

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICITO TAWAT, JIMMY TARRAYA, NESTOR ROJO AND ROQUE BASE, ACCUSED, FELICITO TAWAT AND JIMMY TARRAYA, ACCUSED-APPELLANTS.

G.R. No. 62547. December 21, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Roque Base, Nestor Rojo and appellants Felicito Tawat and Jimmy Tarraya were charged with the crime of Robbery with Homicide and Frustrated Homicide in Criminal Case No. 906 of the then Court of First Instance of Catanduanes. The information against them reads as follows:

"That on or about the 30th day of November 1980, in the evening, at Bugao, Bagamanoc, Catanduanes, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together between November 24 to 29, 1980, and mutually aiding each other, did then and there, wilfully, unlawfully and feloniously with intent of gain and by means of force and violence upon the persons of spouses Pedro Lim and Jovita Lim y Sesalem, to wit: Felicito Tawat, Jimmy Tarraya and Nestor Rojo while inside the store of Mr. and Mrs. Lim, Felicito Tawat suddenly and unexpectedly with intent to kill them, stabbed Mrs. Jovita Lim on the vital parts of her body, resulting in her instantaneous death, while at the same time Jimmy Tarraya hit Pedro Lim on the head with a piece of wood, resulting in his getting unconscious, while Nestor Rojo remained by the door guarding, and with intent of gain immediately emptied the store drawer which contained money in the amount of P110.00 more or less, thereby performing all acts which would produce murder, but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is by the timely medical assistance rendered to said Pedro Lim, which prevented his death.

"That in the commission of the said offense the following aggravating circumstances were present:

- "1. evident premeditation;
- "2. treachery;
3. aid of armed men;
4. superior strength; and
5. offense committed in the dwelling of the offended party." (pp. 20-21, Record)

The case against Roque Base was dismissed upon motion of Prosecuting Fiscal Manuel Magistrado on the ground that the evidence against said accused is insufficient "to secure his conviction beyond reasonable doubt." The remaining accused were sentenced, as follows:

"WHEREFORE, in view of all the foregoing, this Court finds the accused Felicito Tawat, Jimmy Tarraya and Nestor Rojo GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and Frustrated Homicide, without any mitigating circumstance, but with three (3) aggravating circumstances against them,

namely: treachery, evident premeditation and abuse of superior strength, except minority as a privilege mitigating circumstance in so far as accused Nestor Rojo is concerned, hereby imposes upon the accused FELICITO TAWAT and JIMMY TARRAYA the penalty of DEATH, and considering the privilege mitigating circumstance of minority in favor of accused Nestor Rojo, and in the light of the provision of Arts. 68 and 64(1) of the Revised Penal Code, as well as the Indeterminate Sentence Law, hereby imposes upon the accused NESTOR ROJO the penalty of eight (8) years and one (1) day of prision mayor medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum, and all the three accused to indemnify jointly and solidarily the heirs of the deceased Jovita Sesalem Lim the sum of P12,000.00, and P30,000.00 by way of damages, and also to indemnify jointly and solidarily Pedro Lim the sum of P6,000.00." (pp. 216-217, Record)

Considering the penalty imposed upon accused Felicito Tawat and Jimmy Tarraya, the case against them is now before Us on automatic review.

The People's version of the facts is as follows:

"On November 30, 1980, at about 7:30 in the evening, while Pedro Lim and his wife, Jovita, were tending their store situated in barrio Bugao, Bagamanoc, Catanduanes, defendants Nestor Rojo, Jimmy Tarraya and Felicito Tawat arrived (p. 48, t.s.n. July 8, 1981). Rojo entered the store first and bought a pack of "Boss" cigarettes (pp. 47-48, t.s.n. July 8, 1981). Soon thereafter, appellants Tawat and Tarraya entered the store, while Rojo stood by the door of the store (p. 48, id.). Inside, Tarraya asked for a hat and a flashlight bulb (p. 49, id.). At this time, both Tawat and Tarraya were facing Pedro Lim who was situated at the inner part of the store but separated from the two by a table about a meter wide (p. 50, id.). Tawat was on the left side of Tarraya and about one (1) foot away from each other (p. 50, id.). At the right side of Pedro Lim about one (1) foot away from him was his wife, Mrs. Jovita Lim, who was seated on the table but facing her husband (pp. 50-51, id.). Tawat was opposite Mrs. Lim and Tarraya directly facing Pedro Lim (p. 51, id.). The drawer of the table which separated Tawat and Tarraya from the spouses was the place where the sales of the day were kept (pp. 76-77, t.s.n. July 9, 1981). Before appellants entered the store, Pedro Lim had already counted the contents of the drawer in the amount of P110.00 (id.).

