

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CANDIDO ROBANTE ALIAS “ANDI” AND FELIX
SILAWAN, JR., ALIAS “ALEX”, ACCUSED, CANDIDO
ROBANTE ALIAS “‘ANDI”, ACCUSED-APPELLANT.**

G.R. No. 69307. October 16, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Death comes to us all. But for death to come to an old and helpless woman in a cruel and brutal manner for a measly pittance is beyond rhyme or reason. The utter contemptuous disrespect to our elders spurred by greed and lust for money is illustrated in this case.

At around eight o'clock in the evening of July 23, 1983 in Barangay San Isidro, Balilihan, Bohol, Patricio Layao and his wife Clara had just taken their supper. Patricio, 78 years old, blind, unschooled and unlettered remained in the kitchen, while Clara, 71, went up to the second floor of their house to prepare their beddings for the night. All of a sudden, Patricio sensed that there were persons upstairs. He crept quietly upstairs and then heard his wife utter: "Alex, nganong inyo man akong guibinu-angan". (Why are you doing something wrong to me?), followed by a loud thud on the floor.[1]

Patricio groped for his wife. He found her lying on the floor, moaning with pain. He touched her and felt a wound on her head. He noticed something sticky and realized that it was blood flowing from the wound. He massaged her almost inert body. Then becoming fearful that the intruders would turn to him, he tried to move away but Clara held his hand. He noticed that she could no longer stand because her right arm was broken so he helped her sit up. Afterwards, he sensed someone thumping a piece of wood on the floor and moving towards them. When that someone struck his wife on the head, it dawned on him that he had to get away from his wife because he could also be mauled[2]

He tried shouting to the neighbors for help but he was cautioned by the person who attacked his wife to refrain from doing so. Patricio identified that man as "Alex", the accused referred to in this case as Felix Silawan, Jr. But Patricio was also aware that there was someone else on the second floor beside Alex because he could hear a different set of footsteps. Then Alex asked him where they kept their money and he pointed to the trunk. That trunk was forcibly opened. Inside was P200 in cash. After taking the amount, the two malefactors went downstairs momentarily and when they returned, they were carrying a lighted torch. As they passed Patricio, some embers fell on his back and he pleaded with them not to put the torch near him because he could get burned. Then the intruders ransacked the couple's belongings in search for more money. Finding none, they left the Layao residence but not before warning Patricio not to report the incident to his children and to the authorities.[3]

Clara suffered a deep lacerated wound on the left side of her head and a superficial wound over her right chest and left upper arm. She also sustained bruises over her left eye, chin, right arm and left upper chest. The examining physician opined that the aforesaid injuries could have been caused by a piece of wood. He concluded that her

death, which followed shortly thereafter, was due to "cardio respiratory arrest, intracerebral hemorrhage, bleeding head wound".[4]

The news of the robbery and criminal assault against the septuagenarian couple spread throughout the barrio. The police conducted an investigation leading to the eventual apprehension of Felix Silawan, Jr., 17 years old, and Candido Robante, 18 years old, as the prime suspects. In an information dated September 21, 1983, Silawan and Robante were charged with the complex crime of robbery with homicide committed as follows:

"That on or about the 23rd day of July, 1983, in barangay San Isidro, municipality of Balilihan, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, conspiring, confederating and helping each other, entered the house of spouses Patricio Layao and Clara Layao; and once inside, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously beat one Clara Layao by the use of a pointed piece of wood, thereby inflicting serious physical injuries to the body of the latter, which caused her immediate death; and immediately thereafter, the accused did then and there wilfully, unlawfully and feloniously take, steal and carry away the money in the amount of TWO HUNDRED PESOS (P200.00) Philippine Currency, placed inside the trunk belonging to and owned by the said Clara Layao; the crime having been committed with the aggravating circumstances, to wit: (1) nighttime, being purposely sought for or taken advantage of to facilitate the commission of the crime; and (2) disregard of the respect due the offended parties on account of their age; to the damage and prejudice of the heirs of the deceased in the amount aforestated."[5]

