

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO PALINO Y MERCADO, AND ARMANDO MANALANSAN Y SANTIAGO, ACCUSED. LITO PALINO Y MERCADO, ACCUSED-APPELLANT.

G.R. NO. 73044. March 26, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The accused-appellant Lito Palino, together with Armando Manalansan y Santiago was charged with the crime of Robbery with Homicide in an amended information which reads:

"That on or about February 3, 1985, at nighttime purposely sought to better accomplish their criminal design, at Barangay Camaya, Mariveles, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping one another, by means of violence and intimidation of persons, that is, by stabbing Marieta Guarizo with a deadly weapon or a sharp and pointed instrument on her chest, did then and there, with intent to gain, wilfully, unlawfully and feloniously take, steal and carry away cash money in the sum of P20,000.00, three (3) pieces of wrist watch, six (6) pieces of jade stone, two (2) pieces of gold necklace, two (2) pieces of necklace pendant, one (1) pair and three (3) pieces of earrings and one (1) piece of gold ring, all worth P10,000.00, belonging to the said Marieta Guarizo, against the will and without the consent of said owner and as a result of the stabbing inflicted upon the said Marieta Guarizo by reason or on occasion of the said robbery, the said person sustained mortal injuries which directly caused her death thereafter, to the damage and prejudice of the heirs of Marieta Guarizo." (Rollo, p. 18)

The co-accused Manalansan was still at large when Palino was arrested so that the latter was tried separately after pleading not guilty to the crime charged. This review is also for Palino alone.

The Regional Trial Court of Balanga, Bataan, Branch 4 subsequently rendered a decision convicting Palino of the crime of Robbery with Homicide, the dispositive portion reading:

"WHEREFORE, the Court finds the accused Lito Palino y Mercado guilty beyond reasonable doubt as co-principal by direct participation of the crime of robbery with homicide as defined and penalized under par. 1 of Article 294 of the Revised Penal Code and as charged in the information, with the attendance of the aggravating circumstances of nighttime and dwelling without any mitigating circumstance to off set the same, and hereby sentences said accused to suffer the penalty of DEATH, with all the accessory penalties of the law, and ordering him to indemnify the Heirs of the victim Marieta Guarizo in the sum of P30,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate share of the costs.

"The recovered stolen articles (Exhs. "C", "C-1" to "C-12) and cash amount of P560.00 are hereby ordered returned to the Heirs of the victim Marieta Guarizo.

"No civil liability by way of restitution is imposed upon said accused as to the allegedly unrecovered cash amount as no sufficient and competent proofs were presented to substantiate its loss.

"The pointed steel file with wooden handle (Exh. "A") used in the commission of the offense charged is hereby

confiscated in favor of the State." (Rollo, pp. 28-29)

From the above judgment, the accused appealed and raises the following assignments of error to support his plea of innocence:

I

"THE HONORABLE LOWER TRIAL COURT ERRED IN GIVING CREDENCE SOLELY TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE GLARING INCONSISTENCIES AND CONTRADICTIONS." (Appellant's Brief, Rollo, p. 117)

II

"THE HONORABLE LOWER TRIAL COURT ERRED IN GIVING CREDENCE TO THE CIRCUMSTANCES OF IDENTIFICATION OF THE ACCUSED-APPELLANT BY THE PROSECUTION WITNESSES." (Appellant's Brief, Rollo, p. 119)

III

"THE HONORABLE LOWER TRIAL COURT ERRED IN GIVING CREDENCE SOLFLY TO THE TESTIMONY OF THE PROSECUTION WITNESSES AS REGARDS THE CIRCUMSTANCES OF RECOVERY OF THE ALLEGED PROCEEDS OF THE CRIME." (Appellant's Brief, Rollo, p. 125)

IV

"THE HONORABLE LOWER TRIAL COURT ERRED IN CONSIDERING THE AGGRAVATING CIRCUMSTANCES OF DWELLING AND NIGHT TIME AGAINST ACCUSED-APPELLANT (Appellant's Brief, Rollo, p. 128)

