

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO APOLINARIO AND ANTONIO RIVERA, ACCUSED/APPELLANTS.

G.R. No. 97426. June 03, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Romeo Apolinario and Antonio Rivera appeal from a decision of the Regional Trial Court of Capiz, Roxas City, Branch 10, finding them guilty of robbery with homicide.

Appellants were charged in an information dated 13 March 1990 which read as follows:

"The undersigned Assistant Provincial Prosecutor, with prior authority and approval of the Provincial Prosecutor, accuses ROMEO APOLINARIO, ANTONIO RIVERA and MARIO SION of the crime of ROBBERY WITH HOMICIDE, committed as follows:

That on or about October 9, 1989 at around 2:00 in the morning, at Sitio Agbobolo, Brgy. Agdahon, Cuartero, Capiz, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos and with intent of (sic) gain, conspiring, confederating and mutually helping one another, by means of force upon things entered the house of the Spouses SIMON HIBALER and RESTITUTA HIBALER through the window jealousy (sic) and once inside, by means of violence and intimidation did then and there wilfully, unlawfully and feloniously take, steal and carry away the following personal properties, to wit:

1. Cash money in the amount of P6,000.00
2. Silver coins, genuine, in the amount of 500.00
3. Radio Cassette valued at 3,000.00
4. Assorted jewelries (sic) valued at 5,000.00
5. Unused clothes valued at 1,000.00
6. Blankets valued at 750.00

Total P18,250.00

to the damage and the prejudice of the said spouses Simon Hibaler and Restituta Hibaler as owners thereof against their will and consent in sum total of Eighteen Thousand Two Hundred Fifty (P18,250.000) Pesos, Philippine Currency; that on the occasion and in the furtherance of the robbery, Simon Hibaler was boloed several times causing death thereafter.

ACTS CONTRARY TO LAW with the aggravating circumstance of use of superior strength and nighttime."^[1]

Only Romeo Apolinario and Antonio Rivera were arraigned, because Mario Sion was at large and so far as the records of this case are concerned, remains at large still.

Upon arraignment, appellants pleaded not guilty. After trial, the court a quo found both appellants guilty in a Decision dated 31 October 1990 of the crime of robbery with homicide and sentenced them to suffer reclusion perpetua and to indemnify, jointly and severally, the heirs of the deceased Simon Hibaler in the amount of P30,000.00, plus the sum of P14,650.00 which represented the total value of the personal properties and money which the accused took from the home of the deceased.

The prosecution presented Restituta Hibaler, the widow of the deceased victim Simon Hibaler, and Ernesto Biboso, the next-door neighbor of the Hibalers, whose testimony can be summarized in the following terms:

Around 2:00 o'clock in the morning of 9 October 1989, Restituta Hibaler and her husband, Simon Hibaler, were awakened by three (3) persons who had broken into their house. Simon got his flashlight and directed its beam towards the three (3) intruders. Simon and Restituta recognized the intruders and they were Romeo Apolinario, Antonio Rivera and Mario Sion. Simon exclaimed in the local dialect "kamo man lang gali" ("it was you all along"). The intruders promptly attacked Simon with their bolos. Restituta pleaded for her husband's life. In response, one of the intruders struck Restituta on the face; she fell down and lost consciousness. When she regained her senses, she saw appellant Romeo Apolinario taking clothes from their respective hangers while the other two (2) were ransacking a trunk. When they finished, the three (3) went down to the first floor, to the dining room, lit a lamp and helped themselves to some coffee. Restituta said she saw the appellants on the first floor drinking coffee through a hole she had made on the sawali floor.

After the intruders had left, Restituta went to the balcony and called out for her son, Pedro Hibaler, and a neighbor, Ernesto Biboso. Ernesto arrived ahead of Pedro, and upon Restituta's request, went to the second floor and there found Simon bleeding profusely. Ernesto held the wounded man in his arms and asked him what had happened. Simon told Ernesto that Romeo, Antonio and Mario had attacked him. When Pedro arrived, he too asked his father what had happened but by then Simon was already very weak. Pedro Hibaler and Ernesto Biboso put Simon on a hammock in order to bring him to the hospital. Simon, however, died before they could leave. The son, Pedro Hibaler, with three (3) barangay councilors, went to the police station to report the incident. Pedro then went back to his parent's house, accompanied by policemen. Simon's body was brought to the municipal hall where an autopsy was performed.

