

## SECOND DIVISION

[ G.R. No. 116011, March 07, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RHODESA\* SILAN Y BORQUE, ALIAS "DADA", AND VIRGILIO  
GARCIA, ALIAS "BILLY GARCIA", ACCUSED-APPELLANTS.**

### D E C I S I O N

**REGALADO, J.:**

Accused-appellants were prosecuted for the special complex crime of robbery with homicide in Criminal Case No. 93016 of the Regional Trial Court, Branch 163, of Pasig, Metro Manila upon an indictment filed on June 17, 1992 and alleging -

That on or about the 1st day of June, 1992, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with John "Tol", whose true nam(e), identity and present whereabouts (are) still unknown and all of them mutually helping and assisting one another, by means of force, violence and intimidation employed upon the person of Evangeline Gargantos, did then and there willfully, unlawfully and feloniously take, steal and carry away complainant's personal belongings and valuables all amounting to P6,500.00, to the damage and prejudice of the offended party in the aforementioned amount of P6,500.00; that on the occasion of the said robbery, the above-named accused, conspiring and confederating together with John Doe @ "Tol", whose true name, identity and present whereabouts (are) still unknown and they all mutually helping and assisting one another, with evident premeditation and treachery, with the use of superior strength and during nighttime, while armed with bladed weapon, with intent to kill, did then and there willfully, unlawfully and feloniously attack assault, strangle with a cord of an electric stove, and stab said Evangeline Gargantos, thereby inflicting upon her fatal injuries which caused her death.<sup>[1]</sup>

They were both found guilty as charged in the decision of said court, dated October 21, 1993, which adjudged as follows:

WHEREFORE, foregoing premises considered, this Court finds both accused, Rhodessa Silan and Virgilio Garcia guilty as principal(s) of the crime of Robbery with homicide defined in Article 293 and penalized under Article 294. And, considering the aggravating circumstance of the crime having been committed in the dwelling of the offended party and there being no mitigating circumstance on record this Court sentences them to suffer the penalty of reclusion perpetua with its accessories provided for by law, to restitute to the heirs of Evangeline Gargantos the value of the article stolen from her house in the amount of P6,500.00; to

indemnify said heirs (in) the sum of P50,000.00 and to pay the cost.

If accused has signed a written conformity to abide with the rules on convicted prisoner, their detention service if any should be deducted from this sentence computed as provided for by law.<sup>[2]</sup>

We have carefully and thoroughly reviewed the records of this case, especially the transcripts of the stenographic notes taken at the trial, the documentary evidence, and the respective presentations of the parties, and we find that these findings of the court below which were adopted in the People's brief provide us sufficient and accurate bases for this appellate review:

Investigation conducted by police investigator Ricardo Domingo revealed that Rhodessa Silan was seen by Carol Concepcion about 2:00 P.M. on either 31 May or 1 June 1992. Silan inquired from Carol as to whether or not there was anyone in the house of her auntie. Carol told her that there is nobody there because they are (o)n vacation. Silan told Carol that she would like to get something inside the house. About 7:00 o'clock in the evening of the same day Carol while fetching water, again saw Silan with a male companion going to the house of Evangeline Gargantos at the back. Carol did not recognize the male companion of Silan (TSN page 4, dated 23 Sept. 1992).

Investigator Domingo took the statement of Rhodessa Silan who at the time was assisted by Atty. Salvador Navarro. (p. 5, November 4, 1992, TSN). In her extra-judicial statement (Exh. "H") Silan stated that she went to the house of her auntie Vangie in the late afternoon of 1 June 1992. (p.4. July 1, 1993, TSN). Her companions in going to Vangie's house were Virgilio 'Billy' Garcia and a certain Tol. (p. 4, ibid.) They went to Vangie's house to get her things so they can sell them as Billy needed money. (p. 4, ibid.) Upon reaching the house of Vangie they found it closed. They went to the back portion where Billy used a screw driver in destroying the padlock of the kitchen door. (p. 5, ibid.) Once the kitchen door was opened, they entered the house, Silan going to her room while Billy and Tol went upstairs. (p. 5, ibid.) While Silan was arranging her things she heard a loud sound of objects falling. She went up the house and found that an electric fan fell on the floor. She saw Billy and Tol searching something. (p. 5, ibid.) She also notice (sic) that the room was in disarray. It was at this juncture that Billy told her to get things that she wants. She then got two jackets, coleman, colored blue dress of Remia, perfume, make-up kit, t-shirt, girdle of Remia and plate with saucer. When they went down from the second floor of the house Billy talked with her and forced her to go to her former room where he forced her to have sex with him. It was at that instance when her auntie Vangie arrived and knocked at the door. (p. 6, ibid.) Billy then ordered her to stand up in one corner and told her he will take care of things. He then put off the light and opened the door and allowed her auntie to come in. (p. 6, ibid.) After her auntie entered the house there was a commotion. (p. 6, ibid.) She heard her auntie shouting 'Who are you, why did you enter the house' followed by shouts for help 'Aling Lina, Aling Lina, tulungan ninyo ako, may gustong pumatay sa akin.' (p. 6, ibid.) Soon thereafter silence followed. Then Billy returned for her and pulled her out

