

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELICISIMA BASILAN Y ABU, DEFENDANT-APPELLANT.***G.R. No. 66257. June 20, 1989*

Ponente: GANCAYCO, J.

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On March 15, 1984 at about 5:30 o'clock in the morning Rafael Abarico was walking by the Alpha Grocery store along San Juan Street in Calapan, Oriental Mindoro when he overheard the loud voice of a woman within the store saying, "Pag hindi mo ibinigay ang hinihingi namin sa iyo ay papatayin ka namin." Abarico stopped and peeped into the store through a slit in the steel accordion door and saw two men holding the Chinese store owner, Lim Wan, by the arms. Felicisima Basilan stood in front of Lim Wan pointing a finger at him while he was shaking his head. Thereafter, one of the two men released Lim Wan's arm and stabbed the Chinaman on the back.

Alarmed by what he saw, Abarico ran across the street. A few moments later, he saw two men emerge from the store and run in the direction of the back of the vice-governor's house. Felicisima Basilan then came out closing the door behind her and hurriedly proceeded in the direction of the public market. In her haste, she slipped and fell on the road. However, she recovered and proceeded on her way towards the market. Because Abarico had to see his sister in Calauang, he boarded a passenger jeep and did not stay to report what he saw.

Lim Wan's body was found on that same morning. The drawer of his desk was pulled out and some small change lay scattered about the floor. Ubaldo Pimentel, the business partner of Lim Wan, found out later that some Five Hundred Pesos left with Lim Wan the night before for settling an obligation were gone. Abarico later told the authorities what he saw.

The municipal health officer of Calapan who conducted an autopsy of the victim's body found three penetrating stab wounds on the victim's chest and one stab wound on the back that did not quite penetrate the body because the weapon was blocked by a bone of the spinal column. Internal hemorrhage resulted in the death of the victim.[1]

In due course, the provincial fiscal of Mindoro filed an information charging Felicisima Basilan y Abu, John Doe and Peter Doe of the crime of Robbery with Homicide allegedly committed as follows:

"That on or about the 15th day of March, 1981, at around 5:30 o'clock in the morning, in the Pablacion (San Vicente), municipality of Calapan, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above named accused, with intent of gain, conspiring, confederating and mutually helping one another, thru and with the use of violence against or intimidation of person, that was, after having ganged-up and stabbed one Lim Wan, a Chinese business man resulting in his sudden and unexpected demise, did then and there wilfully, unlawfully and feloniously take, steal and carry away cash money in the amount of FIVE HUNDRED (P500.00) PESOS, Philippine Currency, belonging to and owned by the same business man to the damage and prejudice of the latter's heirs.

That in the commission of the crime the aggravating circumstances of nighttime and dwelling were present.

Contrary to Article 294 of the Revised Penal Code."[2]

Only the accused Felicisima Basilan submitted to the jurisdiction of the court while the two other accused remained at large. Upon arraignment, she entered a plea of not guilty and thereafter the trial on the merits proceeded.

On May 19, 1983, after the trial on the merits, the trial court rendered a decision convicting the accused of the offense charged, imposing on her the penalty of reclusion perpetua, to indemnify the lawful heirs of the deceased Lim Wan in the amount of TWELVE THOUSAND PESOS (P12,000.00), in addition, to pay said heirs the amount of FIFTY ONE THOUSAND NINE HUNDRED TWENTY PESOS (P51,920.00), as actual and compensatory damages and to pay the costs. It was further directed in the same decision that the law enforcing agencies should exert efforts to locate the two unidentified accused so that they may be held accountable for their acts.

Not satisfied therewith, the accused brought this appeal on certiorari alleging that the trial court committed the following assigned errors:

I. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING HEREIN APPELLANT ON THE GROUND OF INSUFFICIENCY OF EVIDENCE.

