

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SABANGAN CABATO, ACCUSED-APPELLANT.

G.R. No. L-37400. April 15, 1988

Ponente: CORTES, J.

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CORTES, J.:

Accused-appellant Sabangan Cabato appeals from the judgment of the Court of First Instance (now Regional Trial Court) of Zamboangadel Norte finding him guilty of the crime of ROBBERY WITH HOMICIDE in Criminal Case No. 307.

The facts of the case are as follows:

In an INFORMATION dated February 12, 1971, the Provincial Fiscal of Zamboanga del Norte accused Sabangan Cabato of ROBBERY WITH HOMICIDE committed as follows:

That in the evening on or about the 25th day of Januar 1971. ... the said accused SABANGAN CABATO, conspiring, confederating and working together with two (2) other DOES who are still at large. all armed with firearms and stones and with intent of illicit gain by means of lorce violence and intimidation aeainsi persons, did then and there wilfully, unlawfully and feloniously enter the dwelling house of one VICTOR GUINIT and once inside attack, hold tight and squeeze the mouth of said Victor Guinit, and hug his wife Herminia Am-es Guinit, and then rob them of cash money (coins) in the amount of P300.00; . . . that in pursuance to (sic) their evil motives, during and on the occasion of said robbery, the above-named accused taking advantage of their superior strength and of the darkness of the night to better accomplish their purpose and with intent to kill by means of treachery and evident premeditation, did there and then wilfully, unlawfully and feloniously attack, strike with stones for several times said HERMINIA AM-ES GUINIT thereby inflicting upon her several abrasions and contusions . . . which caused her death on the spot;...

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CONTRARY TO LAW with the aggravating circumstances of treachery and evident premeditation, dwelling, superior strength, and without respect due to ages of the victims (spouses) and due to the sex of Herminia Am-es Guinit [Rollo, pp. 9-10.]

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Upon arraignment, the accused, assisted by counsel, pleaded NOT GUILTY.

During the hearings in the Trial Court, the prosecution, relying heavily on the eyewitness account of Victor Guinit, established that:

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Offended party Victor Guinit, 69 years old, widower, testified that he knows accused Sabangan Cabato personally; that witness pointed to accused in open court; that on January 25, 1971, his wife was his only companion in their house; that at around 7:30 p.m., three persons came to their house while they were taking supper; that his wife brought food to their dog; that they have two lamps in the house, one lamp near the bed,

and another lamp brought by his wife; that the two persons [who] hugged him covered his mouth; that the robber hit his mouth with a stone causing his tooth to fell out (sic); that one of the robbers grappled with his wife, and the mask covering the face fell out (sic) and his wife recognized accused Sabangan Cabato; that his wife shouted "Sabangan, do not kill us, we will give you the money"; that the accused was at a distance of three meters from him; that accused Sabangan Cabato said: "Get your money"; that she (deceased) said: "Victor, we will give the money in the piggy bank"; that his wife went down; that later the deceased said: "Victor, I do not know where you put the money"; that the robbers untied him and he went downstairs; that he got the money and gave the same to one of the bandits; that one of the bandits said, let us go upstairs, and got (sic) the paper bills, we want P3.000.00: that the money given to the bandits were their saving (sic) for five years consisting of coins which were proceeds from the sale of the bananas; that the deceased and accused Cabato went to the kitchen; that they told the bandits that we do not have paper bills and that they do not have P3.000.00; that one of the bandits struck him with a pistol while the other boxed him; that one of the bandits struck the back of his head with a stone and his teeth fell out that the accused and his companions left the house; that he noticed that his wife was already dead; that he gave the stones to the police (Exh. C, C-1, C-2); that after the bandits left, he untied himself, that he called for help but nobody came; that he went to his two married sons who were living uphill; that the land owned by them is two hectares: that the two bandits wore mask. [CFI Decision, pp. 5-6.] (Italics supplied.)