Upon arraignment on October 26, 1983, both accused pleaded "not guilty" to the crime charged and the case was set for trial.[6] At the initial hearing and before the prosecution began the presentation of its evidence. Silawan changed his plea to "guilty" and implicated Robante as his co-conspirator. Thereafter, his counsel invoked the mitigating circumstances of plea of guilty and minority, to which the prosecuting fiscal interposed no objections.[7]

Trial on the merits proceeded with regards to Robante. On April 24, 1984, the Regional Trial Court, Tagbilaran branch, rendered judgment convicting Silawan and Robante as co-conspirators in the crime of robbery with homicide. The dispositive portion of the decision reads thus:

"WHEREFORE, Judgment is hereby rendered:

"1. Finding accused Candido Robante alias "Andi" guilty beyond reasonable doubt of the crime of Robbery with Homicide, the Court hereby sentenced (sic) him to suffer the penalty of Reclusion Perpetua and to indemnify the legal heirs of Clara Layao severally and jointly with accused Felix Silawan, Jr., the following amounts, to wit:

- (a) TWELVE THOUSAND PESOS (P12,000) by reason of her death;
- (b) the actual damages of FOUR THOUSAND PESOS (P4,000) and TWO HUNDRED PESOS (P200);
- (c) the amount of FIVE THOUSAND PESOS (P5,000) as moral damages; and
- (d) to pay his proportionate share of the cost.

"2. Finding herein accused Felix Silawan, Jr. alias "Alex" guilty beyond reasonable doubt for the crime of robbery with homicide, the Court hereby sentenced (sic) him to suffer the indeterminate penalty by imprisonment of SIX (6) YEARS and EIGHT (8) MONTHS of Prison Mayor as minimum to TWELVE (12) YEARS and TEN (10) MONTHS of Reclusion Temporal as maximum and to indemnify the legal heirs of Clara Layao jointly and severally with accused Candido Robante, the following amounts, to wit:

- "(a) TWELVE THOUSAND PESOS (P12,000) by reason of her death;

“(b) the amount of FOUR THOUSAND PESOS (P4,000) and TWO HUNDRED PESOS (P200) as actual damages;

“(c) the amount of FIVE THOUSAND PESOS (P5,000) as moral damages; and

“(d) to pay his proportionate share of the cost. x x x.”[8]

Accused Robante has appealed, alleging that the trial court erred:

1. in finding that he and Silawan had conspired to rob the Layao couple and kill Clara; and
2. in convicting appellant of robbery with homicide despite the failure of the prosecution to prove that the aforesaid felony was committed and the absence of a clear and positive identification of a credible witness attesting to appellant's complicity in the crime.[9]

From the testimonies of Patricio Layao and Felix Silawan, the prosecution sought to establish that there were two malefactors who conspired to rob the Layao spouses and to kill the wife to conceal their identities. The prosecution likewise endeavored to show that the unidentified companion of Silawan was none other than accused-appellant Robante himself. The Court is convinced that the prosecution has successfully discharged the onus of proving its case.

Patricio Layao (now allegedly deceased) reported the criminal outrage to the police on the day following the incident. He positively identified Felix Silawan, Jr. as “Alex”, one of the assailants.[10] He was familiar with Alex's voice because the young man often came to the house of Patricio. The latter was also guided by Clara who was able to shout Alex's name before she was clubbed on the head.[11]

Though blind, Patricio was certain that there was another person present upstairs, aside from Alex. He could hear and feel his footfalls. But he failed to recognize him because he did not utter a single word. It was Alex who warned Patricio not to shout and who demanded where the money was.[12]

In admitting his guilt, Silawan gave a detailed description of the conspiracy. In his testimony, Silawan, an occasional hired hand of the Robantes, pointed to accused-appellant Robante as his companion in robbing the Layao couple and in slaying Clara.

