

SECOND DIVISION

[G.R. No. 131036, June 20, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DONATO DEL ROSARIO, DEFENDANT-APPELLANT.**

D E C I S I O N

BUENA, J.:

This is an appeal from the decision of the Regional Trial Court at Olongapo City, Branch 72 in Criminal Case No. 838-92, entitled "People of the Philippines versus Donato del Rosario," convicting the accused of the crime of robbery with homicide and sentencing him to reclusion perpetua.

On November 20, 1992, an information was filed against Donato del Rosario charging him of robbery with homicide committed as follows:

"That on or about the twenty-sixth (26th) of September, 1992, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and without the knowledge and consent of the owner, and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously take, steal and carry away one (1) pc. of 22K grams of gold bracelet worth P3,500.00, one (1) pc. of diamond ring with letter 'E' worth P3,200.00, one (1) pc. of wedding ring worth P800.00, two (2) pairs of gold earring worth P1,600.00 and cash money in the amount of P1,600.00, all in the total amount of Ten Thousand Seven Hundred Pesos (P10,700.00), Philippine Currency, belonging to Emelita Paragua, and on the occasion of said robbery and for the purpose of enabling him to take, steal and carry away the above-mentioned items, the herein accused, did then and there wilfully, unlawfully, feloniously and taking advantage of superior strength and with intent to kill treacherously attack, assault, hit her with a hard object on the head and then strangle and tie the neck of Raquel Lopez (niece of Emelita Paragua) with a Cat-V wire to prevent her from breathing and making an outcry, thereby inflicting upon said Raquel Lopez asphyxia injuries which directly caused her death shortly thereafter."^[1]

Upon arraignment on February 3, 1993, accused Donato del Rosario, assisted by counsel, pleaded not guilty to the crime charged. The Regional Trial Court thereafter proceeded with the trial.

Culled from the records are the following:

On September 26, 1992, at about 8:10 in the morning, Emelita Paragua and a

companion, a Delia Aquino, left their house at 1657 Balic-Balic, Sta. Rita, Olongapo City to go to the former's stall in the public market. Raquel Lopez, the 11-year old niece of Paragua, was left behind as she had no classes that day, a Saturday.

Notified of the news that their house was on fire, they went home.

Paragua saw that the sala set, their merchandise (stuffed toys that they sell at the public market), and the cassette were burned. When she entered the kitchen, she saw her niece lying on her stomach with a raincoat covering her head and her neck and arms tied with CATV wire. Parts of her hand and her thigh were burned. Raquel Lopez was already dead when her aunt discovered her. The total value of the burned properties was around Thirty Thousand Pesos (P30,000.00). Emelita Paragua likewise discovered that six pieces of her jewelries were missing.

SPO1 Ramon Fernandez received a report regarding the fire in Balic-Balic wherein a minor who was identified as Raquel Lopez was found dead. Together with his chief investigator, Leonardo Esteban and other personnel, he went to the scene of the incident to conduct an investigation.

He found the single-storey house in complete disarray. The sala was set on fire and he found the items therein burned. Likewise the two bedrooms.

He located the body of Raquel Lopez in the kitchen. Her head was covered with a pink raincoat and around her neck was a CATV wire. She was lying face down, her hands behind her back.

Inquiries made revealed that a certain Ramon Ilagan was seen in the vicinity of the house before the incident. Ramon Ilagan was interrogated but denied the accusation against him. Since no evidence could be produced linking him to the crime, he was released.

Three days after the incident, the police received information from the live-in partner of Ilagan, that a certain Donato del Rosario was seen standing at the back of the house of Paragua before the crime was committed and had disappeared since then. Del Rosario's mother and common-law wife were questioned about the whereabouts of the accused. SPO1 Fernandez told the mother of del Rosario that her son was suspected of committing the crimes in Balic-Balic.

On October 2, 1992, the Olongapo City police received a call from the Subic police that Donato del Rosario surrendered to police officer Fernando Morales, the brother-in-law of his common-law wife, Ruby Tan. Thereafter, SPO1 Fernandez, together with Inspector Leonardo Esteban and PO3 Laurea, proceeded to Subic to fetch Donato del Rosario.

Del Rosario, even without being asked, told them that he really surrendered to Morales because he was being bothered by his conscience and that he was very willing to accompany them to recover the stolen items. He also volunteered the information as to where he sold the jewelries that he took from the house of Emelita Paragua.

Thereafter the policemen from Olongapo and Donato del Rosario proceeded to the places mentioned by the latter - Barrio Barretto, Olongapo City, where the "Lovely

Kahael Pawnshop" was located, and Barangay Magsaysay, Iba, Zambales. Del Rosario was not even handcuffed at the time.

At the Lovely Kahael pawnshop del Rosario pointed out the jewelry that he had pawned. He also signed the pawnshop ticket in order that a wedding band and a diamond ring with the letter "E" could be redeemed. At the pawnshop he was identified by Florencio Gamboa, the OIC/appraiser therein.

Afterwards they proceeded to Magsaysay, Iba, Zambales to the shop of Rogelio Adriano. They were not able to immediately recover a bracelet and a 7-day ring that were sold to Adriano, a watch repairer and a buyer/seller of second hand jewelry, as he had given them to his son for safekeeping. However, Adriano assured the police that he is going to voluntarily surrender the jewelry because he learned of the girl who was found dead and of the robbery. His son, Rogelio Adriano, Jr., returned the jewelry to the police some days later. Both Adrianos identified del Rosario as the person who sold them the jewelry. After the jewelry was recovered, the police called Emelita Paragua who positively identified the jewels as hers.