"While Tarraya was trying to fit the bulb on the flashlight, Jovita suddenly screamed (p. 51, id.). Lim was taken aback when he saw a sharp instrument, a dagger, being withdrawn by Tawat from the right side below the right nipple of Mrs. Lim (p. 52, id.). Without ado, Tarraya hit Pedro Lim on the left side of the head above the ear with a piece of wood which rendered him unconscious (p. 52, id.).

"Afterwards, Rojo and appellants Tarraya and Tawat fled (pp. 54-55, t.s.n. Aug. 14, 1981). In their haste, the piece of wood was left inside the store, while the bow gun, a slingshot with three arrows and a mask were left outside the store (pp. 31-32, t.s.n. July 8, 1981).

"Hearing that there was trouble in Pedro Lim's store, Lope de Leon, a neighbor, proceeded to the store (pp. 29-30, t.s.n. March 24, 1981). Near the gate, he saw Jessie Lim, son of Pedro Lim, who had just arrived (p. 30, id.). Both entered the store and saw Pedro Lim and his wife, Jovita, both bleeding, lying prostrate on the floor (p. 30, id.). As Jessie Lim was looking for a piece of cloth with which to wipe the blood of his father, the former noticed the drawer of the table wherein the sales of the day are kept, already open and empty (p. 17, t.s.n. March 23, 1981).

"Thereafter, Pedro Lim was rushed to the Viga Emergency Hospital for treatment, while Mrs. Lim, who was already dead, was brought to the upper floor of the store (pp. 33-34, t.s.n. March 24, 1981).

"Dr. Elizabeth de Lima, Resident Physician of Viga Emergency Hospital who treated Pedro Lim of 'stab wound 12 cm. 1 inch deep scapula region, left' and 'lacerated wound, 5 cm. temporal region left' (Exh. 'T'), testified that if the above injuries of Pedro Lim did not result in his death, it was due to timely medical attention (pp. 43-44, t.s.n. July 7, 1981).

"Dr. Carmen Ugel, Municipal Health Officer of Panganiban, Catanduanes, who performed the postmortem examination on the body of Mrs. Jovita Lim attributed the victim's death to 'Hematorax, accumulation of blood within the right half of the chest (Exh. 'B') due to penetrating wound (Exh. 'A') caused by a sharp bladed instrument (p. 8, t.s.n. March 13, 1981).

"About midnight on the same evening, Pat. Felipe Villaflor of the Bagamanoc INP received a report of the Bugao incident (p. 55, t.s.n. July 7, 1981). Upon being informed of the presence of three (3) suspicious looking persons inside the passenger bus parked at Bagamanoc town plaza, he immediately proceeded there with one Roberto Evangelista (p. 56, id.). When they reached a distance of about three (3) meters away from the bus, Pat. Villaflor saw appellant Tawat and Rojo standing inside the back portion of the bus while Tarraya was in the act of opening the back door (p. 57, id.). Thereafter, Tawat fled by jumping out of the bus through the window followed by Tarraya who passed through the back door (pp. 58, 61, id.). Pat. Villaflor pursued Tawat and in the process the latter's hat and jacket fell (pp. 60-61, 62, id.). Soon he gave up the chase, and, picking up the hat and jacket of Tawat, went back to the bus, where he apprehended Rojo who was left inside the bus and brought him to the Bagamanoc Police Department (pp. 62, 63, 64, id.). When asked why he was with the two others who fled, Rojo answered that they were companions in going to Bagamanoc in order to stage a robbery holdup (p. 64, id.).

