

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO LAGAHAN Y RUBASTO, ACCUSED-APPELLANT.

G.R. No. 78692. December 08, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The killing of an 84-year old Chinese woman, Lim Sy, and the robbery of P7,000.00 from her residence in the early morning of 2 May 1985 led to the filing of an Information for Robbery with Homicide against the accused Antonio Lagahan y Rubasto. Having been convicted and sentenced to reclusion perpetua by the Regional Trial Court, Branch 85, Quezon City,[*] the accused has interposed the present appeal.

The evidence for the prosecution discloses that at the time of the incident, Appellant, a native of Leyte, along with other employees, was employed in the Pag-asa Bakery managed and operated by one Ramon Jacinto Tan, a grandson of the victim.

On 1 May 1985, Appellant asked his employer for permission to take a vacation from 1 May to 16 May 1985 and for a cash advance of P400.00 after which he left the bakery at around 7:30 P.M. of said date, the 1st of May.

The bakery is located at 122 Road I, Bagong Pag-asa, Quezon City. It was also in the same place where the victim lived with her grandson Ramon. In the evening of 1 May, the victim slept inside her room near the kitchen at the ground floor of the bakery while Ramon and his employees occupied their respective rooms, except for Appellant who had, as previously stated, left for a vacation.

At around 1:00-2:00 o'clock in the early morning of 2 May 1985, Councilman Crisanto Tongol, who was sleeping in his house located in front of the bakery, was awakened by the call of a Barangay Tanod who told him that a person was sprawled near the gate of the bakery. Tongol rushed to the place where he saw the gate slightly opened and the victim lying prostrate by the gate. He shouted for Ramon and woke him up. The latter saw his grandmother with several stab wounds on different parts of her body and profusely bleeding from the back of her head. He also noticed that her room had been ransacked and the drawer where he used to keep his daily earnings from the bakery was forcibly opened and P7,000.00 was missing. Ramon and the Barangay Tanod rushed the victim to the hospital but she died upon arrival thereat.

The autopsy report disclosed that the victim had suffered contusions on her head and several stab wounds on different parts of her body.

Investigation by the police authorities confirmed the forcible opening of the drawer and the scattering of its contents. Further investigation disclosed that at about 1:00-2:00 o'clock in the early morning of 2 May 1985, Appellant was at the Mirales Restaurant not too far away from the bakery. He ordered a cup of coffee, which was served by the waitress, prosecution witness Rose Nipal. Rose noticed that Appellant was uneasy and was constantly changing places inside the restaurant. Rose knew him by face even before then because he used to pass by the restaurant. After a while, at about 2:00 A.M., Appellant left.

His whereabouts traced to Naval, Leyte, where Appellant and his live-in partner, Julita Mahilum, had gone on 5 May 1985, Appellant was subsequently apprehended at Julita's residence and taken to Tacloban City for investigation together with Julita. The latter, assisted by a CLAO lawyer, voluntarily gave a written statement (Exhibits "F" to "F-8") wherein she declared that Appellant had admitted to her that he had killed the victim. Confronted with that statement, Appellant readily admitted that he had really killed and robbed the victim of P7,000.00. Appellant was thereafter taken to Quezon City for further investigation.

In his written statement in the Visayan dialect executed on 12 June 1985 (Exhibits "C" to "C-8") Appellant admitted that he had hit the victim with a piece of hard wood known as "bakawan" and stabbed her several times with a 6-inch long kitchen knife given to him by Mario Cuesta, his former co-employee at the bakery but who had since transferred to another bakery. Picked up by investigators for questioning, Cuesta admitted that he had, indeed, given a knife to Appellant.

A re-enactment of the crime was conducted at the scene thereof on 12 June 1985 during which Appellant demonstrated how he entered the gate of the bakery, struck the victim with a piece of wood, stabbed her with a knife, ransacked the drawer, and thereafter left the place (Exhibits "H", "I", "J", "K" & "L").

On 15 July 1986, when Julita was scheduled to testify as a prosecution witness, Appellant, when placed on the witness stand, and with the assistance of counsel, changed his plea to one of Guilty and admitted before the Court that he had really killed and robbed the victim. He declared that on the night of the incident he went to the victim's house to get his belongings but that the victim got mad at him; that he was forced to kill the victim with the use of a knife about six (6) inches long; that he also hit her with a piece of hard wood several times on the nape. He also admitted that Julita Mahilum was his live-in partner. He only begged for a reduction of his sentence (t.s.n., July 15, 1986, pp. 2-8). Notwithstanding Appellant's admissions, the Court refrained from imposing sentence on that date and instead reset the trial to the next day to give him time to reflect on the consequences of his change of plea. On the date reset, Appellant again admitted killing the victim but this time claimed that he did not take any money from the drawer (t.s.n., July 16, 1986, p. 2). As a result, the Court rejected the Guilty plea and continued with the trial.

