

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EVANGELINE NUNAG, TIRSO V. DELAS ARMAS AND ARNEL ZAFRA,
ACCUSED. EVANGELINE NUNAG, ACCUSED-APPELLANT.**

G.R. No. 92570. April 22, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Evangeline Nunag and her two co-accused, Tirso delas Armas and Arnel Zafra, were charged with Robbery with Homicide and Less Serious Physical Injuries before the Regional Trial Court of Malolos, Bulacan, Branch 6, in an information which reads:

"The undersigned Asst. Provincial Fiscal accuses Evangeline Nunag, Tirso V. delas Armas and Arnel Zafra of the crime of Robbery with Homicide and Less Serious Physical Injuries, defined and penalized under the provisions of Art. 294, par. 1 and 3 of the Revised Penal Code, committed as follows:

That on or about the 22[nd] day of February, 1988, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation of persons, take, rob and carry away with them cash in the sum of P3,063.35 belonging to one Agueda Santos and Epifania Santos, to the damage and prejudice of the said owners in the same amount of P3,063.35; and that by reason or on the occasion of the commission of the said robbery, the above-named accused, armed with a piece of drift wood and a knife, and with intent to kill said Agueda and Epifania Santos, did then and there wilfully, unlawfully and feloniously attack, assault and strike with the said weapons the said Agueda Santos and Epifania Santos, inflicting on the said Agueda Santos serious physical injuries which directly caused her death and on the said Epifania Santos less serious physical injuries which required medical attendance and incapacitated her from performing her customary labor for a period of not more than thirty (30) days. (Rollo, pp. 20-21)

Nunag and delas Armas pleaded "not guilty" to the charges. Zafra was not arraigned since he remained at large.

Delas Armas later withdrew his earlier plea and entered a plea of guilty to the crime charged. Consequently, the trial court, on July 13, 1988, rendered a partial judgment finding him guilty of robbery with homicide and less serious physical injuries. (Records, pp. 63-64) In view of his minority, however, the lower court suspended the imposition of his sentence and instead ordered his commitment to the Juanita L. Nepomuceno Rehabilitation Center at Magalang, Pampanga for rehabilitation purposes pursuant to Article 192 of the Child and Youth Welfare Code.

During trial, Nunag filed a motion to subpoena Tirso delas Armas to compel the latter to testify in her behalf. This motion was favorably acted upon by the trial court in its Order of August 14, 1989 (Records, p. 232) notwithstanding the prosecution's vehement opposition thereto.

The prosecution presented four witnesses, whose testimonies, as summarized in the trial court decision, are set

forth below:

"1. Leonides Mateo who testified that in the morning of February 22, 1988, when she went to the house of spouses Carlos and Agueda Santos to do her usual chore, she being the laundrywoman of the spouses Santos for about 10 years already, it was Tirso delas Armas (there was already a partial judgment as far as this accused is concerned) who opened the steel gate for her and thereafter she proceeded to the sewing room just beside the house and started ironing clothes; that she saw Evangeline Nunag, Tirso delas Armas and their companion, Arnel Zafra, who is still at large to date, were allowed entrance into the house by the victim Mrs. Agueda Santos; that previous to that, Tirso told her that his two companions were seeking employment from the Santos; that while the three accused were inside the house of the Santos to partake of the breakfast offered to them by Mrs. Santos, she heard the voice of Mrs. Agueda Santos shouting 'Tirso, naku, Tirso' twice and when she peeped through the open jalousie window she saw Agueda Santos bloodied and sprawled on the floor with accused Nunag on top of her in a straddling position; that Tirso poked a knife at her and brought her to the kitchen where she was locked in and Tirso told her to stay put and not to try to escape; that while inside the kitchen she heard Fanny, the daughter of Mrs. Santos, shouting for help; that she opened the back door and went out and she saw Mrs. Santos, through the open window, holding her forehead and trying to contact somebody in the telephone; that she asked Mrs. Santos whether the group of Tirso had already left and when she received affirmative answer she shouted at Fanny to open the door so that they could bring Mrs. Santos to the hospital; that when she entered the house she saw knives on top of the table and a wooden figurine broken into two; that neighbors brought Mrs. Santos to the hospital.

2. Pat. Godofredo Glorioso who testified that on February 22, 1988, he received a call that a robbery was taking place at the residence of the Santos and when they arrived at the scene, Mrs. Santos was already being brought to the hospital and the daughter, Fanny, told them that it was Tirso and his companions who were the malefactors; that during their search they saw a girl running towards the open field and they ran after her and found her inside a nipa hut with her left wrist slashed; that the girl was accused Nunag and after being treated in the hospital, they brought her to the police station and they discovered money in the pockets of the jacket she was wearing; that they were able to recover the knives and the wooden figuring used by the robbers and also I.D. cards from the person of Nunag and a white purse containing coins of various denominations in a place near the house of the Santos; that they investigated Nunag and she told them that her companions were Tirso delas Armas and Arnel Zafra; that he learned later that Mrs. Santos was transferred to another hospital in Manila where she expired.