V

"THE HONORABLE LOWER TRIAL COURT ERRED IN ITS FINDING THAT THERE WAS CONSPIRACY IN THE COMMISSION OF ROBBERY WITH HOMICIDE." (Appellant's Brief, Rollo, p. 130)

The facts, as gleaned from the People's Brief are summarized as follows:

"In the evening of February 3, 1985, a Sunday, Marieta Guarizo y Ordilar, a 43-year old spinster with ample means, was slain inside her house in Barangay Camaya, Mariveles, Bataan. She sustained a single stab wound on the right chest and died on the spot. At the time of her violent death, she was living alone and was engaged in the buy-and-sell business, was operating a stall at the public market and maintaining a boarding house. On the same occasion, the killers also robbed the victim of her cash amounting to P20,000.00 and pieces of jewelry, such as wrist watches, necklaces, earrings, rings, etc., all valued at P10,000.00. (tsn., p. 17, pp. 19-22, July 2, 1985).

"At about eight-thirty in the evening of February 3, 1985 a certain youth, Arvin Imaysag, told his uncle, prosecution eye-witness Arturo Manguil, a neighbor of the victim, who was then relaxing at home, that he saw two persons enter the victim's house. Proceeding to the place which was about ten (10) meters away, Manguil saw a woman knocking at the victim's door calling out her name as she wanted to buy some ice cubes. Manguil joined the woman in knocking at the victim's door and calling out her name at the same time. (tsn., p. 3, June 26, 1985).

"When nobody responded, Manguil became suspicious that there were intruders inside the house. So, he decided to fetch a neighbor, prosecution witness Rodolfo Cabiling, a barangay tanod, living about thirty (30) meters away. On his way, Manguil met Cabiling at the street corner. Returning to the victim's house with Cabiling, Manguil climbed over the outer iron grill gate and peeped inside the room through the elevated

wooden jalousied window. Manguil saw two male persons going through the drawers inside the victim's room which was then illuminated with a fluorescent bulb. Manguil recognized the men as the ones he had seen a week before at least three or four times in a nearby house of one Manding upon his return home from work after five o'clock in the afternoon. (tsn., pp. 4-5, June 26, 1985).

Manguil informed Cabiling of what he had seen and the latter also peeped through the elevated window. Manguil tried to look for a padlock with which to lock the outer iron grill gate and, thus, prevent the intruders from escaping. At this juncture, the female boarders in the adjoining rooms of the victim's house noticed Manguil looking for something and, upon learning that there were intruders inside the victim's room, started to shout in fear. (tsn., p. 9, June 26, 1985). Momentarily, the inner door of the victim's house suddenly opened with the two intruders rushing out. Cabiling tried to accost them by holding on to the outer iron gate. One of the intruders, later identified as accused Palino, who was armed with a pointed steel file with wooden handle, stabbed Cabiling twice with said instrument, hitting Cabiling on the left chest and injuring his left fingers. (tsn., pp. 4-5, May 23, 1985).

"Manguil, noticing that accused Manalansan was also carrying a bladed instrument, ran away out of fear but was chased by said accused who, however, failed to overtake him. The malefactors were able to make good their escape by jumping into and crossing the river about 10 meters away from the crime scene. The men then parted ways, the accused Manalansan running toward the forested area, while the accused Palino proceeding in the direction of the Bataan Export Processing Zone compound.

"Meanwhile, Manguil repaired to the nearby house of town councilor Rodolfo Cariño to report the incident. Soon after, Cariño and Manguil rushed back to the victim's house and found the victim sprawled on the cement floor dead near the refrigerator bathed in her own blood with a piece of cloth stuffed inside her mouth. The victim's room was in disarray with drawers and wardrobes opened. An empty bag lay beside the victim with its contents strewn all around, including loose coins and a fifty peso paper bill. (tsn., pp. 5, 11, June 26, 1985).

