

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO ALISON, JUANITO ALERTA, ENRICO CABATINGAN,
AQUINO ALVAREZ, PABLO MENDOZA, ROMULO CABATINGAN,
PEDRO GALUPO, IDOLE...**

G.R. No. L-30612. May 03, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

This case is before Us for the review of the decision of the Court of First Instance of Quezon, Branch IV, in Criminal Case No. C-351, dated January 3, 1969, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the four (4) accused AQUINO ALVAREZ, ENRICO CABATINGAN, JUANITO ALERTA and PABLO MENDOZA are hereby CONVICTED with the crime as charged, because their guilt has been proven beyond reasonable doubt, and they are hereby punished to death by electrocution, pursuant to Art. 299 in relation with Arts. 248, 6, 48 and 51 of the Revised Penal Code, as amended by Republic Acts Nos. 12 and 18; while the seven (7) other accused, namely: DOMINADOR ALERTA, BONIFACIO ALISON, IDOLES CORO, NASALITO SUBING-SUBING, ROMULO CABATINGAN, GERARDO SANTIAGO and PEDRO GALUPO, considering their lesser degree of participation and their guilt equally proven beyond reasonable doubt, are hereby CONVICTED and to suffer imprisonment for life or cadena perpetua; hereby ordering the eleven (11) accused to indemnify the heirs of SGT. GREGORIO CALNEA and CPL. ALFREDO LLANTINO, the amount of TWELVE THOUSAND (P12,000.00) PESOS for each victim, or a total of TWENTY FOUR THOUSAND (P24,000.00) PESOS, to be divided pro rata among them, but without subsidiary imprisonment in case of insolvency; and, to reimburse Juanito Uy the amount of FOUR THOUSAND THREE HUNDRED THIRTY (P4,330.00) PESOS, and the heirs of Sgt. Gregorio Calnea as well as Capt. Plaridel M. Abaya himself the amount of NINE HUNDRED EIGHTY (P980.00) PESOS, or a grand total of FIVE THOUSAND THREE HUNDRED TEN (P5,310.00) PESOS, in Philippine currency, (representing the cash and articles robbed), with costs de oficio."

On February 20, 1970, this Court issued a resolution as follows: "The motion of accused-appellants Nasalito Subing-Subing and Dominador Alerta, withdrawing their appeal in this case, is GRANTED."

Likewise, on September 22, 1970, this Court issued this resolution: "The motion of appellants Idoles Coro and Gerardo Santiago praying that they be allowed to withdraw their appeal in this case, is GRANTED."

And, on April 27, 1972, the case against appellant Bonifacio Alison was dismissed on the ground that on January 26, 1972, he died. "The death of accused-appellant Bonifacio Alison having been established and considering that there is as yet no final judgment in view of the pendency of the appeal, the criminal and civil liability of said accused-appellant Alison was extinguished by his death (Resolution, G.R. No. 30612, April 27, 1972)."

Thus, this appeal concerns Juanito Alerta, Enrico Cabatingan, Aquino Alvarez, Pablo Mendoza, Romulo Cabatingan and Pedro Galupo only.

Records show that on May 3, 1966, the Office of the Provincial Fiscal of Quezon filed an amended information for the crime of robbery in band with double murder and attempted murder against twelve (12) persons, namely: Juanito Alerta, Dominador Alerta, Enrico Cabatingan, Bonifacio Alison, Idoles Coro, Aquino Alvarez, Pablo Mendoza, Nazalito Subing-Subing, Romulo Cabatingan, Gerardo Santiago, Pedro Galupo and Valeriano Jimenez. The last named accused, Valeriano Jimenez, was discharged with his consent from the information, upon motion of the prosecuting fiscal and made a state witness.

On March 17, 1966, the abovenamed defendants met together in Burias Island and there planned to rob Juanito Uy, who was known to be wealthy. Valeriano Jimenez was to guide the group to the Uy's residence in San Narciso, Quezon because, being a tenant of the latter, he knew the place.

