

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME ROSALES Y ARELLANO @ GIGI, ACCUSED-APPELLANT.

G.R. No. 86390. June 30, 1993

Ponente: MELO, J.

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MELO, J.:

Jaime Rosales and Alberto Pebanco were charged with the commission of the crime of robbery with homicide in an Information which reads:

That on or about the 17th day of July, 1984, in Pasay, Metro-Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Jaime Rosales y Arellano @ Gigi and Alberto Pebanco y Villanueva @ Berto, conspiring and confederating together and mutually helping one another, by means of force and violence employed upon the person of Thelma Padua-Aruelo, in that by repeatedly stabbing with sharp bladed instruments the latter on the vital parts of her body, with intent of gain and against the will and consent of said Thelma Padua-Aruelo, did then and there willfully, unlawfully and feloniously take, steal and rob from the latter, her Walkman Transistor Radio, valued at P1,200.00, more or less, to the damage and prejudice of said Thelma Padua-Aruelo in the amount of P1,200.00, and which radio has never been recovered: that also as a consequence of the force and violence employed by the herein accused upon the person of Thelma Padua--Aruelo, prompted by deliberate intent to kill, the latter sustained mortal wounds which caused her untimely death. (p. 1, Rollo.)

After trial, Branch 109 of the Regional Trial Court of the National Capital Judicial Region stationed in Pasay City, the Honorable Lilia C. Lopez presiding, rendered a decision on July 20, 1988, the dispositive portion of which reads as follows:

WHEREFORE, in view of all the foregoing, the Court finds that the prosecution has proven all the elements of the crime of Robbery With Homicide as defined and penalized in Article 294, par. 1 of the Revised Penal Code and finds both accused Alberto Pebanco y Villanueva and Jaime Rosales y Arellano guilty beyond reasonable doubt of the crime charged in the Information, and hereby sentences them to RECLUSION PERPETUA.

The Court likewise sentences them to jointly and severally indemnify the heirs of the victim Thelma Padua Aruelo the sum of SIXTY THOUSAND (P60,000.00) PESOS for the death of Thelma Padua Aruelo, SIXTEEN THOUSAND AND NINE HUNDRED TWENTY FOUR and NINETY CENTAVOS (P16,924.90) PESOS actual damages incurred for the burial and other expenses and moral damages in the amount of SIXTY THOUSAND (P60,000.00) PESOS and to pay the costs.

Further, for the interest of justice, the Officer in-Charge of this Court is ordered to furnish [copies of this decision to] the Chairman of the National Police Commission, the Station Commanders of both Pasay City Police Station, Southern Police District and the Western Police District for their information and guidance re: alleged threats committed on the person of Jaime Lopeña found dead at Roxas Boulevard near Savory Chicken Restaurant with 45 caliber gunshot wounds allegedly by one Pat. Boyet Ignacio said to be a member of the Western Police District. (pp. 115-116, Rollo.)

From said decision, only Jaime Rosales appealed, assigning the following alleged errors of the trial court:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT JAIME ROSALES OF ROBBERY WITH HOMICIDE DESPITE THE FACT THAT THE ELEMENTS OF SAID CRIME HAD NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN FINDING JAIME ROSALES GUILTY OF THE CRIME CHARGED BASED ON EVIDENCE WHICH ARE MERE SPECULATIONS AND ON THE SUSPICIOUS TESTIMONY OF JAIME LOPEÑA.

III

THE TRIAL COURT ERRED IN CONSIDERING THE EXTRAJUDICIAL STATEMENTS MADE BY JAIME ROSALES AND ALBERTO PEBANCO AS A BASIS OF JAIME ROSALES' CONVICTION. (p. 140, Rollo.)

The facts of the case as established by the evidence are as follows:

On July 17, 1984, at around 5 A.M., prosecution witness Jaime Lopeña and his wife, both cigarette vendors, were seated at the seawall at the corner of Roxas Boulevard and Buendia, Pasay City. At about that time, accused-appellant Jaime Rosales and his co-accused Alberto Pebanco, known to Lopeña, passed by. A few moments later, Lopeña and his wife heard someone screaming for help. Rushing to the place where the screams came from, Lopeña, at a distance of about five meters, saw accused-appellant and Pebanco stabbing a woman, later identified as Thelma Padua-Aruelo. Accused-appellant was stabbing the woman with a knife, while his co-accused hit the woman with a samurai knife. The woman ran but the two assailants continued stabbing her until she crumpled at the foot of a lamp post. Thereupon, accused-appellant and Pebanco took the woman's "walkman" transistor radio and ran towards the reclamation area. Lopeña, overcome with fear, left the place. Some time later, the husband of the victim arrived and brought his wife to the San Juan de Dios Hospital where she was pronounced dead on arrival. When Lopeña returned to the place to sell cigarettes, he saw police investigators at the scene. He gave Patrolman Palma an account of the killing, furnishing the investigator the names and description of the perpetrators of the crime. The following day, July 18, 1984, Lopeña, accompanied by a security guard went to the Pasay City Police Headquarter to give his statement.