In his defense, Appellant maintained that on 1 May 1985, at around 7:00 P.M., he left the bakery where he was working. In the evening of 1 May, he was in Marikina, watched TV, and did not leave that place. He left for Leyte on 5 May 1985 and stayed at Villa Consuelo, Naval, Leyte, for two weeks until he was arrested in the house of his live-in partner, Julita, on 11 June 1985. When he was investigated in Tacloban City he told the authorities that he knew nothing about the killing. He did not sign any statement in Leyte. From Leyte he was taken to Quezon City where he was detained, investigated and forced to sign a written statement (Exhibits "B", "B-1", "C" to "C-8") without knowing its contents. He denied having taken coffee in the early morning of 2 May at the Mirales Restaurant alleging that he was then already sleeping in Marikina. As to the admissions he made in open Court, he explained that he did so because he had long been suffering in jail. He admitted having re-enacted the commission of the offense before the authorities but repeated that he did so because of said suffering. Finally, he denied having robbed the victim of P7,000.00 claiming that he was able to save P2,000.00 while under the employ of the bakery.

Sifting the evidence thus adduced, the Trial Court concluded, with moral certainty, that Appellant was guilty of Robbery with Homicide and sentenced him to suffer the penalty of reclusion perpetua; to pay the heirs of the victim the sum of P7,000.00 as actual damages; and P30,000.00 as moral damages, plus costs.

Now ascribed by Appellant to the Trial Court are the following errors:

- I. The Trial Court erred in admitting the extrajudicial confession of the accused-appellant (Exhibits C to C-8)

as evidence against him.

II. The Trial Court erred in convicting the accused-appellant of the special complex crime of robbery with homicide when only the crime of homicide was established by evidence.

The first assigned error is persuasive. The requirements of the law on custodial investigation, as amplified by jurisprudence in a string of cases, were not met when Appellant's extrajudicial confession was taken on 12 June 1985 (Exhibit "B"). The appraisal of Appellant's constitutional rights was, at best, perfunctory. At no point in time does it even appear that Appellant was assisted by counsel. And even if he had waived his right to counsel, the waiver is invalid absent any showing that it was made with counsel's assistance. Accordingly, the said extrajudicial confession must be held inadmissible in evidence.

Be that as it may, even without said extrajudicial confession, there is sufficient evidence establishing Appellant's guilt beyond peradventure of doubt. Not only has circumstantial evidence been furnished by credible and unbiased prosecution witnesses, but also, Appellant himself, during the 15 July 1986 hearing, admitted his guilt. Although he retracted the same subsequently on 12 August 1986, his retraction cannot prevail over other evidence on record. That he was in the vicinity of the crime was testified to by Rose Nipal, the waitress in the Mirales Restaurant. That he had, in fact, hit the victim with a piece of wood is confirmed by the contusions on the parietal and frontal region of the victim's head as shown by the medico-legal report (Exhibit "G"). That he had used a knife to stab the victim is likewise borne out by the three stab wounds that the victim had suffered on the neck, the left umbilical region, and the left lumbar region; by a lacerated wound in the right ear; and an incised wound on the left arm (*ibid.*). That he had used such weapon in assaulting the victim is further established by Mario Cuesta who admitted having given him that knife. That he was in Marikina in the early morning of 2 May 1985 when the killing occurred is an uncorroborated alibi. Besides, even if it were so, it does not prove that he could not have been at the scene of the crime at the time of its commission, transportation between Marikina and Quezon City being readily accessible. That he had killed the victim was further corroborated by his live-in partner, Julita, who testified that Appellant had so confided to her. That also accounted for their sudden trip to Leyte on 5 May, and his not having reported back to work on 17 May after his vacation. Appellant's sudden departure a few days after the incident is clean evidence of flight. "The guilty flees even if no one pursueth, but the innocent stands as brave as a lion" (*People vs. Aragona*, L-43752, September 19, 1985, 138 SCRA 571).

The crime committed is Robbery with Homicide. The homicide was committed by reason, or on the occasion, of the robbery. Appellant's claim that he killed the victim because she had maltreated him (*t.s.n.*, July 16, 1986, p. 7) is far-fetched. It is inconceivable that a defenseless 84-year old woman could have inflicted harm on him. Neither was there any more reason for him to go back to the bakery that fateful night except to rob and kill, considering that he had already asked for permission to go on vacation and had received a cash advance. Ramon Tan, the victim's grandson also testified that on his return from the hospital he immediately went to his grandmother's room and found the drawer opened, the keys scattered and cash amounting to P7,000.00 representing the day's earnings missing from the drawer where it was kept (*t.s.n.* August 7, 1985, p. 9).

Appellant's claim that he had saved P2,000.00 while in the employ of the victim (*t.s.n.*, August 12, 1986, pp. 9-10) and, therefore, need not have committed robbery, cannot be given credence because if he really did have that sum there would have been no need for him to have asked for a cash advance of P400.00 before leaving for a vacation.

Julita Mahilum's testimony further confirmed the fact that Appellant took the money. She testified that he showed to him the P7,000.00 while they were in Manila and while on board the boat (*t.s.n.*, July 23, 1986, p. 9). Part of the money was placed in his wallet and the rest in a travelling bag (*t.s.n.*, *ibid.*). Appellant's bare denial cannot prevail over Julita's positive declarations specially since no ill motive could be imputed to her for testifying

against Appellant. On the contrary, considering their personal relationship, it would have been more in the natural order of things for her to have shielded Appellant by, at the very least, keeping silent.

We thus conclude that Appellant's guilt of the crime of Robbery with Homicide has been proven beyond reasonable doubt.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with costs against accused-appellant, Antonio Lagahan y Rubasto. SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Presided over by Judge Bernardo P. Abesamis.

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