

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO GALANZA Y VALDEZ @ ED, NICANOR BAUTISTA @ NICK, HUBERTO ALIMAN Y BISNA @ BERT, REGINO BALANGUIT Y CEBRON @ BUDOY AND L...**

*G.R. No. 89685. November 08, 1993*

Ponente: QUIASON, J.

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**QUIASON, J.:**

This is an appeal from the decision of the Regional Trial Court, Branch 19, Bacoor, Cavite in Criminal Case No. B-85-178, finding Regino Balanguit y Cebron and Leo Robiego y Dulay guilty of Robbery in Band with Homicide under Article 294(1) of the Revised Penal Code and sentencing them, in the absence of any aggravating or mitigating circumstance, "to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim, jointly and severally (1) in the amount of P30,000.00 for the death of Dominador Limbo; (2) P10,500.00 for the money taken from the victim; (3) moral damages of P5,000.00; and (4) exemplary damages of P5,000.00 and to pay the proportionate cost" (Rollo, p. 49).

Lourdes de los Santos would not have met face to face with the killers of her common-law-husband, Dominador Limbo, were it not for the information relayed to her by Capt. Marcos Gotico, Chief of the Investigation Section of the Marikina Police, that suspects in two robbery cases in Marikina could be the same culprits who killed Limbo in Bacoor, Cavite.

Capt. Gotico provided such information after Lamberto Bonahan had confided to him that the group who had been apprehended in Marikina for robbery was also involved in the robbery with homicide in Bacoor. Since the informant did not know the name of the victim in Bacoor, Capt. Gotico wrote a letter addressed to "Sa mga kinaaukulan" in Bacoor.

Consequently, on January 28, 1985, Lourdes de los Santos went to the office of Capt. Gotico. Lourdes was able to identify Regino Balanguit in a police line-up as one of the killers of Limbo (TSN, April 10, 1986, p. 10; TSN, April 22, 1986, p. 13).

On January 31, 1985, Sgt. Monico T. Dulloog, the PC investigator-in-charge, filed a complaint for Robbery in band with Homicide against Eduardo Galanza, Nicanor Bautista, Huberto Aliman, Regino Balanguit and Leo Robiego. In due course, the following information for Robbery in band with Homicide was filed against them:

"That on or about the 16th day of December 1984, in the Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Regino Balanguit and Leo Robiego together with Eduardo Galanza, Nicanor Bautista and Huberto Aliman who are still at-large, then all armed with short firearms conspiring, confederating together and mutually assisting and helping one another, with intent to gain and by means of violence against or intimidation on the person of one Dominador Limbo, did, then and there, willfully, unlawfully and feloniously rob, take and carry away cash money in the total amount of TEN THOUSAND FIVE HUNDRED PESOS (P10,500.00), Philippine Currency, to the

damage and prejudice of the latter in the aforesaid amount and by reason of or on occasion of the aforesaid act, the above named accused Regino Balanguit and Leo Robiego together with Eddie Galanza, Nicanor Bautista and Huberto Aliman who are all still at-large, then all armed with short firearms, conspiring, confederating and mutually helping and assisting one another, with intent to kill and without justifiable cause, did, then and there, willfully, unlawfully and feloniously attack, assault and shoot at one Dominador Limbo hitting the latter on his chest which wound caused the direct and proximate death of said Dominador Limbo, to the damage and prejudice of his heirs" (Rollo, p. 17).

Regino Balanguit and Leo Robiego were brought to trial, while Eduardo Galanza, Nicanor Bautista and Huberto Aliman remained at-large.

The case for the prosecution was established mainly through the testimony of Lourdes de los Santos.

According to Lourdes, Limbo woke up between 3:00 and 4:00 A.M. of December 16, 1984, as he was preparing to go to Batangas on business. Their house in Barangay Habay, Bacoar, Cavite, had a canteen. The door was lighted by a fluorescent bulb, its interior by a 40-watt bulb and its balcony by a 20-watt bulb. There was an electric lamp on a post near the house.