The prosecution also presented Dr. Donanito Hijosa who had carried out the autopsy examination. Dr. Hijosa identified his autopsy report which listed the injuries sustained by Simon as follows:

- "1. Clean cut edges wound, spindle shaped, 1/2 inch x 1/4, skull deep at right frontal area;
2. Clean cut edges, spindle shaped, 1/2 x 1/4 inch, skull deep at right temporo frontal.
3. Clean cut edges wound, spindle shaped, 3/4 inch by 1/4, skull deep at medial frontal area.
4. Left infraorbital blackish hematoma 1 inch x 3/4.
5. Blackish hematoma left ear middle of pinna, 1/2 x 1/4 circular in form.
6. Blackish hematoma on entire lower lip.
7. Reddish hematoma left parasternal area 4th intercostal (sic) space circular in from, 1 inch in diameter.
8. Clean cut edges wound, spindle shaped, left hand lateral area dorsal 4 1/2 inches by 1 1/2 inches, fracturing the underneath (sic) ybones.
9. Clean cut edges wound, spindle shaped, left hand medial area, dorsal, measuring 7 inches x 1 1/2 inch (sic) fracturing the underneath (sic) bones.

10. Clean cut edges wound, spindle shaped, 3 inches long avulsing the little finger and middle third of the ring finger.
11. Clean cut edges wound, spindle shaped, 2 inches x 3/4, skull deep, temporo occipital area.
12. Clean cut edges wound, spindle shaped, 2 inches x 3/4, fracturing the skull at supra occipital area.
13. Clean cut edges wound, spindle shaped, 2 1/2 inches x 3/4, chipping off a portion of the skull and injuring the underneath (sic) brain tissue 1 1/2 inch deep at parieto-occipital area.
14. Clean cut edges wound, spindle shaped, 2 1/2 inches by 1/2, transverse skull deep at occipital area.
15. Abrasion 1 1/2 inches long at left suprascapular area, diagonal in direction.
16. Abrasion 3 inches long at left lumbar area, diagonal in direction.
17. Clean cut edges wound, spindle shaped, 3 inches x 1/2 inch at right lumbar area, muscle deep, level of T 12.
18. Clean cut edges wound, spindle shaped, 5 inches x 1 inch x 4 inches deep at right lumbar level of L-4, fracturing the vertebra at this level.[2]

Pedro Hibaler was also presented by the prosecution, as a rebuttal witness. Pedro testified that when he first reported the crime to the police, he did not reveal the identities of the three (3) assailants of his father, for the reason that policeman Anacleto Habana was present at the police station, and Habana's stepson was married to the daughter of one of the appellants, Romeo Apolinario. Pedro stated that he feared that appellants might disappear completely if he revealed their identities in the presence of Pat. Habana.

For its part, the defense presented appellants Romeo Apolinario and Antonio Rivera. The two claimed that from the 7th to the 9th of October 1989, they were in the house of one Estelita Dayao at San Roque Street, Roxas City. They testified that they went to Roxas City to attend the "Halaran" celebration and to buy fish which they proposed to resell in Maindang, Cuartero, Capiz. They said that they left Roxas City only on 9 October 1989 at around 4:00 o'clock in the morning and arrived in Maindang, Cuartero, around 8:00 o'clock in the morning of the same day. Estelita Dayao testified for the defense and corroborated appellants' claim that they had stayed in her house from 7 October to 9 October 1989.

Appellants are now before this Court raising the following as alleged errors of the trial court:

1. The trial court erred in relying on the testimony of Restituta Hibaler and Ernesto Biboso despite the incredible and doubtful nature of such testimony;
2. The trial court erred in finding appellants guilty beyond reasonable doubt of the crime charged despite the failure of the prosecution to positively identify accused-appellants; and
3. Granting that accused-appellants were indeed positively identified as the doers of the crime, the trial court erred in convicting accused-appellants despite the failure of the prosecution to prove robbery as conclusively as any other essential element of the crime.[3]

Turning to the first and second assignments of error, we note that Restituta Hibaler testified affirmatively and firmly that Romeo Apolinario, Antonio Rivera and Mario Sion had broken into their house, savagely attacked her husband Simon and then proceeded to ransack their house and take their money and other personal property:

"Q: Where were you in the evening of October 8, 1989?

A: I was in our house.

Q: Where was your house situated?

A: At Sitio Agbobolo, Brgy. Agdahon, Cuartero, Capiz.

Q: What were you doing that evening of October 8, 1989?

A: I was sleeping.

Q: Please tell the court if you can remember about what time did you wake up from your sleep?

A: At 2:00 in the morning.

Q: You mean it was already October 9, 1989?

A: Yes, sir.

Q: Please tell the court what woke you up?