"As Tawat was running and could not be apprehended, a policeman from San Miguel who came upon him shot him on the leg (pp. 64-65, id.). Thereafter, he was brought to the Municipal building of Bagamanoc (id.). Upon learning of Tawat's apprehension, Tarraya surrendered to the barangay captain of Nursery, San Miguel, who brought him also to the Police Department of Bagamanoc (p. 65, id.).

"When the three defendants were investigated by the Bagamanoc Police Force, they readily gave written statements admitting their respective participation in the conspiracy among themselves (Exhs. 'C', 'D' & 'G'). Their statements were taken down by the investigators after informing them of their constitutional rights and sworn to before Judge Mendoza of the Municipal Circuit Court of Panganiban, Catanduanes, after the latter had read aloud and explained in the dialect each and every question and answer contained in the statements (pp. 2-19, t.s.n. March 24, 1981)." (pp. 3-9, Appellee's Brief)

Appellant Felicito Tawat prays that the appealed decision be modified in that he should be convicted only of the crime of homicide and slight physical injuries without any aggravating circumstance; on the other hand, appellant Jimmy Tarraya prays that he be acquitted considering the mitigating circumstance of provocation.

Tawat declared that since November 21, 1980 he was with Jimmy Tarraya and Nestor Rojo in the mountain of Maitang, San Miguel, Catanduanes, stripping abaca. About 7:00 in the evening of November 30, 1980, the three of them went to the seashore of Bugao to fish. When he found that the light coming from his flashlight was dim, he went alone to buy flashlight bulb in the store of Pedro Lim, leaving Rojo and Tarraya at the seashore about 15 meters away. He was choosing a bulb from among those in the store when Pedro Lim called him "suplado." He answered back with bad words and hit Lim on the right side of the head with the flashlight. At that juncture, Mrs. Lim tried to help her husband. Whereupon, he pulled from his waist a weapon called "supnit" which is used for stripping abaca and stabbed Mrs. Lim several times. While leaving, he met Tarraya and Rojo by the door of the store and the three of them escaped by walking from Bugao to Bagamanoc which is 3 kilometers away.

He admitted having affixed his signatures on the prepared statement (Exhibits "G", "G-1", "G-2" and "G-3") after he had been maltreated.

Tarraya corroborated the testimony of Tawat, saying that he followed the latter after hearing the scream of a woman. He met Tawat when the latter was leaving the store of Mr. Lim Tawat informed him that there was an accident and that they better go home. Thus, he, Tawat and Rojo ran away.

He admitted his signatures on Exhibits "D" to "D-3", but, however, claimed that some of the contents of which were not his because they were already prepared and accomplished when given to him.

In their brief, appellants Tawat and Tarraya claimed that the trial court erred (1) in finding that the special complex crime of robbery with homicide was committed and that they were guilty thereof; (2) in finding that they were also guilty of frustrated homicide; (3) in finding that there was conspiracy among them; and (4) in not appreciating the mitigating circumstance of voluntary surrender on the part of Tarraya.

We reject the claim of the appellants. When they were apprehended and brought to the office of the Integrated National Police of Bagamanoc, Catanduanes, appellants disclosed their intention to rob the store of Pedro Lim following the plan that Tawat and Tarraya would enter the store and take the Money while Rojo would stay outside as a lookout. When they entered the store, Pedro Lim had just counted the contents of the drawer which at the time amounted to P110.00. After the stabbing incident, Jesse Lim, son of Pedro Lim and Lope de Leon, a neighbor, were the first to arrive and they attended to the victims who were lying prostrate on the ground. When Jesse Lim was looking for a piece of cloth to wipe the blood of his father, he noticed that the drawer of the table which contained the money was open and empty. It was at the hospital where Pedro Lim was taken for treatment that he came to know about the loss of the money in the drawer. The claim that appellants went to the store of Pedro Lim for the purpose of buying flashlight bulb only is hard to believe considering that the three were fully armed with a "supnit," a sling shot, a piece of wood and a mask which were left by them in the store in their haste to leave after the incident. It was the finding of the trial court that ?

