

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO ALINDOG, DEFENDANT-APPELLANT.

G.R. No. L-35914. June 25, 1980

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the death sentence imposed upon appellant by the Circuit Criminal Court, Seventh Judicial District at Pasig, Rizal, said court having found appellant guilty beyond reasonable doubt of robbery with homicide committed allegedly on January 17, 1972.

The information charged the appellant thus:

"That on or about January 17, 1972, in the Municipality of Bacoor, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with JOHN DOE, PETER DOE AND RICHARD DOE, whose true identities are still unknown, the latter three still at large, all armed with unlicensed firearms, and all conspir-ing, confederating and mutually assisting one another, with intent to gain, by means of force, threat and intimidation, did, then and there, wilfully, unlawfully and feloniously, hold up, take and carry away a passenger jeepney and owned by Dominador Jimenez, valued at EIGHTEEN THOUSAND PESOS (P18,000.00), Philippine Cur-rency, against the will and consent of the said driver and owner, to the damage and prejudice of the said owner in the aforesaid amount; and that on the occasion of the crime, in furtherance of their unlawful design, and as a necessary means in the commission of said crime of robbery, said accused did, then and there, wilfully, unlawfully and feloniously, assault, hit, shoot and fire at said Jaime Caisa, the driver of the said jeepney, causing his instantaneous death, and thereafter dumped him in a canal.

"With the aggravating circumstances that the crime was committed by the accused and his co-conspirators during nighttime to facilitate its commission; and by taking advantage of their superior strength; and that means and methods were employed to insure the execution of the crime without risk to themselves arising from the defense which the offended party might take.

"Contrary to law." (Pp. 8-9, Record.)

While it is not disputed that as alleged in the above information, the jeepney described therein was taken away from its driver, Jaime Caisa, who was shot at the back and consequently died that same night, how the offense charged was supposed to have been committed was testified to by only one witness named Carmelito Caisa, a nephew of the deceased. In a statement purportedly given by this witness to the police on February 13, 1972, almost a month afterwards, he narrated the event in question as follows:

"T -

Maari mo bang maisalaysay kung paano naganap ang pangyayaring ito?

"S -

Opo. Kami ni CELESTINO GANA ay sakay ng pampasaherong jeepney na minamaneho ni JAIME CAISA, doon sa Binakayan, at ito ay patungong Baclaran, may nagpaparang dalawang tao at sila ay sumakay, hindi pa nakata-takbo ng malayo ang jeepney at muling may pumarang dalawang tao at sumakay din, nasa Binakayan pa lamang ay puno na nang pasahero ang jeepney, na pagdating nang Kaingin, Bacoor, Cavite ay may nagpaparang isang matanda at lulunsad, iyon na po lamang, ang sabi po nang apat na taong iyan na magkasunod na sumakay sa Binakayan ay HOLD-UP ito at tangan ang kanilang Pistola, ang tsuper ay pinigilan nuong taong nasa likod niya at pinukpok ng pistola, kami pong lahat na sakay ay nagpanambulat, na unahan sa pagpanaog, at ang naiwan po lamang ay iyang apat at ang tsuper sa loob ng jeepney, sabay po sa pagpapatakbo nila ng jitney ay nakarinig kami ng isang putok. (Extrajudicial Statement of Carmelito Caisa dated, February 13, 1972)." (Brief for the Defendant-Appellant, pp. 7-8; p. 54 Rec.)

This statement was substantially reiterated by Carmelito in open court, with the particularity that at one point in the course of the cross-examination by defense counsel he testified that he actually saw appellant shoot the deceased in this manner:

"Q

How many times did Carlito Alindog hit the driver on his head?

"A

I saw him once only because we were then kicked and the passengers scampered away.

"Q

Who kicked you?

"A

Because of my fear I alighted from the jeep.

"Q

You said you were kicked, who kicked you?

"A

I was referring to the other passengers who were kicked, sir.

"Q

You said you heard a shot fired?

"A

Yes, sir.

"Q

You do not know who fired that shot?

"A

I do not know anymore.

"Q

It was not Mr. Alindog?

