

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGEL RAMILLANO, – (AT LARGE), EDISON PASAFORTE AND SAMUEL PASAFORTE, JR., DEFENDANTS, EDISON PASAFORTE AND SAMUEL PASAFOR...*G.R. No. 61119. November 14, 1984*

Ponente: RELOVA, J.

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Carlos Ngo, owner and proprietor of the Aeroplane Shoe Palace at Borromeo Street, Cebu City failed to come home at No. 8, Rosal Street, Cebu City, in the morning of June 15, 1980. When his wife Sulpicia Ngo woke up and found that her husband was not in the house, she telephoned the Aeroplane Shoe Store but no one answered. As it was still dark outside and knowing that it was dangerous for a woman to go out the streets unescorted, she waited for a while and, at break of dawn, took the car and drove to the store. She saw her husband's car parked along the store which was closed. She called out for her husband to find if he was inside but there was no answer. As she had no key to the store and the security guard was nowhere to be found, she could not enter. Whereupon, she went to fetch her brother-in-law who kept a duplicate key. When they entered the store, they proceeded straight to the office of her husband and found the papers in disarray, coins scattered, drawers opened and so was the safe. Beside it was her husband, Carlos Ngo, hogtied and lying in a pool of blood which flowed from the multiple stab wounds in his body.

Sulpicia discovered that her jewelries valued at P50,000.00, a radio cassette recorder worth around P2,000.00 and the money collections from the gasoline station and the shoe store were all missing.

The incident was reported to the authorities who immediately took action and in due time the perpetrators of the gory incident appeared to be Angel Ramillano, security guard on duty at the time of the incident, Edison Pasaforte who admitted his guilt and pointed to Angel Ramillano as the mastermind, and his brother Samuel Pasaforte, Jr., as co-participants. While Samuel was subsequently apprehended, Angel Ramillano has successfully avoided arrest and has remained at large.

The victim Carlos Ngo was autopsied by Dr. Jesus P. Serna who found him to have suffered 26 stab wounds, 7 of which were fatal. Cause of death was "hemorrhage, massive, secondary to multiple stab and incised wounds, head, neck, body and extremities." (p. 22. Record)

An information for robbery with homicide was filed by the City Fiscal against Angel Ramillano, Edison Pasaforte and Samuel Pasaforte, Jr., as follows:

"That on the early morning of June 15, 1980 and for sometime prior thereto, in the City of Cebu, Phil-ippines, and within the jurisdiction of this Honorable Court the said accused Angel Ramillano then a security guard of Venus Protective and Detective Agency, detailed at Equitable Banking Corporation located at Borromeo Street, Cebu City adjacent to the Aeroplane Shoe Palace, conniving and confederating together with the accused Edison Pasaforte and Samuel Pasaforte, Jr., and mutually helping one another, accused Angel

Ramillano armed with his service revolver and other two (2) accused armed with bladed weapons, with deliberate intent, with intent of gain and by means of violence upon person, to wit: by stabbing one Carlos Ngo, owner of Aeroplane Shoe Palace, hitting the latter on different parts of his body and inflicting upon him the following physical injuries:

'Hemorrhage, massive SE. To multiple stab wounds and incised wounds, head, body and extremities.'

which injuries resulted to the death of said Carlos Ngo, without the consent of the owner or person having charge thereof, did then and there take, steal and carry away the following things, to wit:

Cash P50,000.00

Cash & Jewelries 50,000.00

Stereo Cassette 2,000.00

Total P102,000.00

valued in all at P102,000.00 from the store of and belonging to Aeroplane Shoe Palace, to the damage and prejudice of the latter in the said sum of P102,000.00, Philippine Currency. x x x" (pp. 8-9, Record)

On arraignment, Edison Pasaforte, assisted by counsel de oficio, Atty. Fil C. Veloso, interposed the plea of guilty "notwithstanding the advertence of this Court as the consequences of such a plea." (trial court's decision, page 11). The accused Samuel Pasaforte, Jr. entered the plea of not guilty.