Del Rosario was then brought to the Olongapo police station. A lawyer, Atty. Norberto dela Cruz, was called in to assist del Rosario. During the custodial investigation, Atty. dela Cruz was present the whole time. He informed del Rosario what was stated in the waiver/confession. It was only when del Rosario said that he fully understood its contents that Atty. dela Cruz signed it as counsel. SPO1 Fernandez brought the accused and Atty. dela Cruz to Assistant City Prosecutor Martinez for subscription.

As to be expected, Donato del Rosario's account of the day in question, September 26, 1992, was different.

He alleged that on the morning of September 26, 1992, at around 7:00 A.M., he went to Subic, Zambales to buy containers for his vinegar and Clorox business. He was with a certain Rancen Anonat, the son of his would-be employer. They returned to Balic-balic at around 9:00 A.M. and spent the night at the house of Anonat. The following day, he went to the house of his common-law wife. On the 28th of September, he went to Navotas and returned to Subic the next day. On the 30th he stayed with the brother-in-law of his common-law wife, Fernando Morales, a police officer in Subic.

It was Morales who informed del Rosario that he was a suspect in the arson case. He was persuaded by Morales to place himself in the custody of the police pending the investigation of the case, as there was a threat to kill him by a certain Zapanta, a member of a salvage team in Olongapo. He spent the night in the detention cell in Subic.

On October 1, four policemen from Olongapo arrived. He was led out of the detention cell to talk with the policemen. In the investigation room, he was told that he would be taken to Olongapo for further investigation. Morales told him to trust the police as they are in the same corps. He was not handcuffed when he was taken out to the vehicle which would take him to Olongapo.

When they arrived in the police station (Station A), he found his aunt and some people in a room. When he sat down he was boxed by an unknown man.

Thereafter, he was brought to Station B. He was forced to sign a document, but not before being mauled with a rattan stick and a chair. While he was being mauled he was forced to admit that he committed the arson.

From the "*mayores*" in the jail, he found out that the document he had signed was a waiver.

Del Rosario did not recall going to the prosecutor's office to file or submit his counter-affidavit. Neither did he go to the fiscal's office for preliminary investigation.

Based on the findings of Dr. Richard Patilano, medico-legal officer, the cause of death of Raquel Lopez was asphyxia by strangulation and multiple physical injuries. The victim was already dead when the burning took place because the body did not show any carbonization or black color.

On November 8, 1996, an order was issued stating, among other things, that since the prosecution and the defense agreed that if witness Raymund Tan (the father of the accused's common-law wife) will be presented to testify that his son-in-law (Fernando Morales) accompanied del Rosario in surrendering to the police department of Subic, Zambales, the testimony of the said witness was dispensed with.^[2]

On April 2, 1997, a decision was rendered by the trial court convicting the accused and imposing the following penalty:

"WHEREFORE, the Court finds the accused Donato del Rosario guilty beyond reasonable doubt of the crime of Robbery with Homicide and hereby sentences him to the maximum of Reclusion Perpetua or from THIRTY-THREE (33) YEARS and FOUR (4) MONTHS and ONE (1) DAY to FORTY YEARS, and to indemnify the heirs of Raquel Lopez y Paragua the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) and to pay the costs.

"SO ORDERED."^[3]

Hence, this appeal where accused-appellant assigns the following errors allegedly committed by the trial court:

"I

"IT IS ERRONEOUS AND ILLOGICAL FOR THE TRIAL COURT TO CONVICT APPELLANT WHEN THE ELEMENTAL REQUISITES OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE ARE NOT PRESENT.

"II

"THE COURT A *QUO* IS LIKEWISE IN ERROR IN HANDING DOWN A

CONVICTION ON A CIRCUMSTANTIAL EVIDENCE ABSENT ITS REQUISITE ELEMENTS.

"III

"THE LOWER COURT'S QUESTIONED DECISION OVERLOOKED MATERIAL FACTS OF IMPORTANCE AND SUBSTANCE WHICH IF CONSIDERED WOULD TILT THE SCALE OF 'LADY JUSTICE' TO ACQUIT THE APPELLANT."

The appeal is unmeritorious.

Accused-appellant Donato del Rosario contends that it is essential to prove the intent to rob and that the intent to rob must come first before the killing transpired. He is of the impression that not all the essential requisites of the crime of robbery with homicide were proven.

We hold otherwise.

In the offense of robbery with homicide, a crime primarily classified as one against property and not against persons, the prosecution has to firmly establish the following elements: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.^[4]

Animus lucrandi, or intent to gain, is an internal act which can be established through the overt acts of the offender.^[5] Although proof as to motive for the crime is essential when the evidence of the theft is circumstantial, the intent to gain or *animus lucrandi* is the usual motive to be presumed from all furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator. "xxx (T)he intent to gain may be presumed from the proven unlawful taking."^[6]

Intent to gain (*animus lucrandi*) is presumed to be alleged in an information where it is charged that there was unlawful taking (*apoderamiento*) and appropriation by the offender of the things subject of the robbery.^[7]

In this case, it was apparent that the reason why accused-appellant stole the jewelry of Emelita Paragua was because he intended to gain by them. He had already admitted that he needed money to marry his common-law wife.^[8]

We take note of the places where the jewelry were recovered - a pawnshop in Olongapo City, and a stall of a second hand jewelry buyer in Iba.

Florencio Gamboa, the OIC/appraiser of the Lovely Kahael Pawnshop, remembered giving the accused-appellant nine hundred pesos (P900.00) for the two pieces of jewelry the latter had pawned, while Rogelio Adriano admitted paying the accused the amount of One Thousand Five Hundred Pesos (P1,500.00) for two jewelries.