"A

After I alighted, I heard shot and after a while the jeep sped away.

"Q

But you did not see Mr. Alindog fired the shot?

"A

"A When I alighted I saw that the gun was fired.

"Q

The question is, did you see Alindog fired his gun to the driver?

"A

I saw.

"Q

Why did you not tell the fiscal that you saw he was shot when you were asked?

"A

All the truth I will tell to this Court." (Pp. 35-37 T.S.N., Aug. 4, 1972.)

It is at once interesting to note that no peace officer ever testified on the investigation of the incident, if any, at all was conducted by the police or the constabulary. Instead, what appears in the record, as testified to by appellant and not rebutted by the prosecution, is that on February 13, 1972, while appellant was in the house of his friend Mariano in Anabu, near the highway and about two kilometers from Bacoar, Cavite, a certain Danny Advincula arrived and told him that Vice Governor Camerino of that province wanted to talk to him. He went with Advincula, who took him to the house of Dominador Jimenez, a witness of the prosecution as to his ownership of the stolen jeep and what were taken therefrom, (the said vehicle having been found later) where he was confronted by the Vice Governor about "a passenger jeep whose driver was killed." Appellant denied any knowledge thereof. And what happened afterwards was narrated by appellant as follows:

"Q

Did Camerino talk with you?

"A

Yes, he asked me if I know of a passenger jeep whose driver was killed. I saw in that house Dominador Jimenez who testified here. I was brought out of the house when I denied knowledge of the robbery of the jeep and the killing of its driver.

"Q

Where were you brought next?

"A

To a house painted yellow in Manggahan, Kawit where I saw Kaisa and his companions. Kaisa testified here.

"Q

Did Camerino tell you when the jeep was stolen?

"A

Yes, on January 17, 1972 at 7:30 in the evening; he was asking me to admit the robbery but I kept on denying it.

"Q

What did Kaisa do while you were in that house?

"A

He just looked at me.

"Q

What happened afterward?

"A

I was brought to Camerino's house in Imus at 3:00 in the afternoon and locked in a room.

"Q

How long were you locked in that room?

"A

About 3 hours. Camerino was taking me out occasionally to ask about my participation in the robbery of the jeep and the killing of its driver. But I vehemently denied any participation.

"Q

Were you brought to any place?

"A

Yes, to the municipal building of Bacoor, Cavite, inside the detention cell where an investigator kept on asking me if I knew anything about the incident that happened on Jan. 17.

"Q

What happened further at the detention cell?

"A

Kaisa arrived with a companion and the two of them were staring at me. The investigator asked them if I was among those who stole the jeep but they did not answer and they did not point at me.

"Q

What happened then.

"A

All of them left the detention cell leaving me alone.

"Q

Do you know the reason why Camerino was continuously asking you about the jeep stolen on Jan. 17, 1972?

"A

Yes, somebody informed him that a witness who was tall with long hair and white complexion had witnessed the incident. That I was involved in a carnapping case. That I am the son of a father incarcerated in Muntinlupa.

"COURT:

"Q

What is that carnapping case about?

"A

I was formerly a driver of Maria Camagong of Pasay City. It was at Cine Martan when my friend Rogelio Henova invited me to his sisters place as his brother-in-law wanted to hire a jeep. Upon arrival at the place we were informed that another jeep had been hired already. We followed them but on the way my jeep turned turtle and my foot got entangled in the side of the jeep. After my foot had been extricated we were brought to the owner of the jeep, who wanted us to pay for the damages caused the jeep. I refused to pay, as the jeep is covered by insurance.

"ATTY. BALAGTAS:

"Q

Upon your refusal what did the owner do?

"A

He charged me with carnapping.

"Q

What happened to that carnapping case?

"A

Dismissed." (Pp. 3-4, T.S.N. Sept. 29, 1972.)