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On the other hand, the accused vehemently denied his alleged participation in the gruesome crime and testified to the effect that:

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... he [Cabato] knew offended party Victor Guinit and the wife since he was young: that the home of the Guinit is one kilometer away from his house: that he visited them before as a neighbor: that the Guinit has (sic) children named Felix and Isco who are living at Tambalang: that he never committed the crime of robbery¹ with homicide attributed to him; that on January 25, 1971, he was gathering corn in their farm in the interior at Balatan. Salug together with his father-in-law; that he left Tambalang bound for Balatan at 6:00 A.M. the same day: that he gathered corn and returned to Tambalang at 5:00 P.M. and then pastured his carabao and stayed in his house the whole night: that on January 25, 1971, in the evening, he did not know of any robbery; that on January 26, 1971, he was informed by their neighbors of the robbery: that he was told that the victims were the Guinites: that as a muslim he did not go to the Guinit to give alms as they are prohibited: that he met the son of Guinit named Felix Guinit in the house of Isco; that he went to Isco Guinit to find out if the report of the robbery of the parents of Isco is true; that Isco Guinit told him that the robbers were not identified; that the amount taken was P80.00; that on January 29th, he was arrested at the market of Tambalang; . . . [CFI Decision, pp. 12-13].

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Faced with the issue of whether or not the accused was guilty beyond reasonable doubt of the crime charged, the Trial Court had to first settle the question concerning the positive identification of Sabangan Cabato as one of the robbers who killed the deceased Herminia Am-es Guinit.

Weighing and evaluating the evidence on record, the Trial Court rendered the following decision:

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There exists no doubt that accused Sabangan Cabato was clearly identified as one of the participants in the gruesome crime that took place in the residence of Victor Guinit on January 25, 1971. By his own admission, accused Sabangan Cabato is well-known to the Guinit family for their houses are only one kilometer apart. Accused Cabato visited the house of the deceased at least two times. Besides, during the incident in question, there were two kerosene lamps in the house of Victor Guinit which illuminated their home such that the

visitors were clearly seen. Another factor that clinched the identification of the accused, Sabangan Cabato, is the fact that when the deceased, Herminia Guinit grappled with the accused Cabato, the mask worn by the accused Cabato fell so much so that the deceased exclaimed, "Sabangan do not kill us. we will give you the money."

According to the evidence, accused Sabangan Cabato brought the deceased to the kitchen in order to compel her to divulge the whereabouts of the P3,000.00 paper bills. But the deceased denied they had any other money except the coins inside the bamboo tube in the approximate sum of P300.00, which led the accused, Cabato, to strike the deceased with the stone in the head which caused cerebral hemorrhage (Exh. A) leading to her death.

From the findings of the Sanitary Inspector who examined the injury suffered by deceased Herminia Guinit, the cerebral hemorrhage was caused by hitting the head with a hard object presumably a stone (Exh. C, C-1, C-2) which were (sic) found in the kitchen near the dead body.

The contention of the defense that Victor Guinit was unable to identify any of the perpetrators for the police blotter (Exh. 1) is devoid of merit.

According to Patrolmen Mananguil and Llenes, they were informed by Victor Guinit on January 28, 1971, that accused Cabato was one of the robbers who perpetrated the crime. The investigation was conducted in the Office of the Chief of Police and on the 29th day of January, 1971, accused Cabato was brought for identification in the Municipal Building of Salug. Although accused Cabato was together with many persons, Victor Guinit pinpointed him as one of the robbers.

The accused defense is alibi, claiming that he was in Barrio Balakan, in the house of his in-laws gathering corn. But his testimony must be rejected for lack of sufficient corroboration. Outside of his lone testimony, no other witness was presented to substantiate his alibi [CFI Decision, pp. 15-17.] (*Italics supplied.*)

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Maintaining his innocence, accused appeals the decision asserting that his guilt has not been proven beyond reasonable doubt. His identification by the prosecution witness Victor Guinit allegedly lacked definiteness and concreteness not to mention that it was tainted with serious inconsistencies [Brief for the Accused, p. 1]. These alleged inconsistencies painstakingly narrated by accused-appellant cannot overturn the finding of guilt by the Trial Court.

Accused-appellant alleged that Victor Guinit, in his cross-examination, declared that he recognized the accused when the piece of cloth which covered the latter's mouth fell down as a result of the grappling by the deceased [TSN, June 8, 1972, p. 22]. But in his examination in chief, he testified that he recognized the accused as early as when the robbers were still at the door [TSN, June 8, 1972, p. 14j]. This is allegedly incredible because when the robbers were at the door, they still had their masks on [Brief for Accused, p. 4].

A close perusal of the direct examination of Victor Guinit would show that the identification of Cabato was indeed made when the latter's mask fell down.

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Q

Now, what did you do when you noticed that after your wife opened the door, Sabangan Cabato bumped your wife with two (2) other persons?

A

The two (2) other persons passed towards me and hugged me; one of them covered my mouth with his palm and I was hit by a piece [of stone] on my nape and one of my teeth fell down,

Q

Now what about this Sabangan Cabato, what did he do?