the house. (p. 7, ibid.)

Some of the articles taken by Silan from the house of Evangeline Gargantos were recovered from the house where she is now living with her live-in partner. Said articles were identified in Court by SPO 1 Celso Cruz, the evidence custodian to whom the recovered articles were turned over after the same were recovered. (p. 3, October 22, 1992, TSN.) Remia Gargantos Gillo, a niece of the victim who also lived with Vangie in #29 Sable St., SSS Village, identified the blouse, the t-shirt, a bottle of perfume and powder case as that belonging(g) to the family of the deceased. (p. 6, October 22, 1992, TSN)

Atty. Salvador Navarro affirmed before the Court the fact that he assisted Rhodesia Silan when she gave her extra-judicial statement before police investigator Ricardo Domingo. (pp. 5-7, ibid) (pp. 2-3, Decision)<sup>[3]</sup>

It is appellant Silan's position, as articulated in her lone assignment of error, that the lower court erred in convicting her of the crime of robbery with homicide without proof of conspiracy between her and appellant Garcia having been sufficiently established by the prosecution.<sup>[4]</sup> Parenthetically, appellant Silan also presented herself as the sole witness in her defense.

Appellant Garcia has a more extended assignment of errors in his brief,<sup>[5]</sup> contending that the court below erred (1) in relying on the testimony and extrajudicial confession of appellant Silan in convicting him; (2) in failing to consider that appellant Silan had sufficient motive to implicate him in the crime charged; (3) in quickly dismissing his defense of alibi; and (4) in not considering the illegality of his arrest by the police.

We absolve the trial court of the aforestated errors imputed to it and which we shall discuss *seriatim* conjointly with our reasons for rejecting the same, starting with the submissions of the lady appellant first.

1. Appellant Silan leads off with the argument that her only intention in going to the house of her aunt, the victim Evangeline Gargantos, was to get some of her things which she had left behind when she left the place. She claimed that she intended to sell the same and give the money to appellant Garcia because of his threat to kill her brother if she did not do so. She denied that there was any prior agreement between her and appellant Garcia or his companion, called "Tol", to rob and kill her aunt, and that those crimes were committed by the latter two without her participation or consent.

We reject this hand washing attempt. It is established that the three of them first agreed to meet at a specific place on an appointed time and, from there, they then proceeded together to the victim's house at 29 Sable Street, SSS Village, Marikina, Metro Manila. The events that transpired after they had forced their way into the house clearly revealed how they cooperated with each other to successfully loot the house and escape undetected through the back door. When appellant Silan was in her former room, she said she heard noises coming from upstairs and that when she went up and saw Garcia and Tol taking things from the room of her aunt, she asked them to desist but they refused. According to her, this proved that she did not

consent to those larcenous acts of her companions.

We believe otherwise. Her simple admonition, even if true, is not evidence of a true intent to prevent her associates from taking valuables from the house. She could and should have insisted, for apparently there was no danger to her at that moment, but she did not do so. Further belying her supposed solicitude is the fact that she readily accepted the white bag containing part of the items taken from the room of the victim. If she really had no intention to gain, she should have returned the white bag which she admittedly opened and wherein she discovered valuables belonging to her aunt and the latter's two sons.<sup>[6]</sup>

On the contrary, the extrajudicial admissions in her sworn statement<sup>[7]</sup> which she voluntarily executed on June 15, 1992 at the Marikina Police Station, with the legal safeguards discussed hereinafter, clearly spell out in detail that she and her aforesaid confederates planned the robbery. Her act of taking things when she was allegedly instructed by appellant Garcia to take whatever she liked necessarily made her a principal by direct participation through confederacy in the robbery.

