

EN BANC

[G.R. No. 128114, October 25, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER CANDO Y PAGDANGANAN, ARNEL VARGAS Y MAGTANGOB, AND WILBERTO RAPCING Y BROÑOLA, ACCUSED-APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

On automatic review is the decision of the Regional Trial Court of Manila, Branch 33, in Criminal Case No. 95-142748, convicting appellants of the crime of robbery with homicide, sentencing them to death, ordering them solidarily to indemnify the heirs of the victim the amount of P50,000.00, and to return the personal belongings taken from the victim and other offended parties. In a related case, Criminal Case No. 95-142749, appellants were acquitted of the charge of carnapping.

Appellants Cando and Rapcing, aged 40 and 28 respectively, were employed as candlemakers at the Rosarian Candle Factory located in Paco, Manila. Appellant Vargas, aged 20, was employed as a delivery boy. The victim, Luis D. Remoriata, was the caretaker ("*katiwala*") in said factory.

The facts based on the records are as follows:

In the afternoon of May 13, 1995, Vargas, Rapcing and one Nonoy Sayson were having a drinking session at a canteen in front of the factory. At around 9:30 P.M., Cando joined the group. Upon the prompting of Vargas, Cando went to the factory to get his salary. Cando came back angry because he was unable to get his salary from the secretary, nor was he able to get a loan of P100.00 from the caretaker. Apparently, Cando already had previous misunderstandings with the caretaker, so this time, he threatened to kill the caretaker. The group continued their drinking session.^[1]

At around 11:00 P.M., Vargas, Rapcing, and Cando, armed with two knives and carrying a shoulder bag, climbed the fence of the factory. They walked on the galvanized iron roof towards the other building. One by one, they slipped through a narrow window at the side of the building. The trio proceeded to the victim's room, which was lighted by a fluorescent lamp. Cando picked a piece of lead pipe and told Vargas to pull open the door where the victim's mosquito net was attached. When Vargas pulled open the door, the mosquito net snapped and Cando struck the victim on the head with the lead pipe. The victim awakened and Cando demanded money from him. When the victim replied that he had no money, Cando struck him again with the lead pipe. Blood oozed from the victim's head. Cando asked the victim if he recognized him. The victim weakly replied "Yes, You are Roger (Cando)." Thereafter, Cando repeatedly hit him with the lead pipe until he became unconscious. Cando placed the victim's radio cassette in his bag. He went upstairs to get more items and the keys of the Cimarron van. Thereafter, the trio went downstairs to where the van

was parked. Vargas, the only one who knew how to drive, sat on the driver's seat. Cando and Rapcing opened the gate, then pushed the van outside. Once they were out of hearing range, Vargas gunned the motor and the two clambered into the van. Cando sat on the passenger side while Rapcing sat at the back. Cando prevailed upon the group to proceed to Quiapo to visit his girlfriend, but they could not locate her so they just drove around until daybreak. When they reached Hemady Street in Quezon City, they abandoned the van. The trio boarded a jeep going to Taft Avenue and went their separate ways.^[2] It was then already early morning of May 14, 1995.

At around 6:00 A.M., Mrs. Norma Chu, the factory owner, discovered the dead body of Luis Remoriata. The factory van was also missing. A hysterical Mrs. Chu called the Barangay Captain, who in turn reported the incident to the police. Upon investigation, the police found a *bakawan* firewood stained with blood some ten meters away from the victim's body. The police also called a funeral parlor to get the body of the victim.^[3]

In the meantime, the van was discovered by *Barangay Kagawad* Mejia, who called up the telephone number posted at the side of the van. The owner, Mrs. Chu, arrived with three NBI Agents who took pictures of the van and lifted fingerprints from it.^[4]

The very next day, May 15, 1995, Mrs. Chu lodged a complaint^[5] with the National Bureau of Investigation (NBI). Based on her complaint, the NBI dispatched a team of agents to the crime scene. The NBI recovered a bloodstained steel pipe behind the door of the room. Upon learning from Mrs. Chu that appellants Cando and Vargas had previous skirmishes with the victim, on May 16, 1995, the NBI agents picked up Vargas from the factory and brought him to their office for questioning.^[6]

