as moral and exemplary damages in the amount of P25,000.00, and to cause the return of P200.00 to the aforesaid heirs; and to pay proportionate costs.

The Information filed in the court a quo charging the above mentioned accused, together with one Arcadio Lacaron who at the time was still at large, reads as follows:

"That on or about the 4th day of December, 1977, between 12:30 o'clock and 4:00 o'clock in the afternoon, more or less, in Landahan, Toledo City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, and by means of violence against persons and with intent of gain, forcibly open a wooden bank owned by one Nazario Bendanillo, a 72-year old man, and taking therefrom the amount of TWO HUNDRED (P200.00) PESOS, Philippine Currency, consisting of bills and coins of different denominations, to the damage and prejudice of said owner Nazario Bendanillo in the said total sum; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the money above-mentioned, herein accused, in pursuance, of their conspiracy, did then and there, wilfully, unlawfully and feloniously, taking advantage of their superior number and strength and with intent to kill, treacherously attack, assault and use physical violence upon said Nazario Bendanillo with the use of sharp-bladed instrument, thereby inflicting upon him incised wounds on the occipital region of the head, posterior aspect of the neck, and between the thumbs and index fingers of both hands, which resulted to fatal hemorrhage, directly causing the death of said Nazario Bendanillo."

The trial proceeded against the two appellants in this case because their co-accused Arcadio Lacaron had managed to elude arrest and at that time remained at large.

The facts attendant to the commission of the crime charged, as set forth in the People's brief are as follows:

"The victim Nazario Bendanillo, a septuagenarian, was left alone in his house at Landajan, Toledo City in the morning of December 4, 1977. His wife left for Toledo City to buy the family provisions for the week, while their two sons left for Sitio Dao, Barangay Subayon, where a basketball tournament was being held (pp. 7-8, tsn, June 21, 1978).

"Then at about 1:00 o'clock in the afternoon that same day, Cipriano Pajaganas, a resident of Landajan, was on

his way to Dao to see the games. Just after he passed by the house of the victim, he met the two appellants, Juan Nabaluna and Edgardo Empuerto in the company of their co-accused, Arcadio Lacaron. He even greeted Empuerto, who was his only acquaintance among the three, as the trio proceeded towards the house of the victim (pp. 2-3; tsn, July 13, 1978).

"Thereafter, Martin Linihan who was then gathering 'nito' (a vine used in the making of fish trap) in the semi-forested area at Sitio Babao, Barangay Landahan, heard shouts for help coming from the direction of the victim's house. Forthwith, he dropped the 'nito' he had just gathered and went to where the shouts for help came from to investigate. He stopped from nearing the victim's house, however, as he saw a man, he later identified as the appellant Empuerto, who appeared to be guarding the place. He hid himself behind a tree locally known as 'aciotes' and watched. Moments later, he saw a man, he later identified as the appellant Nabaluna, jumped out of the window of the house. Almost simultaneously, he saw a man he later identified as the accused Lacaron, come out of the main door of the house holding a butcher's knife, about 12 inches in length drenched with blood. Thereafter, he saw the trio leave together going towards the east, while he hurriedly went back to where he left his 'nito' and proceeded home. (pp. 2-6, tsn, Sept. 14, 1978).

"On their way back home to Subayon, the three saw Norma Baylosis, who happened to be resting in her mother's house after washing clothes at a creek nearby. Surprised at seeing Norma, Empuerto exclaimed, "Oh, si Norma!" And because Norma knew them since their schooldays at Landahan, she asked Empuerto where they came from, to which, the latter answered that they went to see the basketball games at Dao. (pp. 2-3, tsn, June 22, 1978).