A

He grappled with my wife.

Q

And what happened while [he was] grappling with your wife?

A

During the course of the grappling, my wife happened to scratch Sabangan Cabato's face and the piece of cloth used as mask fell down. Then, at this juncture, my wife said. "Sabangan, don't kill us. We will give you the money."

Q

Now, how far were you from your wife and Sabangan Cabato, while the two (2) were grappling each other?

A

About three (3) meters.

Q

Now, from that distance, were you able to recognize and identify the person grappling with your wife?

A

Yes.

Q

How were you able to recognize him?

A

Because his mask fell down. [TSN, June 8, 1971. pp. 14-15.]

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Accused-appellant further pointed out that Guinit, in his cross-examination, testified that he was unconscious for 20 minutes after he was stFuck with a stone by one of the robbers [TSN, June 8, 1972, p. 24]. Accused alleged that if Guinit was unconscious, it was physically impossible for him to see what happened in the kitchen between the deceased and the accused nor to see the falling down of the mask.

However, the identification of the accused was made by Victor Guinit even before the former proceeded to the kitchen with the deceased. The sequence of events as culled from the records would reveal that when the deceased was opening the door to feed the dog, three masked men bumped her on their way into the house. Once inside, two of the masked men hugged Victor Guinit while the third grappled with Herminia. During the course of the grappling, the wife happened to scratch the face of the masked man as a result of which the mask fell down. This was when the identity of the accused was revealed to the couple with the wife exclaiming, "Sabangan, do not kill us. We will give you the money." [TSN. June 8, 1972. p. 15.] At that precise time, Guinit was only three meters away from his wife. Afterwards, Guinit proceeded to where the money was hidden then he went back into the house to hand over the money. Not being satisfied, the robbers demanded for paper bills which the couple denied possessing. This was when the two robbers whose identities were not revealed, beat Guinit while Cabato went to the kitchen with Herminia.

The other inconsistencies alleged by the accused to buttress his appeal centered on minor details.

Conceding that there may have been inconsistencies in the testimonies of the prosecution, these far from being badges of fraud and fabrication, can justifiably be considered as a manifestation of good faith and a confirmation of the fact that the witness was not a rehearsed witness. It is a truism that the most candid witness oftentimes makes mistakes but such honest lapses do not necessarily impair his intrinsic credibility. [People v. Alcantara, L-26967, 33 SCRA 812; People v. Canada. G.R. No. 63728, Sept. 15, 1986. 144 SCRA 121]. Inconsistencies in the testimony of witnesses due only to inaccurate expressions or honest mistake or observations are not fatal. [People r. Demante, L-38960, March 30, 1982, 113 SCRA 353; People vs. Delavin, G.R. Nos. 73762-63, Feb. 27, 1987, 148 SCRA 257]. When they are on trivial matters only, as in this case, they cannot be taken to mean as an attempt to perpetuate a lie.

Further, there was not even an iota of evidence presented by the accused-appellant ascribing to prosecution witness Guinit any motive or intent to implicate the former as the person who killed his wife. The testimonies of both the prosecution and the defense, in fact would picture the Guinites and the Cabatos as neighbors on good terms. As the accused himself narrated, the Guinites were neighbors whom he used to visit since he was young. In this light, Guinit's testimony becomes more credible. As was held in one recent case:

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We have no doubt about the credibility of Rolando Blanco [the witness] . . . The records do not show any improper motive on his part to falsely implicate the appellants in this diabolic crime. In fact, Antonio Guilbao is his first cousin. They were all positively identified by Blanco. [People v. Ladrera, G.R. No. 55339, May 21, 1987, 150 SCRA 113. 123-124.]

Accused's admissions would negate any improper motive for Guinit to testify falsely against him. In this light,

Guinit's testimony becomes more credible. [People v. Demante, 113 SCRA 353, 364].

Summing up, the alleged inconsistencies brought forth by the accused boil down to the question of the eyewitness' credibility.

Time and again, it has been held that the Supreme Court respects the trial court's findings on credibility of witnesses [People v. Palon, L-33271, Feb. 20, 1984, 120 SCRA 529; People v. Dava, Nos. L-41642-41645, May 15, 1987, 149 SCRA 582]. The appellate court will not disturb the factual findings of the lower court for the latter is in a better position to gauge the credibility of eyewitnesses. [People v. Mercado, G.R. No. 65152, Aug. 30, 1984, 131 SCRA 501] "The matter of assigning value to declarations at the witness stand is best and most completely performed by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the defendant's demeanor, conduct and attitude at the time and is thereby placed in a more competent position to discriminate between the true and the false" [People v. Bermudez, L-30931, June 28, 1974, 57 SCRA 629, People v. Laganzon, L-47118, May 21, 1974, 129 SCRA 333, 347].

