

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNIE LAPAN Y CABRAL, DEFENDANT-APPELLANT.

*G.R. No. 88300. July 06, 1992*

Ponente: ROMERO, J.

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### ROMERO, J.:

In an Information dated October 6, 1987, the accused-appellant Ernie Lapan alias Erning Bulag, Florentino Bracamonte, and Manuel Reginaldo, were accused of Robbery with Double Homicide\* allegedly committed as follows:

"That on or about September 23, 1987, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with intent to gain, did, then and there, wilfully, unlawfully and feloniously enter the house of one Violeta Sayaman Parnala, and once inside, by means of violence and intimidation, rob, take and carry away a necklace worth P660.00 and ring worth P440.00 belonging to one Jay Vee Parnala Custodio, son of Violeta Sayaman Parnala without the consent of the said owner and to his damage and prejudice in the total amount of P1,100.00, Philippine Currency and that on the occasion of the said robbery, and in pursuance of their conspiracy, the above-named accused, with intent to kill, did, then and there, wilfully, unlawfully and feloniously assault, attack, scald and stab Jay Vee Parnala Custodio and Teresita Minorca Rosalinas, hitting and inflicting upon Jay Vee Parnala Custodio 3 incised and 14 stab wounds and upon Teresita Minorca Rosalinas 1 incised and 6 stab wounds on the different parts of their body, which ultimately caused their death.

Contrary to law."[1]

Florentino Bracamonte and Manuel Reginaldo remain at large and cannot be located.

Upon arraignment, Ernie Lapan pleaded "not guilty" and trial commenced.

In due course, a decision was rendered convicting the appellant of the crime charged. The dispositive portion reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Ernie Lapan alias Erning Bulag guilty beyond reasonable doubt of Robbery with Double Homicide and he is hereby sentenced to undergo imprisonment of reclusion perpetua to indemnify the heirs of Jay Vee Parnala and Teresita Rosalinas the amount of P30,000.00 each, to pay unto Violeta Sayaman Parnala, the amount of P1,100.00 corresponding to the total value of the necklace and ring stolen, without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED."[2]

The accused-appellant interposed the present appeal from the judgment of the Regional Trial Court, Branch XVII, Cavite City, finding him guilty as charged.

We adopt the following statement of facts of the Solicitor General as we find it to be accurate and supported by

the records of the case.

"Around 8:30 o'clock on the evening of September 23, 1987, while coming from the Kingdom Hall of the Jehovah's Witnesses at Cavite City, Violeta Parnala and her common-law husband, Clark Din, knocked on the main door of their two-storey house at 8790 Bautista St., Dalahican, Cavite City, but got no response (March 16, 1988, tsn, pp. 5-6). Clark Din then went to the back of the house and stoned the window of the room occupied by Violeta's son, six-year old Jay Vee Parnala Custodio, and the housemaid, Teresita Rosalinas (Ibid.).

As Violeta continued knocking on the front door, Manley Reginaldo suddenly opened it and hurriedly went out, followed by two others, namely Nonoy Bracamonte and appellant (Ibid.). Caught by surprise, Violeta started shouting, prompting the intruders to run away (Ibid.). She then called her husband who immediately ran in pursuit (Ibid., pp. 7-9; March 21, 1988, tsn, pp. 7-8). Failing to catch up with the three, Clark Din returned to the house. He saw Pat. Sahagun and Pat. Punzal standing at the gate, and both accompanied him to the house (March 21, 1988, tsn, pp. 9-10). Inside, the lights were off but the television set was on. They opened the lights as they searched for the housemaid Teresita and Jay Vee (Ibid., p. 11). They discovered that the bathroom door upstairs was locked when they tried to open it, so Clark Din went down to his wife to get the key.

When the door was opened and the light turned on, they saw Teresita, feet and hands tied and mouth gagged, lying dead on the floor, bathed in blood. Jay Vee was found in the washroom, his dead body immersed in a water container (Ibid., pp. 11-14). Per autopsy report, Teresita suffered one (1) incised and six (6) stab wounds, and Jay Vee sustained three (3) incised and fourteen (14) stab wounds (Exhibits "J" and "K")[3].