The plan was, Aquino Alvarez, Enrico Cabatingan, Juanito Alerta, and Pablo Mendoza would enter the house of the intended victim, and execute the robbery; and the rest were to form an armed cordon around the premises.

The group left in a pump boat of Pablo Mendoza from Burias Island to San Narciso at about 6:00 in the afternoon of March 17, 1966. They reached San Narciso about midnight of the same day. On the way, Enrico Cabatingan distributed the firearms which would be used in the commission of the crime. Upon reaching San Narciso, the group went to the Uy's residence, leaving Pedro Galupo at the wharf to guard the boat.

As Valeriano Jimenez was familiar with the place because he had been there several times before, he, together with the group, climbed over the fence and he pointed to them the backdoor of the house through the stairs. They drilled a hole on the door of the kitchen and, thereafter, Juanito Alerta told Jimenez to return to the boat so that he would not be identified.

It was about 1:00 in the morning of March 18, 1966 when Juanito Uy was awakened by persons who said: "Gising, gising, PC ito," following which one of the armed men asked him: "PC ka ba?" Uy answered: "Hindi po." The armed men then tied up Uy's hands and he was asked where his guests, the PC men, were sleeping. Threatened and coerced, he pointed the room, which was then lighted with a native gas lamp, of PC Lt. Plaridel Abaya, PC Sgt. Gregorio Calnea and PC Cpl. Alfredo Llantino. Pushing the door open, one of the armed men shouted: "Huwag lalaban, huwag kikilos," and immediately Enrico Cabatingan, Aquino Alvarez, Pablo Mendoza and Juanito Alerta commenced firing. Aquino Alvarez then approached Lt. Abaya's bed and said: "Ito PC rin? Papatayin ko na." Juanito Alerta replied: "Huwag."

Lieutenant Abaya's hands, like Juanito Uy's, were hogtied, after which they were taken down the ground floor of the residence where the safe was located. Uy was ordered to open it and then ordered to lie face down on the cement floor. The men got the money and even remarked that the amount was not much.

The men brought Uy outside his residence and was ordered to go with them to the wharf. As they ran, Juanito Uy was directed to shout, repeatedly: "I am Juanito, policemen, PC, don't fight." Upon reaching the wharf and before the men boarded the boat, Juanito was made to lie face down.

Upon his return to his residence, Juanito found papers scattered on the floor, one of the PC men already dead and the other hovering between life and death. He discovered that the group had taken P3,500.00 from the safe, his .22 caliber magnum revolver and wallet containing personal papers and some cash.

Philippine Constabulary Sgt. Gregorio Calnea and Cpl. Alfredo Llantino died of severe hemorrhage due to multiple gunshot wounds in the chest, abdomen, head and other parts of the body, all of which according to Dr. Ziegfredo Cabungkal and Dr. Hilarion Tan, Jr. were caused by different weapons.

Herein appellants were arrested in Masbate in the last week of April 1966. Their extra judicial statements,

wherein they admitted their participation in the incident, were taken and sworn to before City Judge Aquilino Villanueva.

The defense is alibi, the appellants claiming that on March 17 and 18, 1966 they were in Masbate and therefore had nothing to do with the robbery and death of the two (2) PC soldiers in San Narciso, Quezon; that upon their arrest they were hogtied and maltreated by the PC soldiers who forced them to sign prepared statements; and that the arresting officers were accompanied by Valeriano Jimenez from whom they inquired why he pointed to them and Jimenez answered that he could no longer endure the punishment inflicted upon him by the PC soldiers.

After consideration of all the evidence presented and relying on the testimonies of eyewitnesses Juanito Uy, PC Lt. Plaridel Abaya and Valeriano Jimenez, the trial court disregarded the alibi interposed by the appellants and convicted them of the crime charge, saying:

"With the foregoing principles as our guidelines, may we register our observation that practically all witnesses for the accused have invoked the defense of alibi and that their affidavits or extra-judicial confessions were allegedly extracted thru maltreatment, so that may we quote the following doctrines: 'Alibi is one of the weakest defenses that can be resorted to by an accused. Either or both of the following reasons were used by the Supreme Court in rejecting the defense of alibi. (1) the place where the accused claimed he was at the time of the commission of the offense was not of such a distance from the place of commission as to make it impossible for him to be at the latter place at or about the time of the commission of the crime; and (2) positive identification of the accused by witnesses.

