

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO TAYAPAD, ACCUSED-APPELLANT.*G.R. No. 60471. May 21, 1984*

Ponente: AQUINO, J.

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Reynaldo Tayapad appealed from the decision of the Court of First Instance of Iloilo, convicting him of robbery with homicide, sentencing him to reclusion perpetua and ordering him to pay an indemnity of P12,000 to the heirs of the victim, Quintin Franco, Sr., an alleged sexual pervert (Criminal Case No. 12405).

Version of the prosecution. - The judgment of conviction was based on the testimony of the prosecution witness, Mary Jane Salvalosa, 12, a grade six pupil of the Jaro Elementary School. She knows Tayapad (Rey), 21, single, jobless and residing at Cuartero Street, Jaro, Iloilo City but actually living in the Salvalosa house where he has a boyfriend named James (3 and 17, Oct. 29, 1980).

She declared that at about six o'clock in the afternoon of May 22, 1980, when it was already dark, she accompanied Tayapad to his house located near the compound of the Central Philippine University in Jaro. He got a piece of wood about a meter long and two inches thick which he made her carry. They went to the back of the university garage where she left the piece of wood.

At the behest of Tayapad, Mary Jane called Quintin Franco, Sr. in his office at the university. Franco went to the back of the garage. As instructed, she hid herself amidst the sugarcane and papaya plants nearby. While there, she heard three thuds or blows.

Shortly thereafter, Tayapad rejoined her. They climbed the university fence. He gave her sixty centavos and a wallet which she later returned to Tayapad. She did not see any other person at the back of the garage. Roger Angga was not there. Tayapad slept in Mary Jane's house. The following morning he told her that Franco was dead the night before (8-9 tsn Oct. 29, 1980).

The autopsy disclosed that Franco suffered a contusion-abrasion in the occipital region and two lace-rated wounds in the parietal area. There were contusions and an abrasion on his lips. When his scalp and skull were opened, there were massive hematomas and fractures inside. Cerebral hemorrhages caused his death (Exh. A and B).

Steve Castillo, a homosexual friend of Tayapad, testified that on the following day, May 23, 1980, Tayapad asked him to sell or pawn a ring and a watch allegedly given to the latter by his aunt. The ring was said for fifty pesos and the watch was pawned for sixty pesos. Steve received P50 as commission. Tayapad admitted having disposed of the ring and watch which belonged to Franco (8-9, 25-26 tsn March 5, 1981). He burned the wallet.

Dolores Franco, the victim's widow, testified that on May 22, 1980, before her husband was killed, he left the house with the sum of P200 collected from a tenant of their land. He was wearing a gold ring and a Seiko wrist watch worth P300. The money, ring and watch were missing when his dead body was found.

Accused Tayapad's version. - Tayapad's story is that Franco, "admittedly a homosexual", was killed by his "virile lover", Roger Angga (who did not testify).

As summarized in his brief, Tayapad's testimony was that in the morning of May 22, 1980, Franco phoned him and requested him to contact Angga. At two-thirty in the afternoon, he went downtown to look for Angga whom he met at the Palace Theater. He told Angga that Franco needed his services (services between homosexuals and virile men). Angga promised to meet Franco.

Tayapad went to Barangay Calubi-an, Jaro at the residence of the Salvalosas to converse with his friends. He left the place at about six o'clock and went home, accompanied by Mary Jane. From there, he and Mary Jane proceeded to the Central Philippine University. He brought a piece of wood of about two feet in length and two inches in diameter because, when taking the route passing over the fence and nearing President Pulido's house in the university compound, they might encounter the latter's big dogs.

He and Mary Jane went to the playground and then to the Alumni Building. It was about six thirty. He saw Angga seated under the acacia tree as if he was hiding. He was obviously under the influence of drugs. His lips were pale and he was shivering.