After trial, the court rendered judgment as follows:

"WHEREFORE, the Court finds the accused Edison Pasaforte and Samuel Pasaforte, Jr. guilty beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE described in the aforequoted amended information. Appreciating in favor of the accused Edison Pasaforte the mitigating circumstance of spontaneous plea of guilty, the said circumstance having been offset by the following aggravating circumstances which have been proven by the prosecution against both accused, namely: (1) treachery; (2) evident premeditation; (3) abuse of superiority; (4) nighttime; (5) abuse of confidence; and (6) cruelty, both accused should be, as they each are, hereby sentenced to the extreme penalty of DEATH, with the accessory penalties of the law; to cause the return of the money, articles and things listed in the amended information or, in default thereof, to indemnify the heirs of the deceased Carlos Ngo in the sum of P102,000.00; to indemnify the heirs of the deceased Carlos Ngo in the sum of P12,000.00 by way of actual and compensatory damages and in the sum of P100,000.00 by way of moral and exemplary damages in redress of the murder they committed or helped commit; and to pay proportionate costs." (p. 32, trial court's decision).

The case is with Us now on automatic appeal, appellants claiming that the court a quo erred in convicting them.

The general rule, based on logic and experience is that the findings of the judge who tried the case and heard the witnesses are not disturbed on appeal unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case.

With respect to Edison Pasaforte's extra-judicial confession, the following observations of the trial court are both pertinent and convincing:

"x x x Owning the crime as it were and admitting the direct and principal participation of his brother, Samuel Pasaforte, Jr. and Security Guard Angel Ramillano, Edison Pasaforte freely and voluntarily confessed that he

was one of the principal perpetrators of the crime and agreed to perform a re-enactment thereof at the crime scene. Then Edison Pasa-forte signed and executed the following confession:

'PREFACE: Mr. Edison Pasaforte, you are investigated in connection with a robbery which happened at the Aeroplane Shoe Store and the killing of the owner Carlos Ngo on June 15, 1980. For this you are warned that under our New Constitution, you have the right to remain silent and to counsel who can assist you in the investigation.

QUESTION: Do you very well understand your rights which I enumerated to you?

ANSWER: I understand, sir.

QUESTION: You already know of your right to remain silent, are you will-ing to proceed with the inves-tigation?

ANSWER: Willing, sir.

QUESTION: Do you want to be assisted by counsel or lawyer who can help you in this investigation?

ANSWER: No need, sir.

QUESTION: I will also inform you that your statement here might be used as evidence against you and for this you might be imprisoned. Do you also under-stand?

ANSWER: I understand, sir.

QUESTION: If that is so, are you ready now to answer my questions?

ANSWER: I am ready, sir.

x x x x x x x x

11. Q - While you and Samuel Pasaforte were in the house of your grand-parent at 20 J. M. Basa, can you recall having met Angel Ramillano?

A - I remember sir, he visited us there.

12. Q - What was his purpose in that visit?

A - He told me and my elder brother Samuel Pasaforte, that he has a problem. He said that, that night was the last night that he will be reporting for duty because the agency will lay him off.

13. Q - Was this his only purpose in visiting you, just to tell you about his problem?

A - He told us that his master the owner of the establishment he is guarding will bring big amounts of money in the safe upstairs in his office. He immediately proposed to us that we will rob it. We ask him if there are not obstacles in the place that we will rob, and Angel Ramillano told us there is none because he will be the one on guard duty. Because of this the three of us agreed to rob it and we left for the place where he is assigned as security guard.

x x x x x x x x

20. Q - Do you mean to say that maybe after one hour of waiting, Angel Ramillano called you?

A - Yes, sir, because the guard on duty already left and Angel already relieved him. He waved at us. But at that time we were already near the Aeroplane Shoe store.

21. Q - After he waved at both of you, what did you do?

A - We approached him. We directly entered thru the side door.

22. Q - At this time, the guard whom Angel Ramillano relieved was no longer there?

A - That is right sir, he already left.

23. Q - When you were already inside, what did you do?

A - We went up the second floor.

24. Q - Who brought you upstairs?

A - Angel Ramillano sir, he led us there.

25. Q - Why did he brought you up there?

A - He told us to sit at the rung of the stairs because the owner has not yet arrived.

x x x x x x x x

33. Q - Then what happened next?

A - The old Chinaman entered his office. Angel placed down the sack near his feet. He drew his firearm and aimed it at the oldman and said: 'Don't move, this is a holdup!'