"Illustrating the first is the case of *People vs. Secapuri*, which held that 'for the defense of alibi to succeed, it should be shown to the satisfaction of a prudent mind that the distance between the places where the accused claimed to be and where the crime was committed is such that it would have been clearly impossible for him to be at the latter at the time of the crime. (G.R. No. 21419, September 29, 1966, et al). In this case the place of origin of the accused is Masbate, an island that is about 4 to 5 hours to traverse up to San Narciso, Quezon by pump-boat of Pablo Mendoza.

"An extra-judicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti.

"What is meant by 'evidence of corpus delicti?' This phrase was explained by the Supreme Court in the case of *People v. Abrera*, when it pointed out that 'the rule that an extrajudicial confession to be sufficient must be corroborated by evidence of corpus delicti does not mean that all the elements of the crime must be clearly established by evidence independent of that confession. It only means that there should be some evidence tending to show the commission of the crime apart from the confession. (G.R. No. 18760, September 29, 1966). There is no doubt that the corroborative testimonies of the government witnesses, except for minor details substantiate the facts contained in the affidavits of the accused which are all true.

.....

"In this case, some of the accused were not only investigated by PC soldiers, but also by Fiscals Jose Veluz Jr., and Celso B. Florido in the Office of the Provincial Fiscal of Quezon, and one by one the affiants were sworn to inside the room of Lucena City Judge Aquilino Villanueva. If they were truly maltreated and forced into signing their statements they had all the opportunity to complain. Besides, they had counsel departe who failed to appear during the investigation although he promised to come. Their silence, therefore, militates against their clamour that they were punished." (Decision, pp. 65-69, January 3, 1969)

Hereunder is the testimony of Juanito Uy:

"Q

Can you identify these people who entered your room if they are shown to you?

A Yes, sir, but not all of them.

Q

How many could you possibly identify if they are shown to you?

A Two (2).

Q

If they are around the courtroom will you please point to them, please look over the room?

(At this juncture, the witness is going down the witness stand and pointing to the accused who when asked their names answered 'Aquino Alvarez' then witness also pointed to one of the accused who gave his name as Pablo Mendoza.

ATTY. BALBIN:

Q Who among these two (2) focused his flashlight to you?

A Pablo Mendoza.

COURT:

Q Who pointed the gun to you?

A

Aquino Alvarez and Pablo Mendoza with a flashlight and a gun.

COURT:

Next question.

ATTY. BALBIN:

Q What kind of firearm was Pablo Mendoza holding?

A A short firearm.

Q How about Alvarez what kind of firearm did he hold?

A A long firearm.

Q

How about the other fellow whom you said you could not recognize?

A A long firearm.

Q After that what was done to you?

ATTY. MARTINEZ:

Leading, your Honor.

COURT:

Other question.

ATTY. BALBIN:

Q What happened next?

A

While I was told to lie and face downward they tore my undershirt which they used in hogtying me.

COURT:

Q What portion of your body was tied?

A My two (2) hands.

ATTY. BALBIN:

Q Now, what happened next?

A

Afterwards they stood me up and asked me where is the PC and I told them over there.

Q

After that will you please tell this Honorable Court what happened next?

A

They were ordering me to open the room and because I could not open the room, one of them open the room.

Q Who particularly opened the room and how was it opened?

A I do not remember.

Q How?

A They just open with their hands.

ATTY. BALBIN:

Q

Now, do you know that one of them was able to open the door?

COURT:

Q Wait a minute, what happened when the door was opened?

A

One of them shouted 'Don't move Huwag lalaban huwag kikilos,' after that Aquino Alvarez fired at them, at the PC men.

ATTY. BALBIN:

Q What happened next?