Tayapad took Mary Jane to the Alumni Building and from the window he pointed Franco to her. Mary Jane then went to the office of Franco. Upon her return, she told Tayapad that Franco needed him in the office. He went to the office of Franco. He and Mr. Franco exchanged greetings. He told Franco that Angga was outside.

Franco asked him to tell Angga to go to the back of the garage. While there, he requested Mary Jane to leave them for a moment as he and Franco had something to talk about. When Tayapad was about to fetch Angga, he saw the latter coming towards them. Tayapad asked permission to leave but Franco requested him to stay. He stayed but moved away from Franco and Angga by about five to ten feet.

Tayapad heard them arguing. Angga was saying "You are stingy and I am not satisfied with what you are doing to me". After Angga uttered these words, he heard a thud. He approached Angga and Franco. He saw Roger holding an iron pipe with his two hands and striking Franco on the head. He tried to stop Angga but the latter said: "Be calm, you son of a bitch".

Tayapad wanted to help Franco and tried to stop Angga but due to fear and shock, he could not move his hands as if he was paralyzed. After Angga's third blow at the head of Franco, the latter fell to the ground. He saw Angga take the wallet, ring and watch of Franco.

When Angga turned back and bent over Franco, Tayapad ran away. He looked for Mary Jane and saw her near the papaya plant. He called for her. They passed through the sugarcane and corn plants and climbed back at the fence.

The next morning at about seven o'clock Angga called him to contact Franco. He phoned the Franco residence.

Tayapad came to know Angga when the latter was introduced to him by his friend, Alain Gray. He introduced Angga to Franco because he knew that Angga could do the thing which Franco needed very much.

Tayapad was investigated by the police about this incident on June 11, 1980. Sergeant Estampador asked him to sign his statement hurriedly without reading its contents because he was afraid the police might do something bad to him. When he told them about Angga, they refused to believe that such person existed. They pointed to him (Tayapad) as the one who killed Franco. The charge against him is a lie because he could not do such a thing, even in thought, because Franco was good to him.

The article given to him by Angga was not given to the police because he was able to sell it through somebody. He was afraid that the article might be discovered in his possession.

Ruling. - The trial court gave credence to the artless testimony of a guileless twelve-year old-girl. The fact that Tayapad told her that Franco was dead and that the watch and ring were in his possession and were sold by him through a homosexual crony are circumstantial evidence connecting him with the robbery with homicide.

The trial court doubted the existence of Angga. It regarded Tayapad's uncorroborated declaration that Angga was the killer as a pure invention. Not even Alain Gray, who allegedly introduced Angga to Tayapad, testified for Tayapad. The police could not find him.

Mrs. Franco belied Tayapad's testimony that Franco called Tayapad in the morning of May 22, 1980. The truth was that Franco was in Barotac Viejo from five o'clock in the morning to four o'clock in the afternoon of that day.

In this appeal, Tayapad contends that the trial court erred in holding that he was the killer of Franco and that the circumstantial evidence proves his guilt beyond reasonable doubt.

As pointed out by the Solicitor General, Mary Jane's testimony that only Tayapad and Franco were at the back of the garage and no other person was there at the time of the killing is more credible than Tayapad's testimony that Angga was there.

Surely, Mary Jane would have noticed Angga's presence if such a person was in the vicinity. Tayapad would have mentioned Angga to Mary Jane. He did not do so. He existed only in Tayapad's imagination. That was why Mary Jane did not see him. Tayapad's imputation of the crime to Angga does not create any reasonable doubt as to his guilt for robo con homicidio.

The circumstances proven constitute an unbroken chain which leads to but one fair and reasonable conclusion and that is that Tayapad was the perpetrator of the robbery with homicide (U. S. vs. Villos, 6 Phil. 510).

WHEREFORE, the trial court's judgment is affirmed with the modification that the accused is further sentenced to pay Dolores Franco P500 as the value of the cash, ring and watch. The indemnity of P12,000 is increased to P30,000. No costs. SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., J., on leave.

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