Before us, the appellant assails his conviction by alleging that the trial court gravely erred in giving more weight and credence to the version of the prosecution and in disregarding the version of the defense, thus finding accused-appellant guilty beyond reasonable doubt of robbery with homicide as charged in the information.[4]

Accused-appellant Ernie Lapan denied his alleged participation in the case and interposed alibi as his defense. He averred that on September 23, 1987, at about 8:20 p.m. he was at the birthday party of Leopoldo Pareja held in the house of his sister-in-law at 777 Dalahican St., Caridad, Cavite City; that he and Guillermo Papa went there at 7:00 p.m.; that he was wearing a muscle shirt stamped Banzai Beach Club; that Leopoldo Pareja, Roberto Mendoza, Eduardo Sagpao, and a certain Junior were also in the party; that drinks were served and he drank beer and lambanog; that he and Guillermo Papa left the party for about five minutes to buy more lambanog; that he knew Florentino Bracamonte and Manley Reginaldo both from Dalahican Street, Cavite City; that they were not in the party and did not belong to his group; that when he left the party at 9:00 p.m. nothing unusual happened; that he proceeded to Aguinaldo monument where he indulged in idle talk with some friends; that thereafter he went home, slept and woke up at 7:00 the following morning; that he went to work but his manager advised him to go home instead because there was no available material; that at about 10:00 a.m. Captain Rebullar came and brought him to the station for interrogation about his alleged participation in the crime where he was pinpointed by witnesses as one of the assailants; and that he reluctantly gave his statement.[5]

The crux of this appeal is the determination as to which should be given more weight: the positive identification of the accused-appellant by two prosecution witnesses or his alibi.

While it is true that "prosecution has the onus probandi of establishing the guilt of the accused beyond reasonable doubt and the weakness of the defense does not relieve it of its duty x x x,[6] in the instant case, we are convinced that the prosecution has proven beyond moral certainty the guilt of accused-appellant. As underscored at the outset, prosecution witness Violeta Parnala, 40 years old, married, businesswoman, and formerly a resident of Dalahican St., Cavite City,[7] positively identified accused-appellant Ernie Lapan as one of the killers of her six-year old son, Jay Vee Parnala Custodio and household helper, Teresita Minorca Rosalinas. She said that upon

arriving home from the Kingdom Hall of Jehovah's Witnesses at around 8:30 o'clock in the evening of September 23, 1987, she and her common-law husband Clark Din knocked on the door. Not getting any response, Clark Din went around the house and stoned the window of the housemaid's room.[8] Meanwhile, she continued knocking on the door and pushing the doorbell when suddenly the front door opened and out rushed three men all of whom she identified as Florentino Bracamonte, Manuel Reginaldo and accused-appellant Ernie Lapan.[9] Caught by surprise and fear, she began shouting, "Magnanakaw," "magnanakaw,"[10] causing her husband and their neighbors Celodonio Furtona and Roger Tupaz to pursue the three men. In her distraught state, Violeta was certainly in no position to falsely accuse Ernie Lapan with an atrocious offense. For in the words of the Court, "the identification of an accused while in a state of shock is worthy of full faith and credence.[11]

Violeta Parnala was able to clearly identify the assailants, namely: Florentino Bracamonte because he is a jeepney driver and she used to take a ride in his jeep in going to market; Manuel "Manley" Reginaldo because he used to buy gold from her; and accused-appellant Ernie Lapan because he is a resident of their place.[12] Besides, the locus delicti was well-lighted by a MERALCO electric post about eight to ten meters away from her house.[13]

Prosecution witness Rosita Ordoñez, 32 years old, married, laundrywoman and a resident of Dalahican Street, Cavite City,[14] corroborated the testimony of Violeta. She narrated that on September 23, 1987, at around 8:30 in the evening while she was washing clothes outside her house, she noticed somebody running behind her. So she turned around but accused-appellant Ernie Lapan who was trying to evade the pursuing Clark Din shoved her against the wall.[15]

Another prosecution witness, Clark Din, 42 years old, married, and jobless,[16] testified that after the chase proved futile, he hurriedly went back home where Patrolmen Sahagun and Punzal, his neighbors, met him at the gate and together, they entered the house.[17] Noticing that the T.V. was on, he turned it off. Nothing was touched in the master's bedroom. Finding the bathroom locked, he unlocked the same and was petrified upon seeing his housemaid bathed in her own blood with her body sprawled on the floor of the bathroom, mouth gagged, and feet and hands tied.[18] Worse, he was shocked to see Jay Vee's head and body immersed in a pail of water.[19]

Promptly, Clark Din asked his neighbor to call a policeman to investigate the gruesome killing. His prompt action which led to the immediate arrest of one of the killers manifests spontaneity of reaction, not one dictated by an ulterior motive but of his earnest desire for the vindication of the deaths of his son and helper.[20]

In addition, the gruesome pictures that were taken hours after the killing eloquently speak for themselves.[21]

We hold that the defense of alibi is devoid of merit.