3. Carlos Santos who testified on the fact of death of his wife and the amount of money recovered by the police as well as the expenses incurred during the hospitalization of his wife.

4. Dr. Benito Caballero who testified that he was the one who conducted the autopsy on the corpse of Mrs. Santos and he found three wounds inflicted on the head of the victim; that the cause of death was that victim was hit on the head by a strong object, either a piece of wood or iron and that there was a massive external, internal and intracranial hemorrhage due to multiple lacerated wounds in the head and fractured skull, among others; that he is positive that the wounds were inflicted by a hard object and not a bladed instrument. (Rollo, pp. 23-24)

Meanwhile, the defense version, as summarized in the trial court decision, is as follows:

"For the defense, accused Evangeline Nunag testified that although she was with Tirso delas Armas and Arnel Zafra in going to the house of the Santos, she did not participate in any wrong doing committed inside the Santos' abode; that she just accompanied Tirso who told her that he would just get his clothes from the house of the Santos; that it was Tirso who hit Agueda Santos with a figurine while Arnel Zafra was holding the hands of the old woman; that she tried to prevent the two from hurting Mrs. Santos but Tirso just pushed her away; that when the door opened she ran away from the house until she reached a hut in the middle of the rice field and because she was losing hope, she slashed her wrist; that the jacket she was wearing belonged to

Tirso and she did not know that it contained money; that from the time she was investigated by the police up to the time that the case was tried in Court, she did not make any written statement about what she testified to when she took the witness stand.

Tirso delas Armas, on the other hand, testified that while he was talking with the maid, Nunag and Zafra entered the house; he saw Nunag forcibly holding the old woman by the shoulder and the old woman whose head was bloody was trying to free herself from Nunag's hold; that he went upstairs and his companions followed him and then they noticed that there were already several persons in the vicinity so what they did was to run and scale the wall of the Santos house." (Rollo, pp. 24-25)

The trial court thereafter rendered another partial decision, the dispositive portion of which reads:

"WHEREFORE, premised from the foregoing, this Court finds Evangeline Nunag guilty beyond reasonable doubt of the crime charged and hereby sentences her to suffer the penalty of RECLUSION PERPETUA. She is likewise held jointly and solidarily liable with her co-accused Tirso dela Armas to indemnify the Heirs of the victim Agueda Santos:

- (a) P30,000.00 as compensatory damages;
- (b) P110,000.00 as actual damages; and
- (c) the costs of the suit.

As far as accused Arnel Zafra is concerned, let the record of the case be sent to the archives, without prejudice to its reinstatement once the said accused shall have been apprehended." (Rollo, pp. 25-27)

The appellant contends that the trial court erred:

1. in giving credence to the testimonies of Tirso delas Armas and Leonides Mateo;
2. in not giving weight to the appellant's claim of innocence and
3. in finding that conspiracy attended the commission of the crime.

The appellant alleges that Tirso delas Armas' testimony was fabricated and forced upon him. The Court finds no substance to this charge. Tirso delas Armas was never presented as a witness for the prosecution. In fact, it was appellant Nunag who insisted in utilizing him as a defense witness and it was the prosecution who vigorously objected to his testifying. That delas Armas did not testify according to what the appellant expected does not indicate in the least bit that his testimony was concocted by the prosecution.

While maintaining that Tirso delas Armas' testimony was fabricated, the appellant nevertheless pits the former's testimony against that of the main prosecution witness, Leonides Mateo, with a view to discrediting the latter. Delas Armas stated that he saw the appellant holding the victim by the shoulder (tsn., June 20, 1988, p. 4) while Mateo testified that she saw Nunag straddling the victim's back (tsn, June 20, 1988, p. 24). The records reveal, however that both testimonies, with respect to Nunag's position vis-a-vis the victim, are consistent with each other. When Mateo demonstrated what she saw, the following transpired:

"Atty. Roxas:

May we put on record the position of the witness while demonstrating the position of Evangeline Nunag.

Interpreter:

Witness was trying to imitate the jockey boarding on his horse. (Underlining supplied)" (tsn, June 20, 1988, p. 38)

As to delas Armas' testimony on re-direct examination:

"Atty. Liwanag:

Will you please show to the Hon. Court the position of Evangeline Nunag and the position of the woman while she was holding the shoulder. I will suggest that we use a person.

"Court:

Use a male person.