When someone knocked at the door, Limbo asked who it was and someone replied, "Pagbili ng sigarilyo." Limbo then asked what brand of cigarette the man wanted to buy. When he heard no response, he opened the door. Balanguit and Robiego, armed with guns, entered the canteen saying, "Hold up ito. Huwag kayong kikilos ng masama." Galanza, in the meantime, stayed outside. Limbo told the two, "Wala kaming pera." He was then shot on the chest at short range. He fell on the floor, screaming and writhing in pain. Robiego pointed a gun at him and told him to keep quiet.

Robiego then hurriedly tied the hands and feet of Limbo with a nylon cord while Balanguit, with his gun pointed at Lourdes, ordered her to get their money. Frightened, Lourdes got the P10,500.00 wrapped in a plastic bag, which was kept in a tool box placed underneath the door. She gave the money to Robiego but as the latter grabbed the plastic bag from her, he accidentally tore it. The peso bills were scattered on the floor. After picking up the money, Robiego and Balanguit fled.

Limbo died on the spot. His body was brought to the National Bureau of Investigation (NBI) for autopsy.

Dr. Ricardo G. Ibarrola, the NBI Medico-Legal officer who conducted the autopsy and prepared the autopsy report, (Exh. "F"), said that Limbo could not have survived the single gunshot wound because three big blood vessels near the heart were damaged.

The ballistics report, (Exh. "G"), states that the bullet marked "DL", which was recovered from Limbo's body, is a caliber .38 bullet "fired through the barrel of a caliber .38 firearm having six (6) lands and six (6) grooves, twisting to the left."

The defense was anchored on alibis and denials.

Robiego testified that in the early morning of December 16, 1984, he was in his house in Sampaloc, Manila and therefore it was impossible for him to have perpetrated the crime. He admitted having executed a statement owning commission of the crime while detained at Imus, Cavite. However, he alleged that he was only forced to sign it as he could no longer endure the torture inflicted on him by the PC soldiers.

For his part, Balanguit testified that when the crime was committed, he was in his hometown at Laoang, Samar. He also claimed that during his detention at the provincial jail in Trece Martires City, he was forced to sign a document written in Tagalog, a dialect he was not fully conversant with.

On March 28, 1988, the trial court promulgated its decision finding both Robiego and Balanguit guilty of the crime as charged.

Robiego and Balanguit interposed the instant appeal.

Balanguit specifically assails the trial court's ruling that appellants were guilty of Robbery in band with Homicide when only three persons allegedly participated in its commission. He also criticizes the trial court for giving credence to the lone prosecution witness, a mere elementary school graduate, who "succumbed to the suggestion given by the letter of Capt. Marcos Gotico that the persons who robbed their canteen and shot her husband were those apprehended by the Marikina Police in a similar robbery-hold-up" (Brief for Balanguit, p. 12; Rollo, p. 88).

The resolution of this case depends upon the credibility of the sole witness. Since this Court did not have the opportunity to see such witness testify and therefore gauge her credibility while on the stand, the general rule that the findings of the trial court on credibility should be given much weight must be applied (*People v. Atilano*, 204 SCRA 278 [1991]; *People v. Lardizabal*, 204 SCRA 320 [1991]).

While there are exceptions to the general rule, none exists in this case. Moreover, there is no evidence to indicate that the lone prosecution eyewitness, Lourdes de los Santos, had any motive to falsely testify against appellants (*People v. Belibet*, 199 SCRA 587 [1991]).

Lourdes had a good look at the two appellants as she was only about half a meter away from them when they entered her house. There was sufficient light for her to see their faces clearly. As this Court has time and again held, where conditions of visibility are favorable and the witness did not appear to be biased against the accused, her assertions as to the identity of the malefactors should normally be accepted. This is more so when the victim is the witness herself because a victim usually strives to remember the faces of the malefactors (*People v. Lacao, Sr.*, 201 SCRA 317 [1991]).

