

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS REPUELA ALIAS JESSIE, JOLITO CAMARADOR ALIAS BULI, AND WENNIE CAMARADOR, AND JOHN DOE (AT LARGE), ACCUSED. JESUS REPUELA...

G.R. NO. 85178. March 15, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The accused were charged under an information filed by the Provincial Fiscal of Quezon with "robbery with homicide and frustrated homicide" committed allegedly as follows:

The undersigned accuses Jesus Repuela alias Jessie (prisoner), Jolito Camarador alias Buli (prisoner), Wennie Camarador (at large), and John Doe whose true name is still unknown, of the crime of robbery with homicide and frustrated homicide, committed as follows:

That on or about the 27th day of May 1987, at Sityo (sic) Lumingoy, Dulong Amihan, Barangay Cagbalete I, Municipality of Mauban, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to rob, armed with a knife and by means of force and intimidation, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously enter the house of the spouses Sotero Banagan and Norma Perez Banagan by destroying and passing thru the backdoor, and once inside, take, steal and carry away from spouses Sotero Banagan and Norma Perez-Banagan, cash money amounting SEVEN THOUSAND PESOS (P7,000.00), two (2) wrist watches, one Seiko 5 for men valued at One Thousand and One Hundred Pesos (P1,100.00), one (1) Citizens watch for women (gold plated) valued at Six Hundred Pesos (P600.00) and assorted cigarettes valued at One Thousand (P1,000.00) or with a total value of NINE THOUSAND AND SEVEN HUNDRED PESOS (P9,700.00), Philippine currency, to the damage and prejudice of said Sotero Banagan and Norma Perez-Banagan in the said amount; and that by reason of and on the occasion of said robbery, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and beat the head with the handle of said knife said Sotero Banagan, inflicting upon him fatal wounds on his head which directly caused his death; and likewise with intent to kill beat the head of Norma Perez-Banagan, inflicting wounds thereto, thus performing all the acts of execution which should have produced the crime of homicide as a consequence, but which nevertheless, did not produce it by reason of causes independent of the will of the accused, that is by the timely and able medical attendance rendered to said Norma Perez-Banagan which prevented her death.

That the accused Jesus Repuela alias Jessie, is a recidivist having been previously convicted on 8 November 1982 by final judgment by the Regional Trial Court, Mauban, Quezon in two cases: Criminal Case No. 861 for theft, and sentenced to undergo imprisonment of FIVE (5) MONTHS, to indemnity Samson Caiño in the amount of Three Hundred Sixty (P360.00) Pesos, to pay the costs and to suffer all the accessories of the law; and in Criminal Case No. 862, also for theft, and sentenced to undergo imprisonment of TWO (2) MONTHS.

Contrary to law.

Lucena City, for Mauban, Quezon.[1]

Except the "Doe" accused and Wennie Camarador, who have remained at large, the other two accused pleaded not guilty on arraignment held on March 24, 1988.

It appears that the spouses-victims, Sotero Banagan and Norma Perez, were residents of Sitio Lumingoy, Dulong Amihan, Barangay Cagbalete I, Mauban, Ouezon. The former fished, butchered pigs, and ferried passengers for living while the latter tended a store in their house.[2]

On or about three o'clock in the afternoon of May 27, 1987, the four accused were seen by a fifteen-year old boy, Bernardo Butalid, a resident of the area, offering to sell a pig to Sotero Banagan. At around five o'clock of the same afternoon, they were seen at the store where accused Jesus Repuela bought cigarettes and accused Jolito Camarador bought rice.

At or about seven o'clock in the evening, the said accused were seen "peeping and going around the house of the Banagans.[3]

At or about nine o'clock in the evening of the same day, the prosecution alleged that while the Banagans were fast asleep, the four accused broke and entered into their house. Jesus Repuela allegedly sat on Norma Perez's thighs, covered her mouth, and took a stabbing stance atop her. Norma allegedly managed to call her husband. ("Dy, me tao."[4]) Repuela allegedly struck her in the head with the handle of the hunting knife he was brandishing, a total of nine times.[5]

Norma positively identified Repuela al the stand as her attacker, while Camarador watched. She also pointed to both as her assailants in a police line-up held following the duo's arrest.

According to her, further, Repuela then left her for dead and as her husband was about to rise. Repuela pushed him, sat on his breast, after which he, Repuela, and Jolito Camarador ganged up on him by striking his head with the handle of the same hunting knife until he died.

