

SECOND DIVISION

[G.R. No. 136113, August 23, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIE QUIBIDO, RUEL QUIBIDO, AND JOHN DOE, (ALL AT LARGE)

RODOLFO MONTEMAYOR ALIAS "DOLFO", ACCUSED APPELLANT.

D E C I S I O N

DE LEON, JR., J.:

Before us on appeal is the Decision^[1] of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40, in Criminal Case No. C-3971, convicting herein appellant, Rodolfo Montemayor, and his co-accused, Ruel Quibido, of the crime of robbery with homicide.

The lifeless body of Sofio Verguela was discovered inside his house in Bagong Silang, Victoria, Oriental Mindoro, lying face down on the floor in a pool of blood, in the early morning of February 16, 1993. His head was bashed with a blunt instrument fracturing the skull and exposing parts of his brain tissues. It was also discovered that one (1) blanket, one (1) radio and a wallet containing undetermined amount of money, all belonging to the victim, were missing.^[2]

On February 24, 1993, Luciano M. Vergara and Pedrito B. de Lara executed separate sworn statements before PO3 Herbert Tabernero of the Victoria, Oriental Mindoro police. Vergara stated in his sworn statement that he saw Willie Quibido, Jr., Ruel Quibido, a certain *alias* Dolfo, and another unidentified person, acting suspiciously while in the act of coming out of the house of the victim, at about the same time the killing incident happened at 9:00 o'clock in the evening on February 15, 1993. On the other hand, de Lara was able to recognize from the group Willie Quibido, Jr. only.^[3] Consequently, the accused Willie Quibido, Jr., Ruel Quibido, a John Doe and a Peter Doe were charged with the crime of robbery with homicide, defined and penalized under Article 294, paragraph 1 of the Revised Penal Code, in an information that reads:

That on or about the 15th day of February 1993, at around 9:00 o'clock in the evening, in Barangay Bagong Silang, Municipality of Victoria, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, taking advantage of the darkness of the night, with evident premeditation and by means of violence, did then and there wilfully, unlawfully and feloniously enter the house of SOFIO VERGUELA also known as SOFIO VERGUERA and once inside, wilfully, unlawfully and feloniously, with the use of violence, with intent to gain and against the will and consent of the owner thereof, took and carried away one (1) radio, one (1) blanket, one (1) wallet and undetermined amount of money all belonging to the latter, to the damage

and prejudice of the said owner in the value of properties aforementioned;

That on the occasion of said robbery and for the purpose of enabling them to take, steal and carry away the properties above-mentioned, the herein accused, in pursuance of their conspiracy and taking advantage of their superior strength, did then and there wilfully, unlawfully, feloniously and treacherously, with intent to kill and evident premeditation, attack, assault and hit on the head with a hard object the said SOFIO VERGUELA also known as SOFIO VERGUERA, thereby inflicting on the latter severe brain injury due to skull fracture resulting in his untimely death.

CONTRARY TO LAW.

Willie Quibido, Jr. was never apprehended and remains at large up to the present. Herein appellant Rodolfo Montemayor who was initially denominated as John Doe in the information in this case, and his co-accused, Ruel Quibido, were arrested on August 29, 1994 and September 5, 1994, respectively. Upon being arraigned on September 28, 1994, Rodolfo Montemayor, alias Dolfo, and Ruel Quibido,^[4] both assisted by *counsel de oficio*, separately entered the plea of "Not guilty".

Meanwhile, Emil Berganio was arrested by the police on November 11, 1994. After having agreed to testify in favor of the prosecution, Berganio's name was not included in the information as one of the accused in this case. On the same date of his arrest, his sworn statement^[5] was taken and which he subscribed and sworn to before Oriental Mindoro Chief Assistant Provincial Prosecutor Nicolas B. Senoren.

The evidence of the prosecution shows that on February 15, 1993 at around 5:00 o'clock in the afternoon the appellant, Rodolfo Montemayor *alias* Dolfo, and a certain Bokno invited Emil Berganio, a barrio mate in Barangay Antonino, Victoria, Oriental Mindoro, to join them to go out of town in search for employment. Emil went with Dolfo and Bokno upon learning that they were supposed to leave early on the following morning after they shall have allegedly collected a debt, to be used for their fare to Batangas, from a certain person in Barangay Bagong Silang, Victoria, Oriental Mindoro.^[6]

While walking alongside the NIA irrigation canal, the trio met Bokno's brother, Ruel Quibido, and his wife at a waiting shed. The group then boarded a passenger jeepney that took them to the neighboring Barangay Macatoc. From Barangay Macatoc, they proceeded on foot to the nearby Barangay Bagong Silang.^[7]