Atty. Liwanag:

We will now describe the position of Evangeline Nunag as acted upon by the accused that Agueda was then sitting on the stair, Evangeline Nunag at the left side of the body of Agueda holding with two hands the two shoulders.

Court:

He was riding on the back already. That is what he demonstrated. (Underlining Supplied)" (tsn, September 8, 1989, pp. 203-204)

Both testimonies indisputably show that appellant Nunag was sitting astride the victim's back while holding her by the shoulders.

The appellant further insists that she has no knowledge of the crime perpetrated by delas Armas and Zafra. The evidence shows otherwise.

Patrolman Glorioso, a prosecution witness, testified that he saw appellant running away from the scene of the crime. The appellant avers that she ran away because the victim requested her to call a policeman but since she did not know where the municipal hall is, she just kept on running. Her statement is hard to believe considering that the victim's house is located within the town proper, just opposite the Mendoza Hospital, and had the appellant really been bent on seeking succor, she would have exited through the front gate and asked for help at the hospital or from the converging crowd that was alerted by the victim's screams. The appellant did the opposite: she, together with her co-accused, scaled the wall and fled towards the ricefield where there was small chance of running into someone.

When Glorioso, Pfc. Herrera and some barrio folks chased Nunag, they finally caught up with her and found her lying inside a nipa hut in the middle of a ricefield, her left wrist slashed. This Court shares the lower court's belief that the appellant's act of slashing her wrist was caused by desperation, fear and remorse.

Several paper bills, worth P2,317.00 were recovered from the black jacket that was tied to the appellant's body. (tsn, July 13, 1988, p. 6) The victim's husband, Atty. Carlos Santos, testified that these bills were part of their inventory. (tsn, July 28, 1988, p. 12) The appellant claims that the jacket was not hers but belonged to Tirso delas Armas who requested her to hold the jacket, and that she did not know there was money inside. (tsn, May 10, 1989, p. 11) We pay short shrift to such declaration. Aside from the aforementioned paper bills, two identification cards, a residence certificate and Social Security System cards all bearing the appellant's name, and a photograph of the appellant were found inside the pocket of the jacket. If the jacket was Tirso's, then why would her personal papers be inside Tirso's jacket? Moreover, Leonides Mateo testified that prior to the assault upon the victim, the appellant was wearing a jacket. (tsn, June 20, 1988, p. 11)

That conspiracy attended the commission of robbery with homicide may be deduced from the malefactors' concerted acts which betray their criminal design and unity of purpose. While their real motive was to commit

robbery, they pretended to be looking for jobs with the Santos. The assailants executed their dastardly acts only after the victim's husband left the house. They cut the telephone line. The appellant sat astride the victim's back, most probably to prevent the latter from fighting back and seeking help, while Tirso delas Armas poked a knife at Leonides Mateo and locked her inside the kitchen, presumably to thwart any attempt to escape and seek help. The three accused took away with them paper bills and coins belonging to the victim.

Who among the three offenders actually inflicted severe blows to the victim which ultimately caused her death is not clearly shown. But conspiracy having been established, they are all deemed principals in the commission of robbery. The rule is whenever homicide has been committed as a consequence or on occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide. (People v. Veloso, 112 SCRA 173 [1982]; People v. Bautista, 49 Phil. 389 [1926]; and US v. Macalalad, 9 Phil. 1 [1907]).

All told, the Court finds that the trial court did not err in pronouncing the culpability of the appellant.

We disagree, however, with the designation of the crime as robbery with homicide and less serious physical injuries. The records reveal that the alleged victim, Epifania Santos, did not suffer less serious physical injuries. The testimony of Patrolman Glorioso is as follows:

"Atty. Roxas:

You said when you met Epifania Santos, the daughter of Mr. Carlos Santos, she was bloodied. Did you come to know why?

Patrolman Glorioso:

She told me that the robbers hit her mother Agueda Santos and considering that she was the one who personally aided her mother, the blood of her mother spilled her dress." (tsn, July 7, 1988, p. 8)

Even if less serious physical injuries were really inflicted and proved, there is no special complex crime as robbery with homicide and less serious physical injuries. The offense is denominated as robbery with homicide regardless of the number of homicides or injuries committed. These other circumstances merely serve as generic aggravating circumstances which can be offset by other mitigating circumstances. (People v. Pedroso, 115 SCRA 599 [1982])

WHEREFORE, the appealed decision is **AFFIRMED** but **MODIFIED**. The appellant is hereby found guilty of the special complex crime of robbery with homicide. The award denominated as compensatory damages and representing indemnity for the victim's death is increased from **THIRTY THOUSAND PESOS (P30,000.00)** to **FIFTY THOUSAND PESOS (P50,000.00)**.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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