II. THE TESTIMONIES OF ALLEGED EYEWITNESS RAFAEL ABARICO AND WITNESS UBALDO PIMENTEL ARE FULL OF INCONSISTENCIES, CONTRADICTIONS, AND THEREFORE UNRELIABLE AND INCREDIBLE. HENCE THE TRIAL COURT GRAVELY ERRED IN CONVICTING HEREIN APPELLANT, ON THE BASIS OF SUCH TESTIMONIES.

III. THE TRIAL COURT GRAVELY ERRED IN CONVICTING HEREIN APPELLANT WITH THE CRIME OF MURDER WHICH IS DIFFERENT AND DISTINCT FROM THE CRIME OF ROBBERY WITH HOMICIDE, THE CRIME CHARGED IN THE INFORMATION.[3]

The first and second assigned errors are without merit. The testimony of Rafael Abarico is corroborated in certain points by other evidence. His statement that he saw the victim, as he was stabbed at the back is corroborated by the necropsy reports[4] prepared by Dr. Carlos Adeva after an examination of the body of the victim Lim Wan, which reads in part, thus:

"POST MORTEM FINDINGS:

THORAX:

1. x x x x x

2. x x x x x

3. x x x x x

BACK:

4. Stab wound- 1 1/2 inches long, 2 inches deep, directed supero-medially, 1 cm from the midline, left, level of the superior border of the scapular bone.

CAUSE OF DEATH:

x x x x x"[5]

Appellant maintains that it is improbable for Abarico to have been at or near the Alpha Grocery at the time of the commission of the crime since the holy mass began at 5:30 o'clock in the morning and it lasted for about an hour

and that "it would be unchristian-like for catholic Abarico, to short-change his obligation to God"[6] by leaving for Calauang before the mass is completed. Abarico testified, however, that he felt compelled to leave church early because his sister expected him at Calauang.

Appellant then suggests that there is a possibility that the angry words that Abarico heard may have been uttered by another woman, i.e. a certain Anita Abas who, according to defense witness Morita De la Cruz also resides in the Alpha Grocery. However, the records show that Morita De la Cruz resides in Tondo, Manila and that she never stayed in Calapan. Furthermore, the testimony of Morita cannot prevail over that of Ubaldo Pimentel, a co-owner of the Alpha Grocery, who would have known if there was indeed another occupant therein besides Lim Wan. In fact, appellant herself asserted that she did not see any other woman at the time she was in the store. This fact was also confirmed by Abarico during the trial.

To further discredit the testimony of Abarico, the appellant calls the attention of the court to the fact that his testimony is full of coincidences such that he happened to pass in front of the store when the slaying occurred and later on, he happened to overhear two policemen discussing the results of the investigation when he decided to report what he had witnessed. Appellant argues that it is hard to believe that a witness would just be at the proper places at those times.

This contention is bereft of merit. The two events mentioned by the appellant occurred a month apart and should not be taken together. What is clear is that Abarico was an eyewitness to the commission of the crime and that when he learned that the crime had not been solved for some time, he volunteered the information.

Appellant maintains that the shaking of the head of Lim Wan at the time he was confronted by the three accused including appellant herein, manifests a willingness on his part to give what his assailants were demanding from him. Hence, according to appellant, the charge of robbery with homicide can not prosper since it is unlikely that the victim would be stabbed after he agreed to yield to their demands.

This argument is untenable. Common experience shows that one nods his head in agreement and shakes his head as a sign of refusal. The argument of the appellant runs counter to human experience.

Thus, the court finds no reason to disregard the testimony of Abarico as proposed by appellant even if he is the sole eyewitness. Well established is the rule that the testimony of only one witness, if credible and positive, is sufficient to convict.[7] The trial court characterized Abarico as a "fine young boy, intelligent and very humble in person." [8] His testimony is positive as he affirmed that the crime was indeed committed. Furthermore, there appears no underlying motive for Abarico to concoct such a story. It is a basic principle in the law on evidence that in the absence of improper motive to testify against the accused, the testimony of such a witness must be given full faith and credence.