"Meanwhile, the victim's wife, Ursula Bendanillo, arrived home at about 4:00 o'clock in the afternoon that same day. She called for her husband as she reached the yard of their house, but no one answered. Then as she was going up through the stairs of their kitchen, she saw blood on the steps thereof. Hurriedly she ran upstairs to find out what happened, only to see her husband inside the kitchen already dead obviously from the two gaping wounds he sustained on his head and nape. Unable to control herself from what she saw, Ursula cried and shouted hysterically. Then, she went out the house and ran towards the house of her husband's niece, Norma Baylosis' mother, who immediately responded with her daughter Norma. They accompanied Ursula back home and the latter discovered the wooden trunk inside their bedroom forced open with its contents scattered all over the floor. She also found the wooden savings bank already outside the trunk, where it was previously placed, forcibly opened and emptied of its contents amounting to P200.00, with few coins scattered over the floor. (pp. 2-4, tsn, June 21, 1978).

"Somehow, Pat. Nicanor Ricana of the Integrated National Police Force of Toledo City who was then in the Sitio of Dao, Tubod, Toledo City the whole day of December 4, 1977 to maintain peace and order at the basketball tournament which was going on, was informed of the incident. Forthwith, he went to the scene of the incident while waiting for the Police Investigation Team from Toledo City whom he had sent for. After cautioning the curious people who accompanied him from moving any object within the vicinity of the crime scene, he went up the house of the victim who he saw lying dead in the kitchen with a gaping wound on his nape almost severing his head and another cracking wound on his head. Inside the bedroom, he saw the wooden trunk forced opened, with the contents thereof scattered on the floor. He also saw the wooden savings bank already opened and emptied of its contents. Then when he looked out of the window, he noticed fresh footprints underneath indicating that someone must have jumped out of said window. He also observed bloody footprints leading to the kitchen stairs down to the ground. Upon inquiries, he was informed by Norma Baylosis that at about the time of the incident she saw the three accused passed by the house of her mother coming from the direction of the victim's house (pp. 2-4, tsn, Sept. 28, 1978). In fact, Norma told Pat. Ricana that she was surprised to see the three accused passed her mother's house when that is not the usual route (p. 12, tsn, July 13, 1978).

"The Police Investigating Team headed by Corporal Bienvenido Blanco arrived at the crime scene at about 10:00 o'clock in the evening that same day. Acting on the lead furnished by Norma Baylosis to Pat. Ricana, the

Police Investigating Team proceeded to the former's house early the following morning. And, from what they gathered from Norma, the Team proceeded to the house of accused Edgar Empuerto, who both confirmed the information given by Norma that they and the other accused Arcadio Lacaron passed by the house of Norma's mother in the afternoon of December 4, 1977. From there, the Team summoned Arcadio Lacaron who must have been caught by surprise as there were yet traces of hardened blood on his right hand and left foot when brought in; and when asked about it, said that he got it while decimbing a cock (pp. 10-12, tsn, July 13, 1978).

"The Team then invited the trio for investigation at the Police Headquarters in Toledo City that same morning. When questioned, after being duly informed of their constitutional rights, the appellants voluntarily gave their sworn statements wherein they practically pointed to each other as the culprit (pp. 13-17, Ibid). Thus, in the extra-judicial statements which Edgardo Empuerto gave to the police on December 5, 1977 (Exhibit "E") and before Special Counsel Gabriel Trocio, Jr. on December 14, 1977 (Exhibit "M"), he pointed to Arcadio Lacaron as the one who proposed and robbed the victim, albeit in his second extra-judicial statements. One before the police on December 6, 1977 (Exhibit "F"), and the other on December 12, 1977 in the office of Special Counsel Gabriel Trocio, Jr. (Exh. "H"). That, while in his first extra-judicial statement, Nabaluna only pointed to Arcadio Lacaron as the culprit, he (Nabaluna) and Empuerto having desisted from taking part therein; he confessed having agreed and acted as "look-out" during the robbery in his second extra-judicial statement, with his two co-accused, Empuerto and Lacaron, as the one who actually went up the house of the victim."

In seeking the reversal of the question decision, appellant Edgardo Empuerto raised the following assignment of errors:

"THE LOWER COURT ERRED IN RULING THAT, AS A MATTER OF LAW, THE GUILT OF APPELLANT EMPUERTO WAS PROVEN BEYOND REASONABLE DOUBT.