As planned earlier, Ruel, Bokno and Dolfo entered a two (2) storey house in Barangay Bagong Silang, Victoria, Oriental Mindoro at around 9:00 o'clock in the evening. Emil remained outside the house presumably as look out, while Ruel's wife was left outside the fence. From a distance of about three (3) arms length, Emil saw Ruel through the light emanating from a gas lamp inside the house, demanded money from an old man, whose name Emil later learned as Sofio Verguela, while Dolfo was pointing his airgun at him. When the old man replied that he had no money, Ruel hit him on the head with the shotgun which he earlier carried inside a sack, and then Bokno stabbed him. After the old man fell on the floor, Ruel took his wallet, while the others took his radio, before they hurriedly left for Poblacion, Victoria, Oriental Mindoro.^[8]

After a few hours, the group rode the bus at the public market in Victoria, Oriental Mindoro en route to Calapan City. Upon reaching Calapan City, they dropped by the house of Ruel Quibido's mother for a few minutes before they boarded the boat at the pier bound for Batangas. They stayed in the house of Ruel Quibido's parents-in-law in Nasugbu, Batangas for more than one (1) month. Subsequently, they moved to Metro Manila in the house of Ruel Quibido's uncle in Quezon City where they stayed for more than two (2) months after which Emil decided to return home in Victoria, Oriental Mindoro ahead of his companions.^[9] Emil disclosed to the police his knowledge involving the killing of Sofio Verguela when he was arrested on November 11, 1994, upon the advice of his father, after he was assured by the police of immunity from the instant criminal case.^[10]

Dr. Ruben A. Quimosing, M.D., Municipal Health Officer of Victoria, oriental, Mindoro during the time material to the instant case, conducted the post mortem examination on the body of the victim, Sofio Verguela. The autopsy report dated February 16, 1993 and signed by Dr. Ruben A. Quimosing shows the following findings:

Skull, open

Brain tissue, avulsed, with laceration

Cause of death: Severe brain injury due to skull fracture.^[11]

Dr. Quimosing testified in court that the single blow sustained by the victim on the frontal left portion of his head which fractured the skull caused severe brain injury that inevitably resulted to his instantaneous death. The blow may have been inflicted with the use of any hard object while the victim and the assailant were facing each other.^[12]

The defense denied any liability for the crime of robbery with homicide. Apellant Rodolfo Montemayor testified that on February 15, 1993 and during the period prior thereto, he shared a house with his brother, Randy Montemayor, in Barangay Loyal, Victoria, Oriental Mondoro which is about twenty (20) kilometers of mountainous terrain from Barangay Bagong Silang of the same town. From Barangay Loyal, one had to pass by the town proper in order to reach, in two (2) hours, Barangay Bagong Silang with the use of a motor vehicle. If a person were to travel on foot, the distance between the two (2) *barangays* can be covered in about five (5) hours.^[13]

On February 15, 1993, at around 9:00 o'clock in the evening, Rodolfo played "*dama*" in the house of his neighbor, Benjamin Grimaldo. He went home to sleep only after 10:00 o'clock in the evening.^[14]

The appellant denied using the *alias* name "Dolfo".^[15] He likewise denied that he knew Willie Quibido, Jr. and Ruel Quibido on February 15, 1993. Rodolfo heard of their names through their sister, Rowena Quibido, whom he met in Minas, Victoria, Oriental Mindoro only on May 4, 1993, and who became his common-law wife on May 31, 1993.^[16]

On August 26, 1994, at 9:00 o'clock in the morning, Rowena and Rodolfo visited the house of the former's parents in Danghari, Victoria, Oriental Mindoro. Willie Quibido, Sr. and his wife, Rosita, including their sons, Jojo and Ruel Quibido, were present on the said occasion. At around 9:00 o'clock in the evening, a police team headed by a

certain Magnayon raided the house of Willie Quibido, Sr. The police failed to arrest Willie Quibido, Sr. and his sons, Jojo and Ruel, for the reason that they had left earlier toward the forest at around 8:00 o'clock in the evening. Rodolfo and Rosita denied to the police having any knowledge on the whereabouts of Willie Quibido, Sr. and his sons,^[17] namely, accused Willie Quibido, Jr. and Ruel Quibido.