On July 20, 1984, Lopeña was approached by a person who introduced himself as Boyet Ignacio, a Manila policeman and a brother-in-law of accused-appellant Rosales, and a lawyer, Atty. Elizalde. Boyet Ignacio Lopeña to name only Alberto Pebanco as the killer of the woman and threatened Lopeña that "something bad" will happen to him if he identifies accused-appellant as one of the killers.

On July 22, 1984, Pat. Boyet Ignacio, Elizalde, and accused-appellant's mother again confronted Lopeña and repeated their threats. Fearful for his life, Lopeña reported the threats to the Pasay City Police Headquarters where he executed a statement concerning the threats.

A follow-up investigation by the Pasay Police team resulted in the arrest and subsequent detention of accused-appellant and Pebanco. At the Police Headquarters, accused-appellant and Pebanco, assisted by a CLAO lawyer, Atty. Abelardo Tomas, freely and voluntarily executed statements admitting and detailing their participation in the killing of Mrs. Aruelo and in robbing her "Walkman".

Sometime in August 1985 or around a year after the incident, Lopeña was a detention prisoner at the Pasay City jail where accused-appellant and Pebanco were likewise detained. Again, accused-appellant and Pebanco threatened Lopeña not to testify against them. After his release from jail and after testifying in this case, Lopeña was found dead from gunshot wounds near the vicinity of Savory Restaurant, not far from the place where Thelma Aruelo's body was found.

The assigned errors can be reduced to only one issue: Whether or not there is sufficient evidence to convict accused-appellant.

Accused-appellant assails the veracity of prosecution witness Jaime Lopeña, pointing out inconsistencies in the testimony of said witness. Accused-appellant invites the attention of the Court to Lopeña's statement on the length of time he had known accused-appellant and his co-accused. In his testimony on September 13, 1985, Lopeña stated that he had known accused-appellant and Pebanco for a year and 6 years, respectively. However, in his testimony of September 17, 1985, he declared that he had known accused-appellant for 10 years. This is a minor inconsistency which does not detract from the force of said testimony. The main fact established by said testimony is that Lopeña had known both accused-appellant and Pebanco for quite a time as to be fully acquainted with them. It is also said that Lopeña initially testified that when he came upon the scene he saw that "the first one who stabbed the woman was Alberto Pebanco;" however, he later testified that when he arrived at the scene he saw that "she was already bloodied" and that "the two men [were] stabbing the victim." We perceive no inconsistency in said testimony. The statements simply mean that when Lopeña arrived at the scene, the victim had already been stabbed and was already bleeding, and that the man then stabbing the victim, was accused Pebanco. Further, accused-appellant asserts that Lopeña cannot even make up his mind as to whether his wife is a cigarette vendor like him or not. This alleged inconsistency is too minor and inconsequential to affect the probative weight of the overall testimony of Lopeña. Appellant then heaps sarcasm on the reaction of Lopeña that, upon hearing the screams of the woman, he ran towards the place where the screams were coming from, thus endangering his life. We agree with the following observation of the Solicitor General in this regard:

Persons react differently to a given situation. The weak-hearted may be immobilized with fear upon hearing the deceased's scream; other[s] may either respond to the scream and immediately render assistance or respond thereto for curiosity, as what Lopeña obviously did in this case which in any case, is a normal and natural human behavior. (p. 12, Appellee's Brief.)

At any rate, the assessment by the trial court of the credibility of witnesses is entitled to great respect and weight, said court having had the opportunity of observing the conduct and demeanor of the witnesses while testifying (*People vs. Sales*, 44 SCRA 489 [1992]). It has been consistently held that the findings of the trial court are generally binding on the Supreme Court (*People vs. Pareja*, 30 SCRA 693 [1969]) unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted (*People vs. Arciaga*, 98 SCRA 1[1980]). We have scrutinized the record and we find no fact of weight or influence that the trial court has overlooked. We, therefore, hold that the testimony of Lopeña deserves full credit. Furthermore, the violent death of Lopeña soon after he gave his testimony in court despite the threats to his life, tragically and starkly confirmed the veracity of his testimony. His willingness to testify in court and perform his civic duty in spite of persistent threats to his life, constitute an irrefragable proof of his credibility and veracity.

Next, accused-appellant contends that the trial court's reliance on his extrajudicial confession is erroneous because said statement was extracted by force and made without the assistance of counsel. The trial court a quo did not rely on the extrajudicial statement of accused-appellant in convicting him. Stated thus the court a quo, "... even disregarding the ... confessions, the testimony of eye witness Jaime Lopeña sufficiently established the guilt of

both accused ..." (p. 22, Decision of the trial court; p. 111, Rollo.)