A: I was surprised and I was awakened by some persons who woke up my husband.

Q: What did these persons tell your husband?

A: Wake up.

Q: And what did your husband do?

A: He woke up and he hold (sic) a flashlight and talk (sic) to those persons.

x x x x x x x x

Q: When the flashlight was directed at those men have you seen those men?

A: Yes, sir.

Q: Did you recognize them?

A: Yes, sir.

Q: Who were they?

A: Romeo Apolinario, Antonio Rivera and Mario Sion.

Q: These persons are inside this courtroom please identify each of them?

A: There (witness pointing to those sitting on the bench).

Q: Please identify the persons closed to you.

A: Antonio.

Q: What about the person near him?

(Witness identified that person as Antonio Rivera and the second person give his name as Romeo Apolinario.)

Q: What about this Mario Sion, is he inside the courtroom?

A: No, sir.

Q: After your husband directed the beam of his flashlight to these three persons, what happened?

A: They took hold of my husband and they asked where is the money.

Q: And what did your husband do?

A: My husband said, 'it is you all along.' (kamo man lang gali.)

Q: After he said that, what happened?

A: I then shouted, 'do not bolo him, do not bolo him and immediately she was being boxed

(witness pointing to her person to the bridge of her nose.)

Q: Do you still have a scar to (sic) your nose?

A: Yes, sir.

Q: Please point that to the court?

A: Witness pointed to her nose.

Q: What happened after that, what happened to you after you were hit on the bridge of your nose?

A: I fell on the floor face up and I fainted and I do not know anything.

x x x x x x x x

Q: When you recovered consciousness, what did you see?

A: When I recovered consciousness I look (sic) up and I saw this Romeo getting those clothes being hanged in a hanger.

Q: When you say Romeo was he the accused you identified?

A: Yes, sir.

Q: And what about the companions of Romeo, where are (sic) they at the time?

A: They were there inside the room, I saw the companions of Romeo getting the contents of the trunks.

Q: Who were they?

A: Antonio and Mario.

Q: How were you able to recognize them?

A: I know them because they have a flashlight and I could see them.

Q: How about this Romeo earlier, how were you able to recognize him getting from those hanger? (sic)

A: He was getting those clothes hanging in the hanger using his flashlight and I saw his face.

Q: What about your husband, where was he at that time?

A: He was lying on the floor where he was boloed.

Q: How long did these three men stayed (sic) inside that room where you and your husband were sleeping?

A: About one (1) hour or more.

Q: After one hour where did these three persons go?

A: They went down from the second floor and drunk (sic) coffee.

Q: How do you know that?

A: Because I heard the clinking of the spoon.

Q: And what did you do when you heard the clinking of the spoon?

A: I heard the moaning of my husband I crawled towards him and told him to keep quiet because they are (sic) still downstairs drinking coffee.

Q: After that, what?

A: I then crawled near the dining room and I made a small hole and I peep (sic) through it and I saw Antonio, Romeo and Mario drinking coffee.

Q: How did you know that when it was nighttime?

A: Because they lighted the lamp and I could see them.

Q: How long did they stayed (sic) in that dining room downstairs drinking coffee?

A: Maybe ten (10) minutes.

Q: After ten minutes where did they go?

A: They went home.

Q: What did you do after they left your house?

A: I look (sic) at them when they went away and then I returned to the place where my husband was lying on the floor and I asked my husband if he has any wound. (sic)

Q: And after you asked from him, what happened?

A: I left him and I went to the balcony and called for Ernesto.

x x x x x x x x

Q: And after you shouted to Ernesto, what happened?

A: Ernesto arrived.

x x x x x x x x"[4]

(Underscoring supplied)

The identities of appellants were also conveyed by the victim himself to Ernesto Biboso who had rushed to the scene of the crime when Restituta had called out. Ernesto testified as follows:

"Q: When you saw him lying on the floor, what did you do?

A: I held him and craddled him.

Q: Why did you ask what happened to him?

A: I saw him with many wounds.

Q: Was he bleeding or not?

A: Yes, sir.

Q: After asking him that question was your question answered by him?

A: He told me that Romeo and Antonio helped each other boloed (sic) him.

Q: He mentioned to you two persons?

A: Three (3) persons.

Q: What is the name of the other one?

A: Mario, Antonio, Romeo and no more.

x x x x x x x x

Q: Do you know these persons named as (sic) Mario Antonio and Romeo?

A: Yes, sir.

Q: If these persons are in court, can you point them? (sic)

A: Yes, sir.

Q: Please point (sic) Romeo.