He recounted that on July 23, 1983, he and Robante went to Barangay Baonos, Antequera, Bohol, about three kilometers from San Isidro, to harvest coconuts. By four in the afternoon they were finished and they walked back to San Isidro. On the way home, they passed the house of the Layao spouses. Robante proposed to Silawan that they rob the elderly couple, to which Silawan did not acquiesce.[13]

Upon reaching Robante's house, they met Feliciano Pacot, Robante's cousin, who reminded them about the dance in the neighboring sitio of Sal-ing. As Silawan did not have any money then, he wanted to borrow from Robante's elder brother but he was refused. Silawan decided to go home but Robante stopped him and volunteered to borrow money from his aunt (Clara Layao) in Silawan's behalf.[14]

Upon arriving at the Layao residence, the two accused saw the couple on the ground floor taking their supper. Robante entered the abode first and told Silawan to follow him upstairs. Since it was dark, Silawan “bumped” into an “arenola”. Probably attracted by the noise, Clara came up the stairs but Robante was ready for her. He clubbed her twice on the head with a “bunal” (a piece of wood measuring about one yard long). Clara staggered and fell down on the floor. Then Robante instructed Silawan to get a torch to illumine the place and a “bungay” (bolo used to clean grasses) to forcibly open the trunk.[15]

Silawan recalled that Patricio was downstairs at the time but he went up when Clara collapsed on the floor with a

loud thud.[16]

After ransacking the place, the two assailants left and headed for Robante's house. From there they walked to the dance being held in Sal-ing where they stayed until two in the morning of July 24, 1983. Then they went back to San Isidro.[17]

Feliciano Pacot, a boy of 14 years (he finished Grade IV), grandson of the dead Clara and witness for the defense, unwittingly corroborated the testimony of Silawan. He stated that on the night in question, he was in Robante's house. The two accused were also there. They were all intending to go to the benefit dance in Sal-ing. Pacot disclosed however that they did not leave for the dance together. For some unknown reason, he left ahead of Silawan and Robante at seven in the evening. The two remained behind in Robante's house and it was only around midnight that they made their appearance at the dance. They all returned to San Isidro at two the following morning and slept at the residence of Robante. Hours later, they were roused from their sleep by Feliciano's farther, Victor Pacot, who shouted that Clara Layao had been killed.[18]

Against the interlocking statements of the prosecution witnesses, including that of a defense witness, appellant Robante could only interpose a patently weak alibi and the ill-conceived pretense that Silawan had framed him up out of revenge.

Robante, 18 years old, single, farmer and nephew of the deceased Clara (his father, Pedro Robante is Clara's brother) claimed that at the precise time of the robbery with homicide, he was sleeping in his own house. He testified that after harvesting coconuts from his father's trees in Barangay Baonos, he and Silawan came back to San Isidro where they took their supper in his house. They were planning to attend the dance in nearby Sal-ing but Silawan had no money. Since Candido's elder brother would not lend Silawan any money. Silawan went home. Robante stayed behind in his house and fell asleep. At past ten in the evening, his mother woke him up and told him that Silawan had returned. Then the two proceeded directly to Sal-ing. On the way, they passed a creek and Robante saw Silawan wash his hunting knife.[19]

On reaching the dance, Silawan deposited P20.00 with the collector (watcher) for their expenses. They left the place at around two in the morning of the next day and headed for San Isidro and slept in Robante's house.[20]

Robante's mother, Dalmacia Robante, 60 years old, corroborated his proffered alibi. She recounted that in the afternoon of July 23, 1983, her son Robante and Silawan arrived home together after gathering coconuts in Barangay Baonos. At about eight in the evening, Silawan asked permission to go home to get some money for the benefit dance. When Silawan returned at ten that same evening, Robante was already asleep but Silawan "forced" him to accompany him to the dance. Sal-ing is about two kilometers from their place.[21]

On further questioning however, Dalmacia admitted that she was "uncertain" whether or not her son Candido Robante and Silawan went to the Layao residence on the night in question. It was only half a kilometer away from the house of the Robantes.[22]

The trial court correctly rejected Robante's alibi. It did not prove that he could not have been at the scene of the crime at the time of its commission, the Layao residence being a mere stone's throw from his own house where he claimed to be sleeping. It was corroborated by only one other person, his own mother. It has been repeatedly observed that alibi is a defense that is weak and easily fabricated especially between parents and children and relatives and great caution must therefore be exercised in accepting the same.[23] The testimony of a mother supporting her son's alibi deserves scant consideration. It is undeniably tainted with bias which springs from a mother's natural desire to shield her son from criminal involvement.