34. Q - When you saw this, what did you do?

A - I immediately went down and poked at the old chinaman the hunting knife I carried. I immediately let him lie flat on his abdomen on the floor. I gagged him with a handkerchief. I immediately tied his hands.

35. Q - What did Samuel do?

A - He aimed a revolver at the old chinaman and said: 'Don't move, this is a robbery!'

x x x x x x x x

40. Q - What was Angel Ramillano doing at the time when you tied and let Carlos Ngo lie on his abdomen?

A - While I was ordering the old chinaman to lie flat on his abdomen on the floor, Angel Ramillano took the wallet and the key from the old chinaman.

41. Q - Then, what did you do next?

A - Angel opened the office. After it was opened, I let the old chinaman go inside. Samuel and Angel also went inside.

42. Q - When you were already inside the office, what did you do next?

A - I held Carlos Ngo, while Angel ransacked the things and the table there.

43. Q - Wait a minute, at the time when you tied the hands of Carlos Ngo and gagged him, you said you were carrying a hunting knife, which you used in poking at him, how did you tie and gag him when you were holding a hunting knife?

A- I, meanwhile gave the hunting knife to Angel before I tied and gagged Carlos Ngo.

44. Q - While you were inside the office, while you were holding Carlos Ngo and Angel was ransacking the things inside, what was Samuel doing?

A - He was all the time aiming the revolver at Carlos Ngo.

45. Q - After this, what else happened?

A - After Angel ransacked the table and the things, he opened the room where the safe was placed. After the room was opened, he immediately opened the safe, after which he gathered the money and placed it on the floor. I also took the Radio Cassette from the table while Samuel continued in aiming the revolver at Carlos Ngo. I gathered the money from the floor and brought it outside together with the radio cassette. I placed it inside the bag which contained the coins and the sack of money which Carlos Ngo already had when he arrived.

46. Q - After you went out, did you not re-enter the office after you placed the money into the container?

A - I re-entered the office.

47. Q - When you re-entered, what else happened?

A - I saw Angel already holding Carlos Ngo. He immediately stab him on the neck. Angel shouted for help, so I pushed Carlos Ngo into the room where the safe was placed. Once inside Carlos Ngo fought back, that was why I stabbed him.

48. Q - How many times did you stab him?

A - Maybe six or seven times.

49. Q - How about Angel, how many times did he stab Carlos Ngo?

A - Only once. Only the one on the neck.

50. Q - What happened to Carlos Ngo after you stabbed him?

A - He slumped down.

x x x x x x x x

59. Q - Who was bringing the money when you return home to J. M. Basa?

A - I and Samuel, sir.

60. Q - But the three of you with Angel Ramillano finally met at the house of your grand-parent at J. M. Basa?

A - Yes, sir.

61. Q - What did you do with the money?

A - We divided it, sir.

62. Q - How much was your share?

A - Only five thousand, sir (P5,000.00).

63. Q - Your companions, how much did each share?

A - I do not know, sir.

64. Q - Where is your share now?

A - All spent sir, I sent some part of it to my mama for treatment. I used it in transportation fare to and from Zamboanga twice because of my Mama's sickness.

65. Q - After dividing the money, what did you do?

A - Angel and Samuel departed. I went to Mandaue in the morning already." (pp. 12-20, trial court's decision)

With respect to the constitutional mandate: "Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right," (Article IV, Section 20, New Constitution), appellant Edison Pasaforte was, prior to the questioning, warned of his right to remain silent, that any statement he does make may be used against him and that he has the right to the presence of an attorney. Thus, said appellant waived effectuation of said rights voluntarily, knowingly and intelligently.

And, with respect to his testimony in Court, the trial judge said:

"The defense presented the accused Edison Pasaforte, 21, single, a laborer, and a resident of Maguikay, Mandaue City. Edison Pasaforte could all but reiterate under oath his plea of guilty of the offense charged, although he hopes to extenuate his liability by stating that, while he participated in the robbery, he had no hand in the killing because he was already out of the office of Carlos Ngo when the latter was killed there.

x x x x x x x x

"The facts and circumstances considered, the only question at issue is whether Samuel Pasaforte, Jr. had been a participant in the commission of the crime of robbery with homicide herein charged and is thus equally as criminally liable as his co-accused, Angel Ramillano and Edison Pasaforte.