A

I saw a PC trying to grab the gun of one of the 3 men and one fell from the bed to the floor and Lt. Abaya's right hand was at his nape while lying down in his bed.

COURT:

Q And then what happened?

A

One was taking me downstairs and that he took my eyeglasses inside the room and then put them on me, and then we went downstairs.

Q What else happened next?

A

Afterwards they ordered me to open the safe, which I opened and then ordered me to lie face down on cement floor." (TSN, pp. 13-16, July 22, 1966 hearing).

and of Lt. Plaridel Abaya:

"Q

When you were awakened by the indiscriminate firing at Sgt. Calnea and Cpl. Liantino who were sleeping then, what happened next?

A

After the tremendous gun fire one of the armed men approached me and said 'Ito PC rin, papatayin ko na.'

COURT: (interrupts)

Wait a minute, which in English means 'This one is also PC, will kill him now.'

SPECIAL COUNSEL FLORIDO: (answers the Court)

Yes, Your Honor.

SP. COUNSEL FLORIDO:

Q What about the other persons there?

COURT: (interrupts)

Q Have you recognized the persons who said that?

A Yes, Your Honor.

Q Who is he?

A

(WITNESS descended the witness stand and pointing to one of the accused inside the Courtroom, who when asked his name answering by the name of AQUINO ALVAREZ).

COURT: (to witness)

You may return now to the witness stand Lieutenant.

.....

Q Now, did you recognize the four (4) persons?

A Yes, sir.

Q

If they are here in the Courtroom, will you please point to them?

A Yes, sir.

Q Please do?

COURT: (to witness)

Please go down again from the witness stand.

A

(WITNESS pointing to a person near him and when asked what is his name answered by the name of ENRICO CABATINGAN, next is the other accused answering by the name of AQUINO ALVAREZ, the other one answered by the name of PABLO MENDOZA, and still another one answering by the name of JUANITO ALERTA.)

COURT: (to witness Lt. Abaya)

You may return now Lieutenant.

SP. COUNSEL FLORIDO:

Q

Were you able to ascertain what kind of weapon caused the tremendous gun fire as you stated?

A A thompson, a caliber .45 and some were short firearms.

Q

Of those four (4) persons you have just mentioned and identified, do you know what Aquino Alvarez was holding on that fateful night?

A Aquino Alvarez held a Thompson.

Q About Enrico Cabatingan?

A I do not know, but it was a short firearm.

Q

How about Pablo Mendoza, what kind of weapon is he holding on that fateful night?

A I do not know the exact caliber, but it was a short firearm.

Q How about Juanito Alerta?

A He was holding a .45 Caliber pistol.

COURT:

Q About Pablo Mendoza?

A

He was holding a short firearm, but I do not know the caliber." (TSN, pp. 33-36, June 22, 1966 hearing)

and of Valeriano Jimenez, defendant who turned state witness:

"Q

You said that you had been a resident of Barrio Maijo, San Narciso, Quezon, in whose land or property were you residing in that place?

A The owner of the land is Manuel (sic) Uy.

Q Do you know the person of this Manuel (sic) Uy.

A Yes, sir.

.....

Q

Now, on March 15, 1966, were you in Barrio Maijo, San Narciso, Quezon?

A I was not there, sir.

COURT:

Q When did you leave the place?

A On March 15, 1966 I left for Burias.

ATTY. ZEPEDA:

Q In what place did you go?

A Pasig, Claveria, Masbate, sir.

Q This Pasig that you mentioned, is that a town or what?

A It is Barrio Pasig, Claveria.

.....

Q

Now, while you were there on March 16, 1966, in Pasig, Claveria, do you remember if you had any conversation with anybody there?

A Yes, sir.

Q What was that conversation?

A I talked with Juanito Alerta, sir.

.....

Q

After you have just answered that you have just arrived to Juanito Alerta, what else transpired?

A

Juanito Alerta said to me—'It is good you were here friend, because we have important thing to talk about.'

ATTY. ZEPEDA:

Q

After Juanito Alerta