"That same night, elements of the Mariveles police authorities were dispatched to the victim's house for investigation. When interviewed by the police probers, Rodolfo Cabiling and Arturo Manguil stated that they could identify the culprits if they were to see them again. After a round-the-clock surveillance of the surrounding area, Pat. Francisco and Cabiling were able to intercept and arrest accused Lino Palino while on board a Philippine Rabbit Bus at about five o'clock in the morning of February 4, 1985. When accosted, Palino was seated at the rear-most portion of the bus, his head bowed and resting on his arms which were covering his face. (tsn., p. 15, July 24, 1985) Palino was brought down from the bus crying and, upon being frisked, was found in possession of cash in bills amounting to P560.00 and pieces of jewelry wrapped in a plastic container. (tsn., pp. 8-9, May 23, 1985). At the Municipal Hall of Mariveles where he was taken following his arrest, Palino and the recovered stolen articles and cash were turned over to Pat. Teodoro Ruiz, the police investigator (tsn., p. 9, id.). In the course of the investigation, accused Palino willingly executed a written statement (Exh. "F") wherein he readily admitted having participated in the planning and the actual commission of the robbery in question and naming his co-accused, Manding Manalansan, as his companion in the commission of the crime. Palino's statement was later sworn to before the Municipal Trial Court Judge of Mariveles that same day (Feb. 4, 1985). When asked by the subscribing judge if he read and understood the contents of his sworn statement and if it was given willingly and voluntarily, Palino answered in the affirmative.

"Later that day, Arturo Manguil identified Palino as one of the intruders from among a group of prisoners at the Municipal jail. Also, the victim's father, Demetrio Guarizo, identified the articles confiscated from Palino as belonging to and stolen from his deceased daughter. (tsn., pp. 12-14 June 26, 1985; p. 12, July 2, 1985).

"The Municipal Health Officer, Dr. Willie G. Calimbas, conducted an autopsy on the body of the deceased Marieta Guarizo. The autopsy report (Exh. 'J') revealed that the victim sustained a single stab wound on the right chest. The cause of her death was internal hemorrhage. Dr. Calimbas opined that, judging from the natural appearance of the stab wound, it must have been caused by a sharp pointed object, and was

immediately fatal. (tsn., pp. 2-6, July 24, 1985)" (People's Brief, pp. 3-10)

The accused-appellant questions the findings on the credibility of the prosecution witnesses accorded by the trial court. He claims that their testimonies are inconsistent and contradictory. He specifically points out the alleged contradiction between prosecution witnesses' statement as to whether Cabiling was fetched or met along the way by Manguil and whether the victim's mouth was stuffed with a duster or a T-shirt. He likewise questions the contradiction in the statement of the same witnesses as to which part of the appellant's body the money and jewelry were found.

We find no material inconsistencies in the testimonies of the prosecution witnesses. The cited inconsistencies are very minor and could even enhance the witnesses' credibility because it shows that these witnesses were not rehearsed. They narrated the incident according to the way that they saw or recalled it. Whether Cabiling was fetched or Manguil met him while on his way to fetch him, the fact remains that both looked inside the room of the victim trying to ascertain what was going on. Whether it was a lady's duster or a T-shirt is not as important as the testimony that the victim was gagged with an item of clothing.

The accused tries, albeit unsuccessfully, to exculpate himself by interposing the defense of alibi. Palino claims that he came from Pilar, Bataan to attend the birthday party of Toto Torres in Mariveles, Bataan and that after said party, he fell asleep and woke up at 8:00 in the evening. He then proceeded to the Philippine Rabbit Bus Station to wait for the next available ride home. The appellant's contention is self-serving. He never presented a single credible witness such as a guest in the party to attest to his presence there.

His other contention that he has never been to the place of the crime is belied by the testimony of Manguil who stated that he "recognized the men as the ones he had seen a week before at least 3 or 4 times in a nearby house of one Manding upon his return home from work after five o'clock in the afternoon." (tsn., pp. 4-5, June 26, 1985). This, therefore, establishes the fact that Palino was already familiarizing himself with the place as well as the victim by pretending to look for a house to rent.

For the defense of alibi to prosper, it is not enough to convincingly prove that the accused was somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime.