Then too, we find that the extrajudicial confession of accused-appellant was made voluntarily and freely without the employment of violence on the part of the apprehending and examining police officers. Atty. Abelardo Tomas, a Citizens Legal Assistance Office (CLAO) lawyer then on duty as Inquest Officer at the Pasay City Police Headquarters on July 18, 1984, when accused-appellant and Pebanco gave their extrajudicial statements, testified that his assistance was sought, that he advised them of their constitutional rights, that he was beside accused-appellant when the latter gave his statement, that he cautioned him of his answers to incriminating questions, and that neither accused-appellant nor Pebanco informed him of any maltreatment, torture, or harassment they suffered while in detention. The presence of Atty. Tomas and the advice he gave accused-appellant while the latter was being interrogated are sufficient safeguards against involuntary confession. The testimony of Atty. Tomas did not violate any privileged communication for he reason that Atty. Tomas testified merely on the circumstances involving the occasion when accused-appellant gave his extrajudicial confession and not on the facts of the crime or on matters he received in confidentiality from accused-appellant. The fact that Atty. Tomas did not affix his signature on the extrajudicial statement is of no moment for there is no law requiring the assisting attorney to affix his signature on the extrajudicial statement.

Next, accused-appellant interposes the defense of alibi, asserting that at the time of the killing he was selling scrap iron at Rudy's Junk Shop located at Estrella St., Pasay City. This alibi deserves scant consideration. Alibi is the weakest defense and cannot prevail over positive identification of the accused (*People vs. Esmael*, 37 SCRA 601 [1971]; *People vs. Carandang*, 52 SCRA 259 [1973]). Accused-appellant's protestation that he was somewhere else at the time of the killing cannot prevail over the positive identification made by witness Lopeña, more so because even granting that he was at Rudy's Junk Shop, it was nonetheless not physically impossible for accused-appellant to be at the scene of the crime at the time of its occurrence (*People vs. Esmael*, *supra*; *People vs. Tamasi*, 55 SCRA 153 [1974]), for the junkshop is, as found by the trial court, not far from the scene of the crime.

Finally, as a last attempt at exculpation, accused-appellant contends that there is lack of evidence to sustain the charge of robbery and that the Information failed to "charge each element of the complex crime of robbery with homicide with the same precision as if the two constituent offenses were the subject of separate prosecutions."

The contention that there is no evidence to sustain the charge of robbery is negated by the testimony of Lopeña and that of Leonardo A. Aruelo, husband of the victim. Lopeña testified that after stabbing the victim accused-appellant and his co-accused took the victim's "Walkman" and ran toward the reclamation area, and that later, on that very day, he saw Alberto Pebanco carrying the walkman. The testimony of Lopeña was corroborated by the testimony of Aruelo who testified that his wife's "Walkman" was never recovered.

Concerning the argument that the Information failed to charge the elements of robbery with homicide, it must be emphasized that both the elements of robbery and those of homicide must be alleged in the information and proven at the trial. The elements of robbery are as follows:

- a. That there be (1) personal property (2) belonging to another;
- b. That there is (3) unlawful taking of that property;
- c. That the taking must be (4) with intent to gain; and
- d. That there is (5) violence against or intimidation of any person, or force upon anything.

(The Revised Penal Code by Reyes, L.B., Book Two, p. 581.)

and the elements of homicide are as follows:

- (1) That a person was killed;
 - (2) That the accused killed him without any justifying circumstance;
 - (3) That the accused had the intention to kill, which is presumed;
 - (4) That the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.
- (supra, at p. 457.)

A perusal of the Information clearly shows that the elements of both robbery and homicide are alleged therein. On the first element of robbery, that is, that there be personal property belonging to another, the Information specifically alleged "her Walkman Transistor Radio, valued at P1,200.00, more or less". On the second element that there is an unlawful taking of that property, it is specifically alleged that the accused "did then and there willfully, unlawfully and feloniously take, steal and rob ... her Walkman Transistor Radio ..." On the third element that the taking must be with intent to gain, the information categorically avers "with intent of gain". And on the last element that there is violence against or intimidation of any person, the information explicitly asserts "by means of force and violence employed upon the person of Thelma Padua--Aruelo".

On the first element of the crime of homicide that a person was killed, the information expressly avers that "the latter [Thelma Padua-Aruelo] sustained mortal wounds which caused her untimely death". On the second element that the accused killed the victim without any justifying circumstance, the information does not affirm the existence of any such justifying circumstance. On the third element that the accused had the intention to kill, the information definitely affirms that the accused were "prompted by deliberate intent to kill". And on the last element that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide, the information does not mention any such circumstances.

On the proof of the elements of robbery and homicide, we have already found in our discussion on the evidence that the guilt of accused-appellant for the crime of robbery with homicide has been established by proof beyond reasonable doubt.

However, the civil indemnity of P60,000.00 awarded by the trial court for the death of the victim is beyond the usual amount of P50,000.00 sanctioned by this Court; and seemingly excessive as well is the grant of P60,000.00 for moral damages which we believe should be reduced to P15,000.00. The award by the trial court of P16,924.90 for burial expenses is in order.

WHEREFORE, the appealed decision is hereby **AFFIRMED** except as above indicated.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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