In this case, the decision of the trial court clearly outlined the evidence for both prosecution and defense. The trial judge had observed the demeanor of both prosecution and defense witnesses on the witness stand and found nothing amiss with the credibility of the prosecution witness.

Accused interposed alibi as his defense claiming that he was in Balakan gathering corn with his wife and in-law [TSN. Dec. 13, 1972, pp. 10-11].

Considering however that the identification of the accused was positively established, accused's defense of alibi becomes weak.

Alibi is one of the weakest defenses by an accused especially if there is direct testimony of an eyewitness identifying the accused as the culprit [U.S. v. Garcia, 9 Phil. 434 (1907). People v. Coronado, G.R. No. 68932. Oct. 28, 1986. 145 SCRA 250. People v. Inot, L-36790. May 29, 1987. 150 SCRA 322]. It is rarely given credence because it is easily fabricated [People v. Milarpe, G.R. No. 69281. Feb. 25, 1985. 134 SCRA 555. People v. Petil, G.R. No. 70223. Mar. 31, 1987, 149 SCRA 92]. Uncorroborated alibi, as in this case, is not credible against positive identification [People v. Jones. G.R. No. 61165, June 24, 1985. 134 SCRA 166: People v. Canturia, G.R. No. 67598, Oct. 1 1. 1985, 139 SCRA 280], Alibi does not deserve much credit as it was established only by the accused himself without any corroboration from his wife or in-law.

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Absence of such corroboration. in the light of the categorical statement of one of the victims that he saw [accused] Luisila Apostol because there was a lighted post at the place of the incident ... is fatal to the defense. [People v. dela Cruz, G.R. Nos. 71044-45. Mar. 16. 1987, 148 SCRA 58,2. 589]

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The Court now addresses itself to the aggravating circumstances alleged by the plaintiff-appellee to have attended the commission of the crime.

The prosecution argues that since "the attack was by a robust man of 29 years with a huge stone against an ageing defenseless woman" [Brief for Plaintiff-Appellee, p. 15], abuse of superior strength should aggravate the crime.

The records of the case are bereft of any information with respect to the physical conditions of both the accused and the victims. Thus, abuse of superior strength cannot be considered. This aggravating circumstance depends on the age, size and strength of the parties.

It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing

a situation of superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of by him in the commission of the crime. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of the defense available to the person attacked [People v. Cabiling, L-38091, Dec. 17, 1976, 74 SCRA 285. 303].

In this case, the prosecution failed to prove that there was indeed a notorious inequality between the ages, sizes and strength of the antagonists and that these notorious advantages were purposely sought for or used by the accused to achieve his ends.

However, the Court considers dwelling as an aggravating circumstance since it has been proven that, indeed robbery with homicide was committed inside the house of the offended parties. Dwelling is aggravating in robbery with violence or intimidation because this class of robbery can be committed without the necessity of trespassing the sanctity of the offended party's house [People v. Mercado, L-39511," April 28, 1980. 97 SCRA 232, People v. Dajaresco, L-32701, June 19, 1984, 129 SCRA 576; People v. Gapasin. G.R. No. 52017, Oct. 27, 1986. 140 SCRA 178].

Likewise, the Court considers disguise as another aggravating circumstance. The accused, together with two others, wore masks to cover their faces. There could have been no other purpose for this but to conceal their identities particularly for Cabato who was very much known to the offended parties. The fact that the mask subsequently fell down thus paving the way for Cabato's identification will not render this aggravating circumstance inapplicable. In a recent case, the Court held "that Darwin Veloso and his five (5) companions wore masks [which eventually fell down] to conceal their identities during the commission of the crime constitutes disguise" [People v. Veloso. L-32900. Feb. 25. 1982. 112 SCRA 73. 182], Robbery with homicide under Art. 294 (1) of the Revised Penal Code is punishable with reclusion perpetua to death. However, in view of Sec. 19(1). Art. III of the 1987 Constitution the supreme penalty of death can no longer be imposed.

WHEREFORE, the appealed judgment is hereby AFFIRMED insofar as the judgment sentenced the accused to suffer the penalty of RECLUSION PERPETUA but is MODIFIED insofar as the civil indemnity is concerned which is hereby increased to P-30,000.00.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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