Alibi is one of the weakest defenses that can be resorted to by an accused,[22] not only because it is inherently weak and unreliable but also because of its easy fabrication without need of much checking or rebuttal.[23]

Times without number, we have consistently stated that for the defense of alibi to prosper, it must be established by clear and convincing evidence that the accused was at some other place for such period of time as to negate his presence at the time and place of the crime committed.[24]

Interestingly, the accused-appellant, 35 years old, single, laborer, and a resident of Dalahican Street, Cavite City,[25] admitted during the cross-examination that the distance between the victims' house where the crime was committed and Leo Pareja's residence where he claimed to be at the time of the macabre killing was "just a walking distance." [26]

In fact, according to accused-appellant's own witnesses, Guillermo Papa and Leopoldo Pareja, Parnala's house is

only 200 meters away and can be easily reached by foot in five minutes.[27]

Likewise, the accused-appellant bared in his Sinumpaang Salaysay dated September 24, 1987,[28] that while the drinking spree went on, he and Guillermo Papa left the party for five minutes to buy bottles of lambanog.

On the contrary, Guillermo Papa and Leopoldo Pareja were one in declaring in their Sinumpaang Salaysay both dated October 30, 1987[29] that the accused-appellant left alone to buy more drinks.

Since the situs of the offense is only 200 meters away from Pareja's house and located on the same Dalahican Street, the accused-appellant could conceivably be at the place of the heinous killing at the time it occurred.

Clearly, therefore, the denial and alibi of the accused-appellant cannot prevail over the positive and unwavering testimonies of Violeta and Rosita pinpointing him as having run away from the scene of the crime.

The aforecited facts of the case yield to the inescapable conclusion that the prosecution's evidence, albeit circumstantial, is sufficient to establish the guilt of the accused-appellant.[29]

The requisites of a valid conviction on the basis of circumstantial evidence are set out in Section 4, Rule 133 of the Rules of Court, thus: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt." [30]

Applying the above requisites and, at the risk of being repetitious, the testimony of Violeta Parnala that she actually saw the accused-appellant together with Manley Reginaldo and Florentino Bracamonte rushing out of her house before the dead bodies of Jay Vee Parnala and Teresita Rosalinas were discovered inside the bathroom; the declaration of Rosita Ordoñez that as the accused-appellant ran from the scene of the crime, he shoved her against the wall; the fact that the blue and white baseball cap of Manley Reginaldo was found at the site of the crime; and the pursuit by Clark Din of the three killers indubitably strengthen the bases for conviction, they being consistent with the hypothesis that the accused-appellant is guilty.

With respect to the charge of robbery, however, we are constrained to agree with the accused-appellant and the Solicitor General that the same has not been independently and adequately proved. While the testimonies of the prosecution witnesses deserve credit as regards the fleeing of the accused-appellant together with Manley Reginaldo and Florentino Bracamonte from the victims' house, no conclusive evidence proving the physical act of asportation thereof by the accused-appellant himself has been presented by the prosecution.[31]

As succinctly stated by the Solicitor General, both Violeta Parnala and Clark Din came to know of the loss of the ring and necklace only after the interment of Jay Vee Custodio. At the time Jay Vee was discovered in the bathroom, Clark Din failed to notice if the ring and necklace were still on his person. While there is testimony that Jay Vee was last seen wearing a ring and necklace at around 6:00 o'clock that fateful evening, the time lag between this time and the discovery of its loss is such that it could well be possible that somebody other than the accused-appellant could have taken them from the body of the deceased.[32]

In the case of *People v. Moro Ambahang*, [33] we held that the testimony of the witness that he found his personal belongings gone when he returned to the scene of the killing, but he did not see who stole said items, the crime of robbery cannot be imputed to the accused since it is not based on substantial evidence but on mere conjecture.

Similarly, we ruled in *People v. Pacala*, [34] that to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven conclusively as any other essential element of a crime. Thus, where there is no conclusive proof that robbery has actually taken place, there can be no evidence for the composite crime of robbery with homicide, but only for homicide which was duly proved.[35]

In the case at bar, we cannot discount the fact that from the time of the discovery of Jay Vee's death up to the time of his interment, several people had already touched his body, not to mention the policemen who took his dead body from the pail and the employees of the funeral parlor. The strong possibility that they had taken the lost jewelry of the boy enhances the element of doubt in favor of the accused-appellant. On this score, the penal laws should be strictly construed against the Government and liberally in favor of the accused-appellant.[36] Hence, the doubt should be resolved in favor of the accused-appellant Ernie Lapan.

