

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PLACIDO NABA-UNAG, ACCUSED-APPELLANT.

G.R. Nos. L-30414-15. September 09, 1977

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PER CURIAM:

This is an appeal from the joint decision of the Court of First Instance of Samar. Branch I, in its Criminal Cases Nos. 721 5 and 7227.

In Criminal Case No. 721 5, Placido Naba-unag and Andres Naba-unag were charged with the crime of robbery with homicide and physical injuries,[1] while in Criminal Case No. 7227, Placido Naba-unag was charged together with Bienvenido Daclag and Luis Cabural with the crime of robbery.[2]

While Placido Naba-unag was still at large, his co-accused Andres Naba-unag, assisted by his counsel, pleaded guilty to the charge in Criminal Case No. 7215, and was accordingly sentenced by the trial court.[3] On the other hand, after their arrest, Placido Naba-unag pleaded not guilty in both criminal cases, while Luis Cabural similarly entered a plea of not guilty to the charge in Criminal Case No. 7227.[4] Bienvenido Daclag is, up to the present, still at large.

Thereafter, a joint trial was conducted by the court below and in due time rendered a joint decision convicting the accused Placido Naba-unag in both criminal cases and acquitting Luis Cabural in Criminal Case No. 7227, the dispositive portion of which reads as follows:

"In view of the above findings and considerations, judgment is now rendered in —

Criminal Case No. 7215 — declaring Placido Naba-unag guilty as principal in the crime of which he stands charged, and convicts him to RECLUSION PERPETUA, with the accessory penalties, indemnify the heirs of Felipe Mabansag (should be Mabangue), the amount of six thousand and twenty pesos, and pay the corresponding costs.

Criminal Case No. 7227 — declaring Placido Naba-unag guilty as principal in the crime for which he stands charged, and convicts him to an indeterminate penalty ranging from EIGHT (8) YEARS of prision mayor to FOURTEEN (14) YEARS, TEN (10) months and TWENTY (20) days of reclusion temporal, indemnify the spouses Victor Mabangue and Felisa Mabangue two hundred pesos, and the corresponding costs.

On reasonable doubt, the accused Luis Cabural is acquitted with the corresponding costs de oficio; and he shall be released from confinement."[5]

Dissatisfied with the above decision, the accused Placido Naba-unag, interposed the present appeal.[6] Hence, this joint decision.

From the testimony of Catalina Mabansag, the sole eyewitness in Criminal Case No. 7215, and the testimonies of Victor Mabangue and Felisa Mabangue in Criminal Case No. 7227, the facts in both cases, are as follows:

On the night of October 30, 1965, the spouses, Felipe Mabangue and Catalina Mabansag, were sleeping in their

one room house at Bo. Dolores, San Sebastian, Samar. At about midnight, their door was forcibly opened and immediately thereafter the brothers, Andres Naba-unag and Placido Naba-unag, entered their house. Catalina Mabansag recognized them as she had known them since their childhood and they had grown up in the barrio.

Once the two were inside, Andres Naba-unag ordered Catalina Mabansag, "Alright Mana, get your money," with which demand the latter complied. She got their money from the trunk and handed to him a twenty-peso bill. After getting the twenty-peso bill, Andres Naba-unag stabbed her on the chest, and as a result thereof, she fell on the floor.

At this juncture, Placido Naba-unag advanced towards Felipe Mabangue, who, at that time, was lying on the floor, and stabbed him with a bolo. Thereupon, Andres Naba-unag followed suit, and they took turns hacking Felipe Mabangue, inflicting upon the latter several wounds on the different parts of his body, until he died.[7] Thereafter, they jumped out of the house and fled.

That same night of October 30, 1965, the couple, Victor Mabangue and Felisa Mabangue, together with their two year old son and one Segundo Raagas, were sleeping soundly in their one room house at Bo. Dolores, San Sebastian, Samar. Towards midnight, they were awakened by a call of "Victor, Victor" from someone outside. Before they could verify who was making the call, somebody forcibly opened their door. Suddenly thereafter, Placido Naba-unag entered their house and stabbed Felisa Mabangue who was still in a sitting position lifting the mosquito net, thereby hitting her on the left forearm. She shouted, "I am wounded," and hearing this Victor Mabangue, her husband, who was still drowsy, jumped from the house and ran away.