"We hold that circumstantial evidence, aside from his verbal admission, which have been unrefuted abound, implicating Samuel Pasaforte, Jr. as a participant of and linking him undeniably to the crime herein charged.

"The perpetration of the robbery at the Aeroplane Shoe Palace and the brutal killing of its owner and proprietor and a third person having been undeniably made in the evening of June 14, 1980, the appearance of Samuel Pasaforte, Jr. at the place of worship at 20 J. M. Basa Street immediately thereafter in the company of Angel Ramillano and Edison Pasaforte, all bloody, holding a knife covered with blood, and carrying a sack or bag which contained their stolen property indicts Samuel Pasaforte, Jr. of the crime herein charged immeasurably as though he were actually seen committing the act.

"This, connected with the testimonial evidence furnished by Diosdada Opolentisima and Nelda Ongque to the effect that the accused Angel Ramillano, Edison Pasaforte and Samuel Pasaforte, Jr. were heard by them to have planned robbery while they were drinking liquor in the living quarters of Samuel Pasaforte, Jr., indubitably ties up the latter to the crime.

"Equally indicative of Samuel's guilt and participation is the unrefuted fact that his T-shirt was drenched in blood and was later taken off by him and placed in the bathroom, together with the bloody security guard uniform of Angel Ramillano and the T-shirt of Edison, for washing.

"Also, Diosdada Opolentisima and Nelda Ongque saw the three accused dividing the money, obviously the stolen property, among the three of them, that is, among Angel Ramillano, Samuel Pasaforte, Jr. and Edison Pasaforte. We would be naive, indeed, if we fail to conclude from this fact the culpable participation and share by a party of a portion of the property stolen or robbed indicates participation in the act of unlawful taking. For, why should his co-accused agree to share the loot with him if he had no guilty involvement in the crime committed?

"To top it all, Samuel Pasaforte, Jr. took to flight in the company of Angel Ramillano, leaving Edison Pasaforte behind to stick to his job at the Foodarama because Edison's conspicuous absence from work might lead to suspicious investigation. He first went to Amlan, Negros Oriental, with Ramillano and he was seen suspiciously carrying a sack full of heavy articles and things. Angel Ramillano had the stolen radio cassette recorder with him. Angel Ramillano and he appeared on the run, the former having hurriedly taken whatever personal belongings in his house there that he could carry. Ramillano's surprised wife and family were quickly fetched and they all left for Mindanao on the N/V 'Don Victoriano.'

"We have Captain Eduardo Ricardo's testimony to the effect that Samuel admitted his participation in the commission of the crime." (pp. 26-27, 28-29, trial court's decision)

Appellant Samuel Pasaforte, Jr. claims that on June 14, 1980 he was in Labason, Zamboanga del Norte, in his parent's coconut plantation and the following day he saw the mayor inquiring about a job.

The trial court correctly rejected the defense of alibi of said appellant. As carefully analyzed by the trial judge, appellant Samuel Pasaforte, Jr.'s presence in Cebu at the time was clearly established by the testimonies of Diosdada Opolentissima, and Nelda Diosdada Opolentissima, a volunteer missionary of the Church of God, testified as follows:

"Q Do you know Samuel Pasaforte?

A Yes, I know him.

Q Why do you know him?

A He is a member of the Church of God.

Q If Samuel Pasaforte is inside the courtroom now will you point to him? Please look around.

A The one wearing blue T-shirt with red collar. (Witness pointing to a person inside the courtroom who identified himself to be Samuel Pasaforte).

Q When did you come to know Samuel Pasaforte for the first time?

A Last 1979.

Q Where did you come to know him for the first time?

A At J. M. Basa Street.

Q Why? What was he doing at J. M. Basa Street?

A He was staying in the first floor of the house at J. M. Basa Street, the place of worship.

Q Do you know if he has any relation to your General Overseer Redesmo Barte?

A Yes.

Q How are they related?

A The mother of our General Overseer and their father (witness pointing to the accused) are cousins.

Q On June 14, 1980, that was a Saturday, do you recall where were you?

A On June 14, 1980, sir, I arrived from Leyte and I was at J. M. Basa Street, at 8:00 in the morning.

Q What were you doing in Leyte?