Appellant, to exculpate himself, could only venture the theory that Silawan wanted to get even with him.

According to Robante, he suspected Silawan as his aunt's killer because at the benefit dance, Silawan had more money with him than what he claimed he was able to borrow; that after the death of Clara, Silawan did not show himself up anymore, and that he reportedly fled when the police came to arrest him. So on July 28, 1983, or five (5) days after Clara's death, Robante went to barangay captain Felix Cabellanes and reported his suspicions. This, according to Robante, led to Silawan's eventual arrest on August 1, 1983.[24]

The testimony of arresting officer INP Patrolman Patricio Bayokbok directly contradicted appellant's asseveration. He testified that Silawan was arrested on July 24, 1983 at 7:30 in the evening. He could not be apprehended earlier because he went into hiding. The police team succeeded in nabbing him only after he returned to his house on the night of July 24, 1983. When queried if the arrest was due to the report of Robante to the barangay captain, Bayokbok replied that it was "based on the statement of the old man, Patricio Layao" who gave the name of Felix Silawan as the one who struck his wife.[25] So it was not true that Silawan's capture was upon the instigation of Robante.

Robante further averred that it was Silawan who had the motive to kill the old woman. He disclosed that Silawan bore a grudge against Clara because she was instrumental in pursuing a rape case where the victim was her great granddaughter and the accused was a certain Pabling Alo, who happened to be Silawan's cousin. But as the records would show, the case never reached the courts as it was settled for P2,000. Thus, the theory of Robante does not hold water.

The trial court adjudged Silawan and Robante guilty of the special complex crime of robbery with homicide. To sustain the conviction however, it must be established with certitude that the killing was a mere incident to the robbery, the latter being the main purpose and objective of the criminals. It contemplates a situation where the homicide resulted by reasons or on the occasion of robbery.[26]

The defense contends that the prosecution failed to prove the element of robbery and that its commission has remained a matter of presumption.

The argument is untenable. The Court is convinced by the forthright statement of Patricio Layao that he and his wife Clara had P200 in cash inside the trunk on the night of the robbery. Moreover, Silawan himself had admitted having asported said amount from the couple, a fact supported by Agustin Layao, the couple's son who stated in his affidavit executed before the police on July 30, 1983 that he had seen his mother counting P700 in bills but on the day she died, he knew that there was only P200 left because he and his brother had borrowed the other P500.[27]

In the case at bar, we are faced with two young men, 17 and 18 years of age, both eager and excited to go to a dance but unfortunately did not have the wherewithal to do so. Thus, one of them thought of a regrettable solution. Why not steal from Aunt Clara who was rumored to have P20,000 in cash?[28] Being old and decrepit, it would be as easy as taking candy from a baby. But they had not reckoned on being discovered even before they could lay their hands on the money. Hence the quick blows on the head of the victim to avoid recognition and to silence her forever.

Appellant insists that the trial court should not have considered the testimony of Silawan against him. He argued that before Silawan's testimony could be admitted against him, proof of the alleged collusion must first be established by evidence other than such testimony in court, citing Section 127, Rule 130 of the Rules of Court.

The case of *People vs. Viscarra*[29] has squarely resolved this particular point raised by the appellant in this wise: "The argument fails to consider that Section 127 of Rule 130 applies only to an extrajudicial act or declaration of a co-conspirator, but not to the testimony given by a witness at the trial where the accused had the opportunity to

cross-examine the declarant. Besides, it is a familiar rule that a co-accused in a criminal case is a competent witness for or against any of his co-accused." [30]

But be that as it may, the existence of the conspiracy has been indubitably established by the prosecution. Direct evidence supplied by self-confessed felon. Silawan, provided the trial court with a detailed narration of how Silawan and Robante connived to rob the Layao spouses and how they slew Clara when she surprised them on the second floor of the house. The aforesaid account dovetailed with the testimony of Patricio Layao and the findings of the medico-legal expert on the head wounds and bruises suffered by the deceased.