The appellant further questions the trial court's giving credence to the testimony on the circumstances of his identification. He claims that the witnesses could not have possibly recognized the intruders through the jalousied windows. The evidence shows that when the female boarders became aware of the intruders' presence, they started shouting. The intruders rushed out of the house where Cabiling and Manguil tried to stop them. In fact, Cabiling was stabbed by Palino with a steel file when the former tried to close the iron grill to prevent them from escaping. Palino even went after Cabiling and Manguil. Under these circumstances, the two witnesses could not have failed to recognize the assailants. There was a frontal encounter in a place which was illuminated by a nearby fluorescent lamp.

While there were no eyewitnesses to the stabbing itself, the fact that the witnesses saw the two intruders ransacking the cabinets and rushing out after the victim had been stabbed is clear proof that they killed the victim on the occasion of the robbery. They were the only persons who had the reason and the opportunity to kill the victim.

The accused-appellant's defense of alibi is, therefore, unavailing. Alibi cannot overcome the positive and clear testimony of prosecution witnesses who had no motive to testify against him. The accused himself could not give any reason why Pat. Francisco and Cabiling would testify against him.

The testimony of the witnesses regarding the circumstances of the recovery of the proceeds of the crime is likewise assailed by Palino. He maintains that the evidence was planted and that the jewelries were supplied by the sister-in-law of the victim. However, he failed to explain how he learned that the articles were supplied by Corazon Guarizo, the sister-in-law. There is nothing in the records, likewise, indicating any reason for Guarizo to plant such evidence.

The records show that some of the stolen articles were recovered from the appellants' possession. Although two testimonies differed as to what part of the appellant's clothing -- waistband or pockets -- the items were taken from, all the evidence points to the appellant's possession. The appellant's denial is, therefore, self-serving. The case of *People v. Newman* (163 SCRA 496 [1988]), states that a presumption of guilt arises if the effects belonging to a person robbed and killed are found in the possession of the accused.

Anent the issue of dwelling and nighttime, we hold that the trial court is correct in considering dwelling as an aggravating circumstance. The mere fact that a woman knocked at the victim's door to buy ice is not sufficient to prove that the victim was running a store inside her house. Neither is nighttime aggravating in this case. As correctly pointed out by the Solicitor General, the culprit did not resort to darkness in the commission of the crime as the room where the robbing and the stabbing took place was then illuminated by a fluorescent lamp. We have ruled that nighttime when not especially sought to commit the robbery is not aggravating. Moreover, the jeep where the accused was riding was well-lighted (*People v. Cristobal, Jr.*, 91 SCRA 71 [1979]). Hence, while the crime was committed during nighttime, its having been especially sought is not sufficiently proved for the place was sufficiently illuminated by light which even enabled the witnesses to recognize the culprits. Moreover, people were mostly still awake at the time including the boarders nearby so that it cannot really be said that nighttime was especially sought to facilitate the crime.

Regardless, however, of the presence of aggravating or mitigating circumstances, the same will not affect the penalty to be imposed as death is an indivisible penalty. It is still the penalty for the crime committed but because of Article III, Section 19 of the Constitution, it may not be imposed. It shall be reduced to reclusion perpetua. Article 63 of the Revised Penal Code also states that "in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

The accused-appellant further contends that there was no conspiracy in the commission of the crime because there was no unity of purpose in the execution of the crime and that while there may have been intent to rob, there was no intent to kill.

We disagree. Conspiracy need not be proved by direct evidence. Neither is it essential that there be shown a previous agreement to commit robbery as the crime of robbery with homicide can be inferred from the acts of the accused such as the ransacking of cabinets, the asportation of stolen items and the accompanying death of the victim. (*People v. Pineda*, 157 SCRA 71 [1988]). The circumstance of acts committed together or in common reveals that the appellants helped each other during the commission of the crime. For instance, a method of attack or manner of killing may clearly indicate the indispensable cooperation and spontaneous coordination between the appellants (*People v. Newman*, *supra*).

WHEREFORE, IN VIEW OF THE ABOVE, the appeal is hereby DISMISSED and the decision of the trial court is AFFIRMED with the exception of the penalty imposed which is REDUCED to RECLUSION PERPETUA from death.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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