The lower court, however, erred in not considering the age of the deceased as an aggravating circumstance.[37] Jay Vee Parnala was barely six years old when ruthlessly stabbed fourteen times before his body was submerged in the pail.

Likewise, the trial court erred in disregarding morada which aggravated the offense inasmuch as the crime took place and was committed by the accused-appellant in the house of the victims. The accused-appellant showed greater perversity in his deliberate invasion of the tranquility and privacy of the Parnala's domicile.[38]

WHEREFORE, the judgment of the lower court is hereby MODIFIED, finding the accused-appellant guilty beyond reasonable doubt of the crime of Homicide as defined and penalized under Article 249 of the Revised Penal Code, and considering the presence of two aggravating circumstances, morada and disregard of age, the accused-appellant is hereby sentenced to suffer an indeterminate penalty of Twelve (12) Years of Prision Mayor to Twenty (20) Years of Reclusion Temporal for the death of Jay Vee Parnala and another indeterminate penalty of Twelve (12) Years of Prision Mayor to Twenty Years (20) Years of Reclusion Temporal for the death of Teresita Rosalinas and to indemnify the heirs of deceased Jay Vee Parnala and Teresita Rosalinas in the amount of P50,000.00 each in line with recent jurisprudence.

With costs.

### **SO ORDERED.**

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

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\* This should be robbery with homicide. The special complex crime of robo con homicido as defined and penalized under Article 294 (1) of the Revised Penal Code does not limit the taking of human life to one single victim. The number of persons killed is immaterial. All homicides or murders are merged in the composite, integrated whole, that is robbery with homicide, as long as all the killings were perpetrated by reasons of or on occasion of robbery (People v. Pecato, No. L-41008, June 18, 1987, 151 SCRA 14). Further, the term "homicide" in robbery with homicide should be understood as a generic term and includes murder (Supra at 228).

[1] Regional Trial Court, Fourth Judicial Region, Branch XVII, Cavite City, 2nd Assistant City Fiscal, Manuel C. Medina; Rollo, p. 7.

[2] Regional Trial Court, Fourth Judicial Region, Branch XVII, Cavite City, Rolando D. Diaz, presiding judge; Rollo, pp. 21-29.

[3] Appellee's Brief, pp. 3-5; Rollo 102.

[4] Appellant's Brief, 6.

[5] Decision, 5-6; Rollo, 25-26.

[6] People v. Pecato, No. L-41008, June 18, 1987, 151 SCRA 14.

- [7] T.S.N., March 16, 1988, 3-4.
- [8] Id., 5-6.
- [9] T.S.N., March 16, 1988, 7.
- [10] Ibid.
- [11] People v. Ampo-an, G.R. No. 75366, July 4, 1990, 187 SCRA 173.
- [12] Id., 34.
- [13] Id., 35.
- [14] T.S.N., April 20, 1988, 3.
- [15] Id., 5.
- [16] Id., March 21, 1988, 3.
- [17] Id., 9.
- [18] Id., 11-12.
- [19] Id., 13.
- [20] People v. Adones, No. G.R. No. 63453, September 24, 1986, 144 SCRA 364.
- [21] Exhibits "B," "C," "D," "E," "F," and "G."
- [22] People v. Devaras, No. L-48009, Feb. 03, 1992.
- [23] Supra, People v. Pecato at p. 26.
- [24] People v. Noriel Fule, G.R. No. 83207, February 28, 1992.
- [25] T.S.N. August 30, 1989, 3.
- [26] T.S.N. October 3, 1988, 7.
- [27] T.S.N. November 8, 1988, 17.
- [28] Exhibits "2" and "3."
- [29] De la Concepcion v. People, G.R. No. 73854, May 9, 1989, 173 SCRA 253
- [30] Supra, People v. Fule at p. 6.
- [31] People v. Espera, G.R. No. 67173, July 31, 1989, 175 SCRA 728.
- [32] Brief, 12-13.
- [33] 108 Phil. 325 (1960).
- [34] No. L-26647, August 15, 1974, 58 SCRA 370.
- [35] Supra; People v. Espera at p. 738.
- [36] U.S. v. Abad Santos, 36 Phil. 243 (1917).
- [37] U.S. v. Butag, 38 Phil. 746 (1918).

[38] People v. Roncal, G.R. No. L-26857-58, October 21, 1977, 79 SCRA 509.

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