In imposing the penalty under review, the lower court held that the subject felony was not attended by any aggravating circumstance. We cannot agree. Dwelling should have been appreciated as an aggravating factor in the instant case, the reason being that dwelling is not inherent in robbery with homicide because the authors thereof could have accomplished their heinous deed without the necessity of violating domicile. [31]

WHEREFORE, accused-appellant Candido Robante is hereby declared guilty of the special complex crime of robbery with homicide as defined in paragraph 1, Article 294 of the Revised Penal Code. Taking into account the aggravating circumstance of dwelling, the prescribed penalty of reclusion perpetua to death is imposed in its maximum period which is death. But in view of the non-imposition of capital punishment in the 1987 Constitution and in line with our recent decisions on the matter, the Court AFFIRMS the penalty of reclusion perpetua imposed by the trial court as a reduction from the death penalty. In addition, all the monetary awards are sustained except the death indemnity which is increased from P12,000 to P30,000. Costs against the appellant.

So ordered.

Feliciano, Bidin, and Cortes, JJ., concur.

Gutierrez, Jr., J., on leave.

[1] TSN, pp. 88-89, December 22, 1983; Original Records, Sworn Statement of Patricio Layao, p. 9.

[2] TSN, pp. 89-90, December 22, 1983.

[3] TSN, pp. 90-92, December 22, 1983.

[4] Record of Documentary Evidence, Certificate of Death, p. 4; TSN, pp. 101-103, December 22, 1983.

[5] Original Records, p. 25.

[6] TSN, p. 4, October 26, 1983.

[7] Original Records, Order dated November 14, 1983, p. 45.

[8] Original Records, pp. 102-103.

[9] Original Records, p. 104; Appellant's Brief, Rollo, p. 49.

[10] TSN, p. 152, March 9, 1984.

[11] TSN, pp. 95, 97, December 22, 1983.

[12] TSN, pp. 96-97, December 22, 1983.

[13] TSN, pp. 8-9, 20, January 10, 1984.

[14] TSN, pp. 9-10, January 10, 1984.

- [15] TSN, pp. 11, 14, 21, 32, 34, January 10, 1984.
- [16] TSN, p. 35, January 10, 1984.
- [17] TSN, pp. 14-16, January 10, 1984.
- [18] TSN, pp. 61-63, 65-66, February 17, 1984.
- [19] TSN, pp. 123-124; 126-129, February 8, 1984.
- [20] TSN, pp. 132-133, February 8, 1984.
- [21] TSN, pp. 114-116, January 31, 1984.
- [22] TSN, pp. 120-121, January 31, 1984.
- [23] *People vs. Cabanit*, G.R. Nos. 62030-31, October 4, 1985, 139 SCRA 94.
- [24] TSN, p. 46, February 10, 1984.
- [25] TSN, p. 151, March 9, 1984.
- [26] *People vs. Aquino*, G.R. No. 50523, September 29, 1983, 124 SCRA 835.
- [27] Record of Documentary Evidence, p. 8.
- [28] Original Records, Sworn Statement of Felix Silawan, Jr., p. 17.
- [29] G.R. No. L-38859, July 30, 1982, 115 SCRA 743, 753.
- [30] See also *People vs. Bazar*, G.R. No. L-41829, June 27, 1988.
- [31] *People vs. Valdez*, 64 Phil. 860; *People vs. Apduhan, Jr.*, G.R. No. L-19491, August 30, 1968, 24 SCRA 800; *People vs. Mercado*, G.R. No. L-39511, April 28, 1980, 97 SCRA 232; *People vs. Capillas*, G.R. No. L-27177, October 23, 1981, 108 SCRA 173.

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