Vargas readily admitted his participation and pinpointed appellants Cando and Rapcing as his co-perpetrators. He likewise executed an extrajudicial admission^[7] and waiver of his rights under Articles 124 and 125 of the Revised Penal Code.^[8]

Acting on the lead, the NBI agents picked appellant Cando at his house in Libis St., Caloocan City. Appellant Cando invoked his right to remain silent.^[9] He executed a waiver of rights under Articles 124 and 125 of the Revised Penal Code.^[10]

Thereafter, appellant Rapcing was also arrested at his house in Cristobal St., Looban, Paco, Manila.^[11] Rapcing admitted complicity in the crime, and executed an extrajudicial admission^[12] corroborating the story of Vargas. He also executed a waiver of his rights under Articles 124 and 125 of the Revised Penal Code.^[13]

During custodial investigation, the three were assisted by Atty. Isidro T. Gamutan, a lawyer who happened to be at the NBI because he was following up a case.

On May 17, 1995, appellant Vargas executed a second extrajudicial admission^[14] stating that Cando gave him the bag containing the stolen items for safekeeping and that he brought the bag to his sister-in-law's house in Kahilum, San Andres Bukid, Manila. He accompanied the NBI agents to the house and gave them the bag which bore Cando's name.^[15]

On May 23, 1995, appellants were charged with the crime of Robbery with Homicide under the following Information:[16]

"The undersigned accuses ROGER CANDO y PAGDANGANAN, ARNEL VARGAS y MAGTANGOB and WILFREDO RAPCING y BROÑOLA of the crime of Robbery with Homicide, committed as follows;

That on or about May 13, 1995, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: by hitting one LUIS D. REMORIATA with steel pipe and wood on the head several times and at the same time forcibly taking away from him the following, to wit:

One (1) Brown wallet valued at	P 120.00
containing cash money of	1,000.00
Cash money in the amount of	10,000.00
.....	
Three (3) wrist watches, all valued	1,000.00
One (1) Radio cassette (STD)	1,200.00
.....	
Assorted clothing, not less than	500.00

or in the total amount of P13,820.00 belonging to said Luis D. Remoriata and under his personal care, to the damage and prejudice of the said owner in the aforesaid amount of P13,820.00, Philippine Currency; that on the occasion of the said robbery and by reason thereof, the herein accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the said LUIS D. REMORIATA, and as a result thereof, he sustained physical injuries which were the direct and immediate cause of his death.

Contrary to law.

ALEJANDRO G.
BIJASA
Asst. City
Prosecutor"

On August 29, 1995, upon arraignment, appellants entered their respective pleas of not guilty.[17] Joint trial ensued.

The prosecution presented the following witnesses: (1) Norma C. Chu, the factory owner; (2) NBI Agents Serafin Gil, Mario Garcia, Gregorio Tomagan; (3) NBI Photographer Cecilio Datinguino; (4) NBI Fingerprint Examiner Elter Yano; (5) Dr. Manuel Lagonera, medico-legal officer; (6) Atty. Isidro Gamutan, counsel of appellants during custodial investigation; (7) *Barangay Kagawad* Alejandro Mejia.

Mrs. Norma Chu testified that when she discovered the body of the victim, the quarters was in disarray, and the victim's clothes and radio were missing. Later, her husband and son informed her that their wallets which they placed on top of the TV in the sala upstairs, and two other wristwatches were missing. She also identified the van which was recovered from Hemady St. in Quezon City as the one belonging to the factory.^[18]

Serafin Gil testified that he took down the statement of Mrs. Chu and supervised the custodial investigation of appellants.^[19] Mario Garcia took down the statements of Vargas and Rapcing.^[20] Gregorio Tomagan testified that he was present during the taking of the two statements of appellant Vargas dated May 16 and 17, 1995.^[21] Cecilio Datinguino testified that he took pictures of the van while the NBI agents were lifting fingerprints from the van.^[22] Elter Yano testified that he managed to lift six (6) fingerprints from the cimarron van, tagged as "Q-1" to "Q-6". He testified that "Q-1" which was lifted from the air freshener found in the van was identical to the left index fingerprint of appellant Vargas (Exh. "DD"). Likewise, "Q-2" which was lifted from the victim's stereo cassette was identical to the right ring fingerprint of Cando (Exh. "EE"). The other prints were unidentifiable.^[23]