"x x x with Rojo as the 'look-out', Tawat stabbed several times Mrs. Jovita Lim, while Tarraya hit Pedro Lim with a piece of wood (Exh. 'J'), which was left by him (Tarraya) in the store when he, Tawat and Rojo fled, which was recovered on the following morning by the police authorities, together with a mask (Exh. 'K-12'), slingshot or bow-gun (Exh. 'K-8'), and three darts (Exhs. 'K-9', 'K-10' and 'K-11'), but before the accused fled, Tawat also stabbed Pedro Lim, who was then unconscious and then robbed the earnings of the day in the amount of P110.00. From the acts simultaneously performed by Tawat, Tarraya and Rojo, conspiracy is very apparent. This Court gives credence to the testimony of Dr. Elizabeth de Lima of Viga Emergency Hospital that the wounds inflicted upon Pedro Lim, which consist of a 2 cm. 1-inch deep stab wound on the leftside of the back of the scapular region could have been caused by a sharp pointed instrument, similar to the sketch drawn as Exh. 'K', and the lacerated wound on the leftside of the head above the ear or at the temporal region, could have been caused by a blunt instrument like a piece of wood (Exh. 'J'), and the wounds could cause death, as a result of complications, if no medical attendance were given. Medical attendance, therefore, prevented the death of Pedro Lim.

"The Court cannot give credence to the admission of accused Tawat in court that he alone is responsible for the death of Mrs. Jovita Lim and the near death of Pedro Lim. Accused Tawat would like this Court to believe that Mrs. Lim allegedly rushed to help her husband just after Mr. Lim was hit on the head with a flashlight by Tawat, then the latter transferred the flashlight to his left hand and then pulled the 'supnit' from his waist with his right hand, but as the distance between them was too close (about a meter away), there would have been no chance for Tawat to transfer the flashlight from his right hand to his left hand and then pulled the weapon from his waist to stab the on-rushing Mrs. Lim. Since Tawat himself admitted that he stabbed Mrs. Lim several times but can not remember the number of injuries he had inflicted, there was sufficient time for Tawat and Tarraya to inflict the many wounds upon both Mr. and Mrs. Lim and to rob the money from the table's drawer before they ran away.

"The testimonies of Pedro Lim and all the prosecution witnesses all taken together, as narrated above, aside from the confessions of the accused, are sufficient to prove the guilt of the accused Tawat, Tarraya and Rojo beyond reasonable doubt of the crime of robbery with homicide and frustrated homicide as charged in the information filed by the prosecution." (pp. 45-47, Rollo)

The trial court did not err in its finding that there was conspiracy among the defendants as shown by their conduct before, during and after the commission of the crime. The three - Tawat, Tarraya and Rojo - arrived together at the store of Lim. Rojo stayed at the door to act as a lookout as Tawat suddenly stabbed Mrs. Lim and Tarraya attacked Pedro Lim. Thereafter, they got the money inside the drawer and fled to Bagamanoc. Patrolman Villaflor pursued them. They were inside a bus bound for Virac and upon seeing the peace officer, Tawat jumped out of the window, followed by Tarraya who passed through the back door. Patrolman Villaflor apprehended Rojo who was left inside the bus. Eventually, Tawat was arrested when another peace officer came upon him and shot him on the leg. When Tarraya learned of Tawat's apprehension, he gave himself up to the Barangay Captain of Nursery, San Miguel.

Even if We do not consider the sworn statements (Exhibits "C" to "C-3", "D" to "D-3" and "G" to "G-3") of herein defendants, taken together as interlocking confessions, there is sufficient evidence to sustain their convictions of the crime charged, attended by the aggravating circumstances of treachery and dwelling. Thus, the death penalty was properly imposed by the trial court. However, for lack of necessary votes, the same is reduced to reclusion perpetua.

WHEREFORE, the judgment appealed from is AFFIRMED with the modification that the death penalty is reduced to reclusion perpetua. Costs de oficio.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Teehankee, J., in the result.

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