Repuela and Camarador allegedly sought to locate the keys to the Banagans' locker ("aparador") hidden under Norma's pillow, opened it (the locker) up, and divested it of P7,020.00 in cash, a wristwatch worth P1,100.00, a gold-plated woman's wristwatch worth P600.00, and cigarettes valued P1,000.00.

A post-mortem examination of the body of Sotero Banagan showed that he sustained the following injuries:

- Lacerated wound about 3-4 inches long, parieto-occipital region, right side
- Lacerated wound about 3 inches long, occipital region
- Lacerated wound about 3 inches long, occipital region, lower portion
- Lacerated wound about 2-3 inches long, parieto occipital region, right
- Lacerated wound with comminuted fracture of the skull, parietal region (right)
- Lacerated wound about 2 inches long, temporal region, left
- Lacerated wound about 2 inches long, forehead
- Swelling with contusion of the eye, right side
- Lacerated wound about 3 inches long level of the eyebrow, left side
- Lacerated wound about 2-3 inches long; naso-labial area, left side,[6]

Norma Perez, on the other hand, was determined to have suffered the following wounds:

- Multiple lacerated wound about 4 inches long parietal region, left;
- Contusion and swelling about 1 inch diameter right zygomatic prominence;
- Swelling and contusion about 2 ½ inches in diameter, right arm;
- Contusion with swelling peri-orbital region right;
- Lacerated wound about 5-6 inches semi-circular parietal region right;
- Lacerated wound about 3 inches occipito parietal region right;
- Contusion with swelling about 11 1/2 inches forearm left side;
- Swelling a contusion post articular region right.[7]

On May 30, 1987, Jesus Repuela was arrested by the police of Sitio Lumingoy. In his possession was found: (1) a wristwatch; (2) a hunting knife, ten and a half inches long; (3) three packs of "Philip" cigarettes; and (4) three packs of "Hope" cigarettes.[8]

It was established that the wristwatch found in Repuela's possession was the timepiece owned by Norma Perez and taken from her locker.[9]

After the prosecution rested, the defense presented their evidence.

The accused, Jesus Repuela, testified that on May 27, 1987, he stayed with his girlfriend, a certain Zenaida Hermosos, in Sitio Calamyas, from ten o'clock in the morning to four o'clock in the afternoon. He allegedly thereafter went home to get some clothes and returned to the house of his girlfriend at seven-thirty. At or about eight o'clock, he, his girlfriend, and the latter's brother went to a dance party at around eight-thirty where they stayed until the following morning. He testified that his co-accused, Jolito Camarador, was also there.[10]

He admitted that the Banagans' house could be reached from there on foot in not more than two hours. He admitted possession of the wristwatch, hunting knife, and six packs of cigarettes seized from him by the authorities. He claimed, however, that the same were given to him by the accused Wennie Camarador. With respect to the hunting knife, he confessed that he owned it. He also admitted knowing the Banagans for a long time.

He admitted, finally, having been previously convicted by final judgment by the Regional Trial Court in Mauban, Quezon, in two cases: Criminal Case No. 861, for theft, and sentenced to imprisonment of five months and to pay an indemnity of P360.00; Criminal Case No. 862, also for theft, and sentenced to imprisonment of two months.

Thereafter, Jolito Camarador testified. He alleged that on May 27, 1987, he was having a "drinking spree" from five o'clock in the afternoon until eleven in the evening, at Calamyas, Cabaleta II, Mauban, after which, he and his wife proceeded to a nearby dance. He testified that he saw Repuela there together with his girlfriend. He claimed that the Banagans' house was more or less two kilometers from his own residence and that he had known the spouses for a long time.

On August 22, 1988, the trial court returned its verdict, convicted both accused, and sentenced them as follows:

WHEREFORE, in view of the foregoing, the Court finds accused JESUS REPUELA and JOLITO CAMARADOR guilty beyond reasonable doubt of the crime of robbery with homicide and frustrated homicide with the aggravating circumstance of recidivism in the case of accused Jesus Repuela and both of them are

hereby sentenced to suffer the penalty of reclusion perpetua (life imprisonment); to jointly and severally indemnify the heirs or the deceased Sotero Banagan in the sum of Thirty Thousand Pesos (P30,000.00); to jointly and severally indemnify Norma Perez in the sum of P1,000.00 representing medical expenses and also the sum of P9,100.00 the value of the effects stolen and not recovered, and to suffer all the accessories of the law.

The wrist watch exhibit is hereby ordered returned to its owner, Norma Perez, and the exhibits: hunting knife and six (6) packs of cigarettes are hereby ordered confiscated in favor of the government.

It appearing that both accused Jesus Repuela and Jolito Camarador are detention prisoners, the preventive imprisonment they had undergone should be taken into consideration in the computation of their sentence.