"THE LOWER COURT ERRED IN FAILING TO RULE THAT THE TWO (2) EXTRAJUDICIAL WRITTEN STATEMENTS OF APPELLANT EMPUERTO AND THE EXTRAJUDICIAL STATEMENTS GIVEN BY APPELLANT NABALUNA ARE ALL INADMISSIBLE AS EVIDENCE AGAINST APPELLANT EMPUERTO.

"THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS MARTIN LINIHAN.

"THERE BEING NO EVIDENCE TENDING TO SHOW HOW THE CRIME WAS COMMITTED, THE LOWER COURT ERRED, AS A MATTER OF LAW, IN RULING THAT THE COMMISSION OF THE CRIME WAS ATTENDED WITH THE AGGRAVATING CIRCUMSTANCES OF TREACHERY, ABUSE OF SUPERIOR STRENGTH AND DISREGARD OF OLD AGE.

"ASSUMING ARGUENDO, THAT THE PROSECUTION EVIDENCE CONSTITUTES PROOF BEYOND REASONABLE DOUBT, THE LOWER COURT ERRED IN FAILING TO RULE THAT APPELLANT EMPUERTO IS LIABLE ONLY FOR THE SIMPLE CRIME OF ROBBERY."

In the brief separately filed by appellant Juan Nabaluna, he contends that:

"THE LOWER COURT ERRED IN ADMITTING AGAINST THE ACCUSED-APPELLANT THE EXTRA-JUDICIAL STATEMENTS MADE BY HIM.

"THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

"THE LOWER COURT ERRED IN FINDING THAT CONSPIRACY WAS PRESENT IN THE CASE AT BAR.

"THE LOWER COURT ERRED IN APPRECIATING AGAINST THE ACCUSED-APPELLANT THE

AGGRAVATING CIR-CUMSTANCES OF TREACHERY, ABUSE OF SUPERIOR STRENGTH AND
DISREGARD OF OLD AGE."

The uniform and main thrust of appellants' principal argument is that, their extra-judicial statements (Exhibits "F", "H", "E", and "M") were improperly admitted as evidence against them as these were obtained in violation of Section 20, Art. IV of the Constitution, particularly because they were not then assisted by counsel when they were undergoing investigation. Appellants aver that while their extra-judicial statements carry a foreword that the accused were respectively advised of their constitutional rights, nevertheless, they were never informed that if they cannot afford a lawyer to assist them in the investigation the State will provide them with one, free of charge. Appellants claim that such an omission constitutes a grave infirmity relying on the pronouncements made in the case of *People vs. Pascual*, 109, SCRA 197, promulgated on November 17, 1981. Appellants further state that their interrogation lasted from 10:00 o'clock in the morning up to 3:00 in the afternoon of December 5, 1977 in the case of accused Empuerto; while accused Nabaluna's investigation started at 3:00 o'clock in the afternoon of the same day and yet the latter's statements were reduced into writing only on the following day December 6, 1977. According to the accused, the lengthy investigation and extended duration of the same, and the delay in the ratification of said extra-judicial statements should excite suspicion regarding their voluntariness. Empuerto claims that he saw his co-accused Arcadio Lacaron and later also Juan Nabaluna, received a beating from the investigators. He explained that having witnessed such alleged maltreatment, and because he was threatened by Cpl. Blanco that he would suffer the same fate that befell his companions, he signed his extra-judicial statement, Exh. "F".