Balanguit points out that while on the witness stand, Lourdes categorically pointed at him as the one who shot Limbo, but in her sworn statement of January 29, 1985, she failed to identify the person who actually fired the shot. This alleged inconsistency, however, is more apparent than real. While at the stand she categorically pointed at Balanguit as the one who shot Limbo, but in her sworn statement she said that she was not looking when all of a sudden someone shot her husband ("Noong nakalingat ako bigla na lang may bumaril sa asawa ko"). However, in the same sworn statement, Lourdes said that she was sure Robiego and Balanguit were the ones who entered the canteen ("ang natitiyak ko lang po ay itong dalawang iyan ang siyang pumasok sa loob"). Under this circumstance, anyone of the two could have been the killer. The conclusion that Balanguit, not Robiego, was the one who fired his gun may be deduced from their positions vis-a-vis the victim and their actions immediately after the shooting. Besides, minor inconsistencies do not reflect on a witness' credibility as long as the testimony manifests a ring of truth (*People v. Arbolante*, 203 SCRA 85 [1991]).

What should concern the Court in this case is whether or not Lourdes had positively identified the accused. There is no doubt that she did. She remained unflinching even on cross-examination in pointing at appellants as the intruders who killed her common-law-husband. In the face of her positive identification of the appellants as the culprits, their respective alibis dwindle into nothingness (*People v. Arroyo*, 201 SCRA 616 [1991]). This defense suffers from an inherent infirmity because it is easy to fabricate (*People v. Bugho*, 202 SCRA 164 [1991]).

Another aspect which erodes appellants' attack on Lourdes' testimony as to who killed Limbo is the fact that conspiracy had been proven beyond reasonable doubt in this case. This is shown by the evidence that both appellants were armed with handguns when they entered the house at an ungodly hour and announced the hold up, while the third member of the group acted as a look-out. They helped each other pick up the scattered money bills

and they fled the scene of the crime together. Even assuming that Lourdes mistook Balanguit as the one who fired the fatal shot at Limbo, Balanguit cannot escape culpability. In conspiracy, the act of one is the act of all and therefore, a showing as to who actually killed the victim is not required (*People v. Alvarez*, 169 SCRA 730 [1989]).

Appellants' denials that they perpetrated the crime were correctly disregarded by the trial court. Being unsubstantiated by clear and convincing evidence, not to mention that they are negative in character, such denials are self-serving which deserve no evidentiary weight unlike the testimony of the sole eyewitness who testified on affirmative matters (*People v. Marti*, 193 SCRA 57 [1991]).

The trial court, however, incorrectly characterized the crime as Robbery in band with Homicide. It has not been indubitably shown by the prosecution that more than three persons perpetrated the crime. Under Article 14(6) of the Revised Penal Code, a crime is deemed committed by a band ("cuadrilla") when more than three armed malefactors acted together in the commission of the offense. In this case, Lourdes only mentioned three culprits, namely: Galanza, Robiego and Balanguit.

The crime committed is therefore the special complex crime of Robbery with Homicide under Art. 294 (1) of the Revised Penal Code. All the elements of the crime of robbery, namely, intent to gain, unlawful taking of personal property belonging to another and violence against or intimidation of a person (Art. 293, Revised Penal Code) have been duly proven in this case. There is no doubt that the appellants' intention was to rob Limbo as they even informed him that it was a hold up. In the course of the robbery, however, they shot and killed him. As there was a direct relation and intimate connection between the robbery and the killing, the special complex crime of Robbery with Homicide was committed (*People v. Ponciano*, 204 SCRA 627 [1991]).

Robbery with Homicide is punishable by reclusion perpetua to death under Article 294(1) of the Revised Penal Code. Inasmuch as there are no mitigating or aggravating circumstances proven in the commission of the crime, the lower court correctly imposed the lesser penalty of reclusion perpetua (Article 63(2) Revised Penal Code).

In line with recent jurisprudence (*People v. Callao*, 206 SCRA 420 [1992]), the indemnity imposed by the trial court for the death of Dominador Limbo in the amount of P30,000.00 should be increased to P50,000.00.

WHEREFORE, the decision of the trial court is AFFIRMED, with the modifications that: (1) the crime committed be designated as Robbery with Homicide under Article 294(1) of the Revised Penal Code; and (2) the indemnity to the heirs of the victim be increased to P50,000.00. Costs de oficio.

**SO ORDERED.**

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

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