The delay in reporting what he had seen to the police authorities is quite understandable for a young boy of 16 years. He naturally feared for his own life and did not want his name dragged into a criminal investigation especially since he is aware of what the malefactors are capable of doing. This is consistent with the ruling of this Court in *People v. Catao* [9] wherein it was held that "delay of a witness in revealing to the authorities what he knows about a crime does not render his testimony false, for the delay may be explained by the natural reticence of most people and their abhorrence to get involved in a criminal case. But more than this, there is always the inherent fear of reprisal, which is quite understandable especially if the accused is a man of power and influence in the community" [12]

In contrast, it is the testimony of the appellant which is not credible. She alleged that she did not hear anything unusual while she was inside the toilet since the same is about 10 meters away from the place where Lim Wan

was killed. An ocular inspection of the crime scene showed that the distance between the toilet and the table of Lim Wan is 4 meters only. After the incident, appellant stated she lost her nerve and ran hastily to the public market. And yet she first collected her things - a bag and thermos bottle. She even changed her clothing before informing the shops next door about the slaying. This is unnatural of a woman in distress. Her actions in fact betray her complicity in the crime.

The Court affirms the finding of the trial court that there was indeed conspiracy between the accused Felicisima Basilan and the two other malefactors. The fact that the appellant uttered the treacherous remark that the victim would be killed if he did not comply with their demands while her two unidentified companions held him on both sides; that the threat she made was accomplished when her two companions stabbed the victim; and thereafter, the three (3) fled from the scene of the crime; all these demonstrate a concerted effort to commit the offense charged.

Having established the existence of a conspiracy, the trial court committed no error when it held the accused responsible for the killing of the victim Lim Wan. Although no person could positively say that he saw the appellant inflict a stab wound on the victim herself, conspiracy having been established, the act of one is deemed the act of all.

With respect to the third assignment of error, this Court agrees with the appellant that the information does not allege any qualifying circumstance that would justify a conviction for murder. The information describes the offense of robbery with homicide. Although there was evidence of such aggravating circumstances that may qualify the crime of homicide to murder, the appellant cannot accordingly be convicted for murder without transgressing the constitutional injunction that an accused should be informed of the nature and cause of the accusation against him.¹¹ However, the evidence supports a conviction for attempted robbery with homicide. When the accused uttered the words "Pag hindi mo ibinigay ang hinihingi namin sa iyo ay papatayin ka namin," it clearly appears that appellant and her companions had the intention of robbing the victim and were bent on resorting to violent means to attain their devious ends. It could have been the P500.00 which Ubaldo Pimentel left with the victim the previous night, or some other valuables, or perhaps, even some merchandise. Since there is no proof or reasonable certainty that anything was successfully taken from the deceased, the appellant should be convicted only of attempted robbery with homicide penalized under Article 297 of the Revised Penal Code. The threat she made is sufficient to establish her attempt to rob the victim.

In *People vs. Carunungan*,¹² this Court found the accused guilty of attempted robbery with homicide when the accused demanded that the occupants of the house bring out their money, an overt act which would lead to the commission of the robbery.

WHEREFORE, premises considered, the decision appealed from is hereby modified in that the appellant is found guilty of the crime of attempted robbery with homicide and he is thereby imposed the indeterminate penalty of imprisonment of twelve (12) years and one (1) day of reclusion temporal as minimum, to twenty (20) years, also of reclusion temporal as maximum, and the indemnity to the heirs of the deceased is increased to P30,000.00, with costs against appellant. The decision is **AFFIRMED** in all other respects. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibits A and B; TSN, Sept. 10, 1981, pages 14-18.

[2] Page 7, Rollo.

[3] Page 66, Rollo.

[4] Exhibit A.

[5] Page 9, Rollo.

[6] Pages 33-36, Rollo.

[7] *People vs. Marasigan*, 85 Phil. 427 (1950).

[8] Page 28, Rollo.

[9] 107 Phil. 861 (1960).

12 *Ibid.*

11 Section 14(2), Article III, Constitution.

12 109 Phil. 534 (1960).

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