Thereafter, Placido Naba-unag pointed his knife at Felisa Mabangue, and asked her: "Where is your money?" at the same time ordering her to light the lamp in her house which she immediately did. Fearing for her life, she pointed to a wooden suitcase near their altar where they kept their savings out of the earnings of Victor Mabangue as tuba gatherer in the amount of P200.00.

At this time, Bienvenido Daclag, who was already inside the house, took the suitcase and demanded the key from Felisa Mabangue, which the latter gave to him. Immediately, he opened the suitcase and took the couple's money amounting to P200.00; then they left the house.

Meanwhile, Victor Mabangue, who was able to evade the thrust of Luis Cabural when he (Victor) leaped from the house, came out from his hiding place, and moved slowly towards their house. Upon reaching the same, he found his wife, Felisa Mabangue, wounded. The latter informed him that their money had been forcibly taken by Placido Naba-unag and Bienvenido Daclag.

Fearing that the robbers might return, the couple, together with their child, transferred to the house of Juanito Agban and passed the night there.

In the morning, Victor Mabangue decided to bring his family to the house of his parents. Arriving thereat, they found his father Felipe Mabangue with wounds and already dead, while his mother Catalina Mabansag was alive but also wounded. Instantly, Victor Mabangue, together with Ernesto Mabangue and Rafael Mabangue, brought his mother and his wife to the Samar Provincial Hospital, at Catbalogan, Samar, where their wounds were treated by Dr. Faustino D. Cinco.[8] For the injuries she suffered, Felisa Mabangue received medical attention for two weeks. Meanwhile, the other relatives of Catalina Mabansag interred Felipe Mabangue at Hita-asan, Samar.

In both cases, the accused Placido Naba-unag set up the defense of alibi, corroborated by defense witness Pastora Navarro and Andres Naba-unag. He testified that on October 30, 1965, he was at Bo. Lunang, San Sebastian, Samar, two kilometers away from Bo. Dolores, harvesting palay in the farm of his sister, Emilia Mabini, together with his brother-in-law Balbino Mabini and Pastora Navarro. About 9:00 o'clock in the evening, his father, Nicolas

Naba-unag, arrived and informed him that his brother, Andres Naba-unag, killed Felipe Mabangue and was himself also seriously wounded. His father advised him not to leave the house because the relatives of Felipe Mabangue would kill him. So, he spent the night in the house of his sister and slept in their room with his brother-in-law, Balbino Mabini. He left the house of his sister after 6:00 o'clock in the morning when Luis Cabural arrived and told him that his brother, Andres Naba-unag, would be taken to the hospital. He went to the hospital and kept watch over his brother. After one week his brother was investigated and then arrested by the Philippine Constabulary. Thereafter, he left the hospital and did not return to Bo. Dolores, San Sebastian, Samar but engaged himself in buying and selling fish at Mahawan until he was arrested.

The trial court did not believe his alibi and, as previously stated, convicted the accused of the crimes correspondingly charged in Criminal Case Nos. 7215 and 7227. The accused, now appellant, assails the court a quo in (1) not giving credence to his defense of alibi; (2) convicting him in both cases merely on the uncorroborated testimonies of Catalina Mabansag and Felisa Mabangue; (3) disregarding entirely the testimony of Andres Naba-unag; and (4) finding him guilty beyond reasonable doubt in both cases as principal through conspiracy. After a careful review of the record, We find that appellant's contentions are devoid of merit.

To begin with, the appellant's defense of alibi is untenable. His pretense that at the time of the commission of the crimes in question he was at barrio Lunang harvesting palay in the farm of his sister does not preclude the possibility that he was at the scene of the crime because the sister's farm is only two kilometers away from barrio Dolores where the robbery was committed.[9] For the defense of alibi to prosper, it is not enough that the defendant was somewhere else when the crime was committed, but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[10] Appellant's alibi does not meet this requirement.

Besides, the appellant was well-known to Catalina Mabansag and Felisa Mabangue, having grown up in their barrio; and his house is barely 100 meters away from the house of complaining witnesses. Hence, they could not have been mistaken in positively identifying appellant as one of the perpetrators of the crimes involved in these cases. The motive alluded to by appellant which could have impelled them to testify falsely against him, that is, the feud between the Naba-unags and the Mabangues because of a previous case of physical injuries between the deceased Felipe Mabangue and Andres Naba-unag, is too fragile to be believed. The oral evidence of alibi can not prevail over the positive identification of the accused by witnesses who saw him at the scene of the crime and who could not have been mistaken because he was well-known to them.[11] The weakness of his alibi becomes more evident when we consider the fact that the same could have been corroborated by persons mentioned by him but for unknown reasons were not presented as witnesses. Such omission is fatal to his defense.