Dr. Manuel Lagonera testified that the cause of death was "blunt head injuries" and that the victim sustained the following injuries:^[24]

- "1. Triangular lacerated wound, with contusions at the periphery, measuring 3x2.8x2.5 cms, right forehead.
2. Deep lacerated wound, right forehead, above the right eyebrow, measuring 7x1.9 cms.
3. Lacerated wound, right zygomatic region, measuring 4.2x1.5 cms.
4. Deep lacerated wound, left frontal region, measuring 7x2.5cms.
5. Lacerated wound, left fronto-temporal region, measuring 2.5x2 cms.
6. Deep lacerated wound, angle of the mouth, right, measuring 4.5x2 cms.
7. Hematoma, both upper eyelids.
8. Deep lacerated wound, verte x, measuring 9x3 cms.
9. Lacerated wound, left occipital region, measuring 7x3 cms.
10. V-shaped lacerated wound, right external ear, measuring 3x2.5 cms.
11. Abrasion, right anterior shoulder, measuring 4x1.8 cms.
12. Semi-circular contusion, right supra-clavicular region, measuring 3.5x3.2 cms.

INTERNAL FINDINGS:

1. There was extensive sub-aponeurotic hematoma with multiple fractures of the cranial vault. Epidural hematoma over the left parietal lobe of the brain with massive sub-arachnoid hemorrhage.
2. Right anterior and middle cranial fossae were fractured.
3. The stomach was empty."

Atty. Isidro T. Gamutan testified that he happened to be at the NBI when the three accused were scheduled for custodial investigation. The Chief of the Anti-Carnapping Unit requested him to give legal assistance to the three accused. He asked the accused why they were being investigated, and explained to them their rights. When he was satisfied that the accused understood their rights, he assisted them in executing their extrajudicial statements.^[25]

Alejandro Mejia, *Barangay Kagawad* at *Barangay Kristong Hari*, Quezon City testified that he found the abandoned van with a flat tire. He contacted the owner through the telephone number printed on the side of the van. The owner arrived with three NBI agents who examined the van.^[26]

For the defense, appellants testified. Appellant Cando stated that he finished Grade III, cannot read, but can write his name. He denied any participation in the killing, but claimed that Vargas and Rapcing knew about the incident. He said that on May 13, 1995, he reported for work at the factory at 2:00 P.M. until 10:00 P.M. He went home in Libis St. Caloocan City, where he slept until around 11:00 A.M. the following day. He denied joining the drinking session. On May 14, 1995, he reported for work at around 12:00 NN until 2:00 P.M.. He identified as his the bag containing the stolen items. He further identified the contents of the bags, the air freshener which was taken from the van, the two wristwatches belonging to the son and daughter of Mrs. Chu. He admitted that he and the other two appellants offered to pay to the widow of the victim damages for his death.^[27]

Appellant Vargas, for his part, admitted participation in the killing, but claimed that he was forced by Cando at knife point to participate. He further claimed that it was only Cando who killed the victim by hitting him with an iron bar. He admitted, however, that he agreed to drive the Cimarron because he wanted to practice driving.^[28]

Appellant Rapcing recanted his extrajudicial admission. He denied any knowledge or participation in the killing since he was stone drunk ("lasing na lasing"). He claimed that he just slept inside a Tamaraw pick-up parked outside the factory. Further, he claimed that the finding of guilt is inconsistent with the fact that he never went into hiding after the alleged incident.^[29]

On December 27, 1996, the trial court rendered its decision^[30] convicting the three (3) appellants of Robbery with Homicide with the aggravating circumstances of evident premeditation and treachery, and sentencing them to suffer the penalty of death. Appellants were acquitted of the charge of carnapping.

Hence, the present automatic review. In their consolidated brief,^[31] appellants raise the lone assignment of error that -