What stands out, however, is that, in both extra-judicial statements given by appellants Empuerto and Nabaluna on December 5, 1977 (Exh. E) and on December 6, 1977 (Exh. F), it is therein duly acknowledged by herein appellants that they were duly informed of their constitutional rights to remain silent and to be assisted by counsel. Of added significance is the fact that when the second set of extra-judicial statements (Exh. "H-Nabaluna") were later given by the accused Juan Nabaluna on December 12, 1977 before special Counsel Gabriel Trocio, Jr., the latter again informed him of his constitutional rights and even told said accused that he, Fiscal Trocio, could recommend said accused to the Citizens' Legal Assistance Office (CLAO) if the latter could not afford to hire the services of counsel. However, appellant Juan Nabaluna waived his right to be assisted by counsel (p. 17, tsn., October 5, 1978). It is also indicated that said accused even declined the suggestion of special counsel Trocio to have said accused examined by a doctor (tsn., p. 17, October 5, 1970).

With respect to the extra-judicial statements given by the accused Edgardo Empuerto on December 5, 1977 (Exh. "E"), which was signed by the above-named accused before Special Counsel Gabriel L. Trocio, the latter's testimony regarding the steps taken by him disclose the following:

"Q

When the affiant Empuerto was brought to your office before he was made to affix his signature, will you please tell this Honorable Court what steps you have taken before you have him affix his signature?

"A

I informed him of his constitutional rights. I told him that he had the right to remain silent and if he would give me his statement the same may be used against him. I also informed him of his right to have counsel and even went further that if he could not afford the services of counsel we would refer his case to the CLAO.

"Q

Aside from informing Edgardo Empuerto of his constitutional rights, what other steps did you take?

"A

I asked him whether or not he was forced by the police or any inte-rested parties in order to execute the sworn statement before me, that is if he was intimidated, threatened or in any way promised in order to entice him in order to sign the affidavit and he said no. I tried to examine also from his appearance whether or not there were traces of injuries but there were none so I dispensed of getting a doctor to examine his body."

That such admonition and advice actually given by Special Counsel Gabriel L. Trocio who had ratified the statements given by the said accused, have not been at all challenged by the accused-appellants.

The Court is mindful of the strictures and pronounce-ments found in the case of Morales vs. Ponce Enrile, G.R. Nos. 61106 and 61107, promulgated on April 26, 1983, 121 SCRA 538, quoted and reiterated in the case of People vs. Galit, L-51770, March 20, 1985 and in the case of People vs. Pascual, 109 SCRA 197, promulgated on November 12, 1981, particularly as to the requisite steps before a person under custodial investigation may be deemed to have properly waived his right to counsel, such as a counsel being present to assist him when the accused manifests such waiver. However, the stated requirements were laid down in the said cases, to serve as governing guidelines, only after the judgment in this case had already been rendered by the trial court. Consequently, no error should attach to the admission by the trial court of the extra-judicial statements given by the accused as evidence in this case. The trial court was then suf-ficiently convinced that the accused had waived assistance of counsel and there was at that time no pronounced guidelines requiring that the waiver of counsel by accused can be properly made only with the presence and assistance of a counsel. It may also be added that the facts of the present case can be differentiated from those stated in the cited case of People vs. Galit, where the acquittal therein was due to absence of any other evidence aside from the supposed confession of the accused.

Thus, even if the extra-judicial statements of the two herein, accused are discounted or that the same are excluded, assuming that Section 20, Art. IV of the Constitution, is to be applied in this instance, nevertheless, the Court still readily holds that the testimonial evidence adduced against them are more than sufficient to establish their guilt beyond reasonable doubt. The over-riding factor in the resolution of this case is that, apart from the extra-judicial confes-sions of the accused, there are equally strong evidence which support the judgment of conviction. As sufficient numbers of circumstantial evidence unerringly point to the herein accused-appellants to be two of the three culprits in the case. As gleaned from the decision of the trial court, the following had been fully estab-lished: (1) Appellants' presence at the scene of the crime approximately at the time of its commission; (2) That appellant Juan Nabaluna, together with Arcadio Lacaron went up the victim's house, while appellant Edgardo Empuerto acted as look-out; (3) That these three mentioned persons, all hastily left together, the victim's house immediately after the robbery and killing of the offended party; (4) That the two appellants herein acknowledged that it was Arcadio Lacaron who proposed that the three of them commit the robbery and while they claim initial reluctance, it appears that they agreed to said proposal and did perform their respective tasks.