A: There (witness pointing to the man in the middle of the two accused and mentioning the name of Romeo when asked give his name as Romeo).

Q: Do you know Romeo's family name?

A: Yes, sir.

Q: What is his family name?

A: Apolinario.

Q: Please point the other person you mentioned, Antonio?

A: There (witness pointing to the man sitting when asked his name give his name as Antonio).

x x x x x x x x

Q: You personally know the two accused you mentioned, how long have you known Romeo and Antonio?

A: For a long time because they were always at Brgy. Agbobolo."[5] (Underscoring supplied)

The Court considers that the foregoing testimony of Ernesto Biboso as to what the dying Simon Hibaler told him is admissible in evidence as a dying declaration. A dying declaration, which is admissible as an exception to the hearsay rule, is defined in Section 37 of Rule 130 as "the declaration of a dying person, made under the consciousness of an impending death" with respect to "the cause and surrounding circumstances of such death"[6] There is no question here that Simon must have been aware of the imminence of death for he died shortly thereafter before he could be brought to the hospital.

That both Restituta Hibaler and Ernesto Biboso were in a position to identify appellants Romeo Apolinario and Antonio Rivera is quite clear: both lived in the same barangay in which appellants lived and had seen appellants several times before.

The defense questions the testimony of Restituta and Ernesto as "doubtful" and "incredible", upon the theory that both had failed to mention to Pedro Hibaler the names of the killers of his father; for when Pedro reported the crime to the police, the police blotter indicated that the attack had been carried out by unknown persons.[7] We think that the defense tries to make too much of the police blotter. A police blotter is not a confession by a suspect; neither does it purport to be a complete and irrefutable record of what had happened at the scene of the

crime. It is no more than a summary report of the occurrence of the crime. In *Ford v. Court of Appeals*,^[8] the Court held that entries in police blotters are only prima facie evidence and inaccuracies as well as omissions therein may be explained during a witness' testimony:

"We are satisfied with private respondent's explanation. Her initiative in promptly instituting her complaint clearly manifests her honest intent to vindicate the wrong committed against her. She explained that shortly after the incident between her and petitioner Uy, petitioner Ford came and slapped her. Thus, when the report was made by private respondent to the police authorities of Dumalag, Capiz, the immediate hurt and humiliation being felt by her was not only the slander committed by petitioner Uy but, primarily and foremost, the slapping by petitioner Ford. Hence, the police report of private respondent focused on her being slapped by petitioner Ford, although inadvertently omitting the incident with petitioner Uy in view of her emotional state then, should not be construed to mean that private respondent was not slandered by petitioner Uy."^[9] (Underscoring supplied)

In the case at bar, the omission was fully explained by Pedro Hibaler in his testimony as a rebuttal witness, where, as earlier noted, he stated that Pat. Habana then at the police station, had a stepson who was married to Romeo Apolinario's daughter:

"Q: Why did you conclude that these accused might run away because Habana was present?

A: Because the son of Pat. Habana is married to the daughter of Romeo Apolinario.

Q: The this Romeo Apolinario is one of the accused here? (sic)

A: Yes sir."^[10] (Underscoring supplied)

Pedro feared that Pat. Habana might warn Romeo Apolinario and that the latter and the other assailants might thereby escape apprehension.

People v. Tulagan^[11] cited by appellants in their brief affords them no comfort. There, the witness not only kept silent about the occurrence of the crime for two (2) weeks but had also kept the information from the victim's father; the trial court accorded his testimony very little credence. In the case at bar, the identities of the robber-killers were immediately conveyed by Restituta Hibaler and Ernesto Biboso to the victim's son Pedro Hibaler, who in turn, revealed to Pat. Himan who the killers were as soon as they were out of the police station. In addition, the victim's widow, Restituta Hibaler, also informed the police who had slain her husband. The testimony of Pedro Hibaler follows in relevant part:

"Q: When you returned to your place in Agbobolo, Cuartero, Capiz, did you have companions?

A: Yes, sir.

Q: Who were they?

A: The policemen.

Q: Did you take any transportation?

A: Yes sir.

Q: When you rode that vehicle going home to Agbobolo, please tell the court what happened.

A: I told them that Romeo Apolinario, Antonio Rivera and a certain Sion, were the ones who killed my father.

Q: To whom did you tell (sic) that statement?

A: Pat. Himan.

Q: What is the name?

A: Elek.

Q: When you give (sic) that information to him did he ever confronted (sic) you of what you told him earlier in the police blotter?

A: No sir.

Q: And did the policemen do or what did the policemen do in Agbobolo?