What also caught our attention is the testimony of prosecution witness Carol Concepcion that she saw and talked to appellant Silan not only on June 1, 1992 but also prior thereto, that is, in all probability on May 31, 1992 likewise near the very house of the victim at Marikina. On May 31, 1992 when witness Concepcion saw appellant Silan at around 2:00 P.M., the latter asked her whether there was a man in the house, informing the former that she was going inside the house to get a few things which she had left behind.<sup>[8]</sup>

Viewed from the events that transpired thereafter, her testimony that the reason why she went with her companions to the house of her aunt on June 1, 1992 was just to get her things is extremely doubtful and obviously contrived for she could have taken everything that she left behind the first time that witness Carol Concepcion saw her on May 31, 1992. It would, therefore, not be far-fetched to assume that during this first meeting with Carol Concepcion at the residence of Evangeline Gargantos, appellant Silan was actually conducting a surveillance of the place prior and consequent to the plan to ransack the same on June 1, 1992.

It is likewise plausible to assume that she had reason to be angry with her aunt for she was practically thrown out of the house, because of her having stolen the camera of the latter and pawning the same, aside from previous similar incidents. In her testimony, she admitted that the reason why she left the house was because she was forced out due to the argument with her aunt regarding that camera.<sup>[9]</sup> It is apparent that she had every opportunity to return the things which she took from her aunt's house but she did not.

With regard to the killing of her aunt, it is indeed out of the ordinary for appellant Silan not to even bother to find out what happened to her own aunt when, in fact, the last that she heard from the victim was the latter's cries for help after appellant Garcia and Tol went to intercept her at the door. Appellant Silan may not have participated in the actual killing of Evangeline Gargantos for in truth there is no evidence specifically showing who actually tied the electric cord around the victim's neck and stabbed her twice. However, the series of events prior to the June 1, 1992 incident, the testimony of witness Carol Concepcion, and the manifest concerted

acts of appellant Silan and her two confederates as recounted by the appellant Silan herself, irresistibly suggest that appellant Silan did participate in the planning and commission of the composite crime charged.

Although the killing of Evangeline Gargantos may just have been an unfortunate complication and was not part of the original plan of the group to commit robbery, there being conspiracy among the three malefactors, the crime of one is the crime of all. Reiterating our previous holdings on this issue, *People vs. Nunag, et al.*<sup>[10]</sup> stressed the rule that whenever homicide has been committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals for the special complex crime of robbery with homicide, although they did not actually take part in the homicide.

2. We are not at all impressed by appellant Garcia's exculpatory attempt to attribute his being enmeshed in this criminal case to the extrajudicial statement of appellant Silan. He assails the same for allegedly having been obtained by the police authorities without appellant Silan having been provided with counsel. Ironically, this claim was likewise belatedly made by Silan in a tragicomic deviation after she had voluntarily narrated in her aforesaid statement the details of her participation in the events that took place in the victim's residence.

How appellant Silan came to give that statement, and how it was reduced to its present form as submitted in evidence, is vividly reported in the testimony of SPO4 Ricardo S.L. Domingo, the police investigator.<sup>[11]</sup> The statement was taken down in the presence of this appellant's own mother, Catalina Silan, as indicated therein and whose signature is affixed to the pages thereof. Said appellant was assisted by Atty. Salvador Navarro, whose appearance and attendance during the interrogation and preparation of this document is also specifically mentioned therein and on the first page whereof he also affixed his signature. On top of that, said Atty. Navarro testified in court<sup>[12]</sup> on his assistance given to appellant Silan throughout the entire proceeding and how the constitutional injunctions mentioned in the sworn statement were duly observed.

And, if that would not be enough, appellant Silan herself took the witness stand and affirmed to the trial court her participation in the crime, virtually reiterating what she stated in her extrajudicial statement, thus:

- Q** Ms. witness, on June 1, 1992 at about 5:30 P.M., you remember where you were?
- A** Yes, ma'm.
- Q** Where were you?
- A** At Caloocan, Quezon City in Bonifacio.
- Q** What were you doing in Bonifacio?
- A** I was with "Billy" Garcia and his friend (whom) he used to call Tol.  
xxx xxx xxx
- Q** What happened?
- A** He (was) asking for (a) sum of money.
- Q** Did you give him money?
- A** No, ma'm.