It is clearly established that appellant Edgardo Empuerto acted as a look-out, and that Juan Nabaluna even went up the house of the victim to commit robbery along with Arcadio Lacaron. Such conduct of the three accused before, during and after the commission of the crime, sufficiently reflect the conspiracy that bound them together in their commission of the offense.

Appellant Empuerto argues that the trial court erred in giving weight and credence to the testimony of prosecution witness Martin Linihan that he saw Juan Nabaluna jump out of the window followed by Arcadio Lacaron who

passed by the main door carrying a blood-stained knife, together with Edgardo Empuerto who has served as a guard and look-out, all fled from the victim's house in great haste.

Suffice it to repeat that the determination by the trial judge who weighs and appraises the testimony as to the facts duly proved is entitled to the highest respect, unless it could be shown that he ignored or disregarded circumstances of weight or influence sufficient to call for a different finding (*People vs. Seculles*, 132 SCRA 659; *People vs. Conchada*, 88 SCRA 683). Facts of such nature are not shown to have been overlooked by the trial court.

The conspiracy among the accused in the commission of the crime is reflected by the proven facts. It is undisputed that the three malefactors were with one another in going to the scene of the crime. The acts of Lacion and Nabaluna in going up the house with the former armed with a bolo and Empuerto staying downstairs as a look-out, demonstrate the existence of common design towards the accomplishment of the same unlawful purpose and objective. The killing of the victim is directly linked to the robbery and such unquestionably happened during and on the occasion of the robbery. Whether the death of the offended party occurred prior to or subsequent to the robbery with the element of conspiracy linking the accused-appellants, then the complex crime of robbery with homicide necessarily held liable therefor.

We are, however, constrained to differ with the trial court's view that the aggravating circumstances of treachery, abuse of superior strength and disregard of old age are attendant in this case. Consideration of these circumstances and the imposition of the extreme penalty on the appellants herein should not have been made. There was no eyewitness when the crime was committed. In the case at bar, there is no evidence on record as to the method resorted to by the assailants in robbing and attacking the victim, or any showing that the latter was unaware when he was attacked. The element of treachery cannot simply be presumed. This aggravating circumstance must be clearly proven as the crime itself in order to aggravate the penalty or liability incurred by the culprit (*People vs. Soriano*, 134, SCRA 542).

As regards the aggravating circumstance of abuse of superior strength, such should also not be applied. The mere fact that two of the accused, with one of them being armed with a bolo, does not necessarily constitute abuse of superior strength on their part. To take advantage of superior strength, it is imperative that there be a showing of purposely using excessive force which is out of proportion to the means of defense available to the person attacked (*People vs. Cabiling*, 74 SCRA 285).

Lastly, the aggravating circumstance of disregard of old age should not be taken into account for, as stated in the case of *People vs. Pagal*, 79 SCRA 570, it is not proper to consider this aggravating circumstance in crimes against property. Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal.

Under paragraph 1, Article 294 of the Revised Penal Code, the penalty for robbery with homicide is reclusion perpetua to death. Without any aggravating circumstance that can be rightfully applied against the two herein accused, Juan Nabaluna and Edgardo Empuerto, the proper penalty that should be imposed against them would be reclusion perpetua.

WHEREFORE, the decision convicting the appellants herein of the crime charged is hereby **AFFIRMED** except as to the penalty which is hereby modified, and the appellants **JUAN NABALUNA** and **EDGARDO EMPUERTO** are hereby sentenced each to suffer the penalty of reclusion perpetua; to indemnify jointly and severally, the heirs of the deceased Nazario Bendanillo, in the amount of P30,000.00; to return to said heirs the sum of P200.00 that was taken from the offended party; and to pay the proportionate costs.

SO ORDERED.

Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., and Paras, JJ., concur.
Teehankee, C.J., and Cruz, J., in the result.

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