A: They conducted a necropsy examination.

Q: From whom did they ask questions?

A: My mother.

Q: And what did you (sic) mother tell them.

ATTY CONANAN:

Objection.

COURT:

Reform.

Q: You said they asked your mother what happened?

A: My mother told them and they left.

Q: What did your mother tell them?

A: That Romeo Apolinario, Antonio Rivera and that Sion were the ones who killed my father.

Q: And you said the policemen left, do you know where they were going?

A: Yes sir.

Q: Where?

A: Going to Brgy. Mainit.

Q: Did they tell you what they are (sic) going to do in Brgy. Mainit?

A: Yes sir.

Q: Why? (sic)

A: To look for Romeo Apolinario, Antonio Rivera and that certain Sion."^[12] (Underscoring supplied)

In their third assignment of error, appellants contend that they could not be convicted of robbery with homicide because the robbery had not been proven. Appellants claimed that there was no conclusive evidence that they had carried the money and other personal properties away from the Hibaler house. As already noted, Restituta had seen with her own eyes appellants and Mario Sion ransacking their house and taking whatever they wanted. Appellants claim that because Restituta did not testify that they were still in possession of here personalty here involved when they left the Hibaler house and because the missing items were never recovered from them, there was no evidence to support a finding of guilt with respect to the charge of robbery.

Once more, appellants' contention must be rejected as without merit. The element of taking or asportation in the crime of robbery, in the instant case, was completed when appellants and Mario Sion took the personal property, even if (and this is not true in the case at bar) they had had no subsequent opportunity to dispose of the same. Restituta had testified that after the robbery, she made an inventory and found many of their personal belongings missing.[13] The later disposition of the property taken, or the failure to dispose of such property, is without moment so far as the characterization of the crime as robbery is concerned. In *People v. Puloc*,[14] it was held that:

"x x x. As early as *People v. Patricio*, the settled rule is that when the fact of asportation has been established beyond reasonable doubt, the conviction of the accused is justified even if, as in this case, the thing subject of the robbery was abandoned by the accused and recovered by the owner." [15] (Underscoring supplied)

In *People v. Salvilla*,[16] the Court held that in robbery, the element of asportation -- which requires the taking of personal property out of the possession of its owner, without his privity and consent and without animus revertendi -- is present once the property is in fact taken from the owner:

"Severance of goods from the possession of the owner and absolute control of the property by the taker, even for an instant, constitutes asportation." [17]

In the case at bar, all the elements of robbery, i.e., (a) personal property belonging to another; (b) was unlawfully taken; (c) with intent to gain; and (d) with the use of force upon things[18] -- were present. Because the homicide was committed by reason or on the occasion of the robbery, appellants are guilty of the special complex crime of robbery with homicide under Article 294 of the Revised Penal Code.[19]

The information alleged two (2) aggravating circumstances. Since, however, as held in *People v. Dapitan*,[20] the penalty for robbery with homicide is reclusion perpetua regardless of presence of aggravating or mitigating circumstances, there appears no need to focus upon these two (2) modifying circumstances.

WHEREFORE, the Decision of the trial court dated 31 October 1990 is hereby **AFFIRMED**, with the modification that the indemnity for the death of Simon Hibaler shall be **INCREASED** from P30,000.00 to P50,000.00. Costs against appellants.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

[1] Records, pp. 1 and 2.

[2] *Id.*, pp. 217-218.

[3] Appellants' Brief, p. 1.

[4] TSN, 29 June 1991, pp. 2-7; Appellee's Brief, pp. 6-12.

[5] TSN, 20 June 1990, pp. 5-6; Appellee's Brief, pp. 12-14.

[6] E.g., *People v. Talingdan*, 191 SCRA 333 (1990); *People v. Alegarbes*, 173 SCRA 64 (1989).

[7] Appellants' Brief, pp. 12-13.

[8] 186 SCRA 21 (1990). See also *People v. Santito, Jr.*, 201 SCRA 87 (1991).

[9] 186 SCRA at 32.

[10] TSN, 6 August 1990, pp. 4-5.

[11] 143 SCRA 107 (1988).

[12] TSN, 6 August 1990, pp. 5-6.

[13] TSN, 25 June 1991, p. 10.

[14] 202 SCRA 179 (1991).

[15] 202 SCRA at 186.

[16] 184 SCRA 671 (1990).

[17] 184 SCRA at 677.

[18] *People v. Puloc*, 202 SCRA 179 (1991).

[19] *People v. Nunag*, 196 SCRA 206 (1991).

[20] 196 SCRA 378 (1991).

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