True it is that appellant was identified by Carmelito Caisa as one of those who participated in the taking of the jeep, so much so that according to Carmelito, it was appellant who hit the deceased with a pistol on the head and, as already stated earlier, shot him. On the other hand, the defense put up by appellant was an alibi supported, of all things, by the sole testimony of a supposed paramour, named Lourdes Donato, 32 years old, who unashamedly divulged in open court that as a married woman whose husband was 49 years old and thin and sickly, having pneumonia and always with fever, upon being "tempted," she used to have a tryst with appellant, who was only 21 years old, on Sundays and Mondays in Las Piñas, in the house of her friend Betty. Ordinarily, therefore, pursuant to existing jurisprudence, the balance should tilt in favor of the prosecution.

But while alibi is indeed a weak defense unless well proven and of such nature as would make it improbable, for the accused to have committed the offense imputed to him, specially because of the distance of the place of the offense, in the case at bar, what baffles the Court is the unusually shaky and incomplete nature of the evidence of the prosecution, notwithstanding the identification of appellant by the sole and only government witness.

To begin with, why did it have to be Carmelito, precisely relative of the deceased, who alone was called to testify, without any explanation as to why Celestino Gana, who he declared was his companion when he rode in the jeep in question was not made a witness? We cannot understand why no police or constabulary investigator testified

even as to where the jeep was found and more, importantly, where Jaime was also found wounded, before being brought to the hospital where he died, to show more precisely the elements of robbery with homicide. We are wondering why no statement was taken from Carmelito on January 17, 1972, and it was only on February 13, 1972 that the statement exhibited in court was taken. No reason at all had been given for such delay. In this connection, it must be recalled that such statement was taken after appellant had been investigated by Vice Governor Camerino, to whom he stoutly denied any knowledge of the crime in question and after he was jailed already and identified without the benefit of being made to line-up with other persons. Then, there is the unusual circumstance that appellant, as the record shows, wore a moustache, a detail Carmelito failed to notice in giving the police a description supposedly of the appellant. Besides, if, as pretended by Carmelito, it was a hold-up that was announced by the four armed men after the old man alighted, why were all the passengers kicked out of the jeep and instead what happened was apparently a carnapping, with homicide. No clear details of such carnapping and homicide appear in the evidence. Indeed, according to Dominador Jimenez, the owner of the jeepney, only some parts of the jeepney costing around P8,000 were missing.

What is more, that Jaime was killed by the supposed four hold-up men is at best indicated only circumstantially. There is nothing in the record showing how the killing actually took place. If it were true that Jaime was fatally shot within sight of Carmelito, how could the jeep have proceeded running away from the place where the passengers scampered out of it, there being no testimony that one of supposed carnappers took over the wheel. Of course, it is not of the essence that the exact manner of killing be established in robbery with homicide, as long as it is shown that the killing is done on the occasion thereof. In the instant case, however, the People's evidence is not only quite foggy but suspiciously short in important decisive details, like the lack of any showing of the intervention of the peace authorities in the investigation and trial. Its whole thrust lacks, in Our view, vital elements, thereby casting reasonable doubt and shaking the faith needed to produce moral conviction.

Before closing, mention need be made that We have not overlooked the reference in the record to the alleged connection of the appellant with another carnapping case and the fact that his father is a convict confined in Muntinlupa. It appears, however from the portion of the testimony of appellant earlier quoted herein, which the prosecution has not rebutted, that such connection was not actually criminal, so much so that the case against him was dismissed. Withal, since when has this Court convicted an accused on account, among other things, of his father having been previously convicted of a crime?

As to the seeming brazenness with which appellant's paramour testified, which the trial court belittled as being polluted with "immoral ventures", the Court is, on the contrary, inclined to accord her credence, considering that her testimony was straightforward and unhesitating, punctuated with moments of tears and other obvious indications of candidness in her manner of testifying and revealing her relationship with appellant.

Upon the foregoing premises, and giving the benefit of the doubt to the accused-appellant, as mandated by the Constitution, judgment is hereby rendered acquitting him with costs de oficio. It is ordered that he immediately be set free unless there is any other legal reason for his further detention.

Fernando, C.J., Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Makasiar, J., I concur solely on insufficiency of the State's evidence. The incredible alibi of appellant should have been ignored.

Teehankee and Melencio-Herrera, JJ., took no part.

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