SO ORDERED.[11]

This is an appeal directly to us; the other accused have not been tried and are still at large.

We affirm the decision appealed from.

We are persuaded that the prosecution has established beyond reasonable doubt a case for robo con homicidio or homicide on the occasion of robbery, as defined by the Revised Penal Code. The evidence shows that on May 27, 1987, Sotero Banagan was killed, and his wife, Norma Perez injured, after which their residence was ransacked of valuables. Norma positively identified the perpetrators to be, among others, the accused Jesus Repuela and Jolito Camarador. On May 30, 1987, the accused, Jesus Repuela was arrested and parts of the valuables stolen, the wristwatch and packs of cigarettes, were found in his possession. It has been held that "[i]n the absence of an explanation of how one has come into the possession of stolen effects belonging to a person wounded and treacherously killed, he must necessarily be considered the author of the aggression and death of said person and of the robbery committed on him." [12]

It is contended, of course, that the accused Repuela was supposed to have received the wristwatch from his co-accused, Camarador, but his explanation seems to us to be a clear attempt to shift the blame on Camarador. Interestingly, Camarador is silent as to where and how he acquired the said wristwatch. In that event, the presumption, so we rule, has not been overthrown.

It has been held that in robbery with homicide, the robbery itself must be proven, otherwise, the accused may be convicted only for the killing, homicide or murder as case may be.[13] In this case, the fact of robbery has been established by presumption while the homicide was shown by the corpus delicti.

The accused questions the credibility of Norma Perez's testimony, whom they allege could not have counted the number of blows she received (nine), seen Jolito Camarador at the same time, seen her husband being attacked, and noticed that a lookout was outside. First of all, credibility is a matter, so we have held, for the trial court to determine, and generally, we have been inclined to leave it to the sound discretion of the lower court.[14] Secondly, no malicious motive has been ascribed to Mrs. Perez to testily falsely against the two accused. Thirdly, the stolen goods had been found in the accused Repuela's possession right after the incident. Finally, the testimony of Mrs. Perez is supported by physical evidence: the death of Sotero Banagan, the loss of effects in his residence, the injuries suffered by Mrs. Perez, and so we reiterate, their discovery in the accused Repuela's person subsequently. These are sufficient evidence of the accused's guilt beyond reasonable doubt. With respect to Camarador, he was positively identified at the stand by Mrs. Perez. Again, no ulterior motive has been imputed to Mrs. Perez an implicating Camarador.

The accused's defense of alibi can not prevail over positive identification.[15] Moreover, as the two accused testified, the Banagan's place of residence was only two hours away from where they, the accused, allegedly were

at the night of the incident. For "alibi" to succeed, the accused must show that he could not have gone to the locus criminis from where he was.[16]

The Court is not unaware of the fact that the accused have been charged with robbery with homicide and frustrated homicide. The court has held,[17] however, that there exists no offense as robbery with frustrated homicide because "homicide," as the term is used by Article 294, paragraph (1) of the Revised Penal Code, is meant in its generic sense, that is, any act that results in death. Any other act producing a result short of death is embraced by "homicide,"[18] assuming that death occurs at the same time. If no death supervenes, the accused should be held liable for robbery and frustrated or attempted homicide or murder (provided there was intent to kill),[19] and not the complex crime of robbery with homicide.

WHEREFORE, the decision appealed from is AFFIRMED, with the modification that the accused is hereby held guilty of a single offense of robbery with homicide as defined in Article 294, paragraph (1) of the Revised Penal Code. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, 15-16.

[2] Id., 17.

[3] Id.

[4] Id., 18.

[5] Id.

[6] Id., 19.

[7] Id., 19-20.

[8] Id., 20.

[9] Id., 20-21.

[10] Id., 22.

[11] Id., 28-29; rendered by Judge Irineo V. Mendoza.

[12] *People v. Kagui Malasugui* 63 Phil. 221 (1936), citing *People v. Merin*, 2 Phil. 88 (1903) and *US v. Divino*, 18 Phil. 425 (1911).

[13] *People v. Pacala*. No. L-26647, August 15, 1974, 58 SCRA 370.

[14] *Manahan v. People*, No. L-37010, November 7, 1988, 167 SCRA 1.

[15] *Pacala*, supra.

[16] *People v. Rose, Sr.*, No. 80457, September 29, 1988, 166 SCRA 110.

[17] *People v. Cariño*, No. 73876, September 26, 1988, 165 SCRA 664.

[18] *Supra*.

[19] See *People v. Olaes*, 105 Phil. 502 (1959).

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