Again, there is no merit to his claim that the trial court erred in convicting him of the crimes charged in Criminal Cases Nos. 7215 and 7227 merely on the uncorroborated testimonies of the aggrieved parties, Catalina Mabansag and Felisa Mabangue. In the determination of the value and credibility of evidence, witnesses are to be weighed and not numbered;[12] and the testimony of a single witness may be sufficient to produce conviction if it appears to be trustworthy and reliable.[13] In the case before Us, We find the testimonies of Catalina Mabansag and Felisa Mabangue to be credible, trustworthy and reliable.

Nor do We find merit in appellant's contention that the trial court erred in disregarding entirely the testimony of Andres Naba-unag, his brother and co-accused in Criminal Case No. 7215, who, on a plea of guilt, was accordingly convicted and is now serving sentence in prison. If said witness really intended to admit solely the commission of the crimes involved herein, he could have done so at the time he entered his plea of guilty. Obviously, this witness was presented in court in a vain attempt to save his brother, the herein appellant, from punishment for the crimes committed. The said testimony is unworthy of any weight and credence. At any rate,

the appellant's flight from the scene of the crime is hardly consistent with his claim of innocence.

The crime of robbery with homicide and physical injuries, committed by the accused as charged in Criminal Case No. 7215, is aggravated by the circumstances of having been committed at nighttime and in the dwelling of the offended party. Likewise, the crime of robbery committed by the accused as charged in Criminal Case No. 7227 is aggravated by the circumstances of nighttime and dwelling.

Robbery with homicide is punished by reclusion perpetua to death. There being two aggravating circumstances without any mitigating circumstance, the death penalty should be imposed upon the accused for the crime charged in Criminal Case No. 721 5. The indemnity awarded to the heirs of the deceased Felipe Mabangue should be increased to P12,020.00.

The crime of robbery charged in Criminal Case No. 7227 is punished by prision correccional in its maximum period to prision mayor in its medium period. There being two aggravating circumstances without any mitigating circumstance, the penalty prescribed by law should be imposed in its maximum period. Applying the Indeterminate Sentence Law, the appellant should be sentenced to an imprisonment of not less than 4 years and 2 months of prision correccional as minimum, to 10 years of prision mayor, as maximum.

IN VIEW OF THE FOREGOING, the judgment of the trial court is modified as follows:

1. In Criminal Case No. 721 5, the appellant is sentenced to suffer the death penalty, and the indemnity awarded to the heirs of the deceased is increased to P12,020.00;
2. In Criminal Case No. 7227, the appellant is sentenced to an imprisonment of not less than 4 years and 2 months of prision correccional, as minimum, to 10 years of prision mayor, as maximum.

The judgment of the trial court is affirmed in all other respects. With costs against the appellant.

SO ORDERED.

Castro, C.J., Teehankee, Barredo, Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion Jr., Martin, Santos, Fernandez, and Guerrero, JJ., concur.

Fernando, J.. took no part.

[1] pp. 16-17. Record. Criminal Case No. 7215.

[2] p. 33. Record, Criminal Case No. 7227.

[3] pp. 16-17, Record, Criminal Case No. 7215

[4] p. 33, Record. Criminal Case No. 7227.

[5] p. 147. Record, Criminal Case No. 7215.

[6] p. 105. Record. Criminal Case No. 7227.

[7] p. 51. Record. Criminal Case No. 7227.

[8] Exhibit "D", p. 54. Record. Criminal Case No. 7227.

[9] People vs. Tamani, 55 SCRA 153, 172; People vs. Dereje, 56 SCRA 554, 559; People vs. Clementer, 58 SCRA 742, 747.

[10] People vs. Sarmiento, L-26183, June 19. 1975.

[11] People vs. Paz, et al, L-17320. May 31, 1965, citing People vs. Quiatchon, L-11109. June 30, 1958; People vs. Sabuero, L-13372, May 20, 1960; People vs. Divinagracia, L-10611. April 13. 1959.

[12] People vs. Marasigan, L-2355. Jan. 31. 1050. 47 Official Gazette, No. 7. p. 1529.

[13] People vs. Salazar, L-32858. Aug. 19. 1974. and cases therein cited.

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