After the police had departed, appellant Rodolfo Montemayor and Rowena took Rosita to a relative in Poblacion, Victoria, Oriental Mindoro inasmuch as she needed to take medicine. On August 27, 1994, the three (3) proceeded to Barangay Loyal, Victoria, Oriental Mindoro. However, a person carrying a letter arrived and invited them to the police detachment for investigation. Upon arrival at the police detachment in Malayas, Victoria, Oriental Mindoro, the appellant was asked by Magnayon, who earlier headed the team that raided the house of Willie Quibido, where they could possibly find Willie Quibido and his sons Jojo and Ruel. When he answered in the negative, Magnayon warned that he (appellant) may be implicated in the crime.^[18]

On August 28, 1994, at around 3:00 o'clock in the afternoon, a certain Diego and Emil Berganio arrived at the Malayas police detachment. Magnayon introduced the appellant,, as the "son-in-law of Willie Quibido, Sr. and brother-in-law of Ruel Quibido", before Diego and Emil had a conversation with Magnayon inside the latter's office.^[19] Thereafter, the appellant was brought to the PNP headquarters in Calapan City, Oriental Mindoro.

Incidentally, after learning from a neighbor on February 16, 1993 of the death of Sofio Verguela, defense witness Pedrito B. de Lara went to see Sonny de Ocampo, who is the late Verguela's son-in-law, to inform him of what he saw on the evening of February 15, 1993 when the victim was purportedly killed. Pedrito related to Sonny that he met Willie Quibido, Jr. and Ruel Quibido together with two (2) other persons on February 15, 1993 at around 9:00 o'clock in the evening along the road in Barangay Bagong Silang, Victoria, Oriental Mindoro which was about fifty (50) meters away from the house of his father-in-law. He was on his way home after watching television in the house of his uncle while Willie Quibido, Jr., Ruel Quibido together with two (2) other persons were heading towards the opposite direction. He inquired where they were going (*Saan ang lakad n'yo?*) but nobody answered from the group inasmuch as they were walking hurriedly. Pedrito did not know the two (2) other companions of Willie Quibido, Jr. and Ruel Quibido although he saw their faces when he focussed his flashlight on them. He declared on the witness stand that appellant Rodolfo Montemayor was not one of the companions of the Quibido brothers.^[20]

In addition, Pedrito recalled that four (4) days prior to the killing of Sofio Verguela, Willie Quibido, Jr. invited him to join in robbing the store of a certain Angeles Vergara whose house was located directly across the house of the victim in Barangay Bagong Silang. Pedrito refused. He did not report the incident to the police authorities however, for the reason that he did not wish to offend Willie Quibido, Jr. who was a childhood friend.^[21]

After analyzing the evidence, the trial court found as follows:

It is clear from the testimony of prosecution witness Emil Berganio that he was certain that said accused Rodolfo Montemayor alias "Dolfo" poked

an airgun at the victim, while accused Ruel Quibido demanded money, and when the victim replied to have no money, Ruel Quibido hit the victim with a shotgun while accused only named "Bokno" stabbed him.

In the face of the foregoing clear and positive identification of accused Rodolfo Montemayor, alias "Dolfo" as one of those who robbed and killed Sofio Verguela, his defense of alibi clearly appears nothing but a mere concoction — a fabrication designed to exculpate him of the crime charged.

It is also striking to note that the defense did not even present in Court Benjamin Grimaldo to corroborate the testimonies given by accused Rodolfo Montemayor that the latter was playing "dama" with the former when the incident happened. This cast a grave doubt as to the veracity and truthfulness of the testimonies given by accused Rodolfo Montemayor.

xxx the Court is more inclined to believe the testimonies given by prosecution witness Emil Berganio, whose veracity can hardly be assailed and had narrated in detail the facts of how the crime was committed. Said witness was able to clearly identify the accused Ruel Quibido, Willie Quibido (Jr.) and Rodolfo Montemayor alias "Dolfo" as the perpetrators of the crime charged.

From the clear evidence presented by the prosecution, accused Ruel Quibido did not put up a defense; instead, he opted to escape from detention. His escape even during the pendency of the case, is therefore a clear indication of his guilt,

Hence, it ruled thus:

ACCORDINGLY, finding herein accused RUEL QUIBIDO and RODOLFO MONTEMAYOR *alias* "Dolfo" guilty beyond reasonable doubt of the complex crime of "Robbery with Homicide" punishable under Article 294(1) of the Revised Penal Code, and there being no mitigating nor aggravating circumstance present in this case, said accused are hereby sentenced to suffer the penalty of "*RECLUSION PERPETUA*" with all the accessory penalties provided by law, and to indemnify the heirs of the victim Sofio Verguela the amount of Fifty Thousand Pesos (P50,000.00) as moral and exemplary damages and to pay the costs.

Appellant Rodolfo Montemayor interposed the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE DESPITE INSUFFICIENCY OF EVIDENCE.

II

THE COURT *A QUO* GRAVELY ERRED GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF EMIL BERGANIO AND IN NOT APPRECIATING THE DEFENSE INTERPOSED BY THE ACCUSED APPELLANT.