A I attended to the death of one of our Evangelist, Severo Vermil, in Tabang, Noval, Leyte.

Q On that date after you arrived from Leyte, did you meet Samuel Pasaforte at 20 J. M. Basa Street?

A He attended to our services that date, June 14, 1980.

Q Why? Was that the day according to the tenets of your religion that you hold services?

A That is right. The seventh day.

Q What time did your services start on that day?

A 8:30.

Q And what time did it end?

A 11:30.

Q And from 8:30 to 11:30 in the morning of June 14, 1980, was Samuel Pasaforte present during the services?

A Yes, sir.

x x x x x x x x

Q That evening of June 14, 1980 did you notice again the presence of Samuel Pasaforte?

A Yes, sir. They were there.

Q When you said 'they' to whom do you refer?

A Jaime Dacwayan, Samuel Pasaforte, Edison Pasaforte and Angel.

Q What were they doing?

A They were drinking.

x x x x x x x x

ATTY. GARCIA:

Q What time, more or less, was it when you notice that they were drinking downstairs?

A Around 7:00 to 10:00 o'clock.

Q Did you hear if they had any conversation while they were drinking?

A Yes.

Q What was the subject of their conversation that you heard?

A Their voices were quite loud already because they were quite drunk and they were conversing about staging a robbery.

x x x x x x x x

Q While Angel Ramillano, Samuel Pasaforte and Edison Pasaforte were in the kitchen, as you said, dividing the money, what were you doing?

A I saw it.

Q After they divided the money, what did they do?

A They went downstairs and picked up their clothes and after picking up their clothes they left passing by the kitchen.

Q What time was it, more or less?

A May be between 3:00 and 4:00 o'clock. (tsn., pp 3, 4, 5, 6, 7, October 13, 1981 hearing)

Nelda Ongque also testified having seen appellant Samuel Pasaforte, J. on June 14, 1980 in Cebu City:

"Q. Was Samuel Pasaforte whom you said is a member of your church present during that particular service on June 14, 1980?

A Yes, sir.

x x x x x x x x

Q What time was that more or less in the evening of June 4, 1980 when you noticed that Samuel Pasaforte, Edison Pasaforte and Angel Ramillano and another companion were drinking downstairs?

WITNESS:

A In the afternoon they were drinking, I do not know what time.

x x x x x x

COURT (to witness)

Q The person whom you refer to as Junior Pasaforte is Samuel Pasaforte?

A Yes, sir.

Q You were mentioning Junior Pasaforte, so Junior Pasaforte is Samuel Pasaforte Jr.?

A Yes.

Q Instead of attending to church services they were attending to drinks downstairs?

A They were not drinking during our services, it was only in the evening." (tsn., pp. 3, 4 & 5, October 22, 1981 hearing)

The trial court considered in its decision the following aggravating circumstances, to wit: evident premeditation, abuse of superior strength, nighttime, abuse of confidence and cruelty. We have already ruled that nighttime and abuse of superior strength are inherent in treachery and cannot be appreciated separately, and We agree with the Solicitor General that "there is no showing of abuse of confidence on the part of appellants in the commission of the crime. Neither can cruelty be taken as an aggravating circumstance in the absence of proof showing that the wrong done was intended to prolong the suffering of the victim causing him unnecessary moral and physical pain." (p. 16, Appellee's Brief)

In favor of Edison Pasaforte is the mitigating circumstance of voluntary plea of guilty which is offset by the aggravating circumstance of evident premeditation. Hence, the proper penalty as to him is reclusion perpetua.

In view of the foregoing, We hold that the trial court did not err in finding appellants guilty of the offense charged and in imposing the extreme penalty of death upon Samuel Pasaforte, Jr. However, considering the lack of necessary votes, the penalty is reduced to reclusion perpetua.

WHEREFORE, with the modifications that the penalty imposed upon each of them is reduced to reclusion perpetua and the indemnity to be paid by them, jointly and severally, for the death of Carlos Ngo, is increased from P12,000.00 to P30,000.00, the judgment of the lower court is affirmed in all other respects.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., de la Fuente, and Cuevas, JJ., concur.

Teehankee, Acting C.J., no part.

Fernando, C.J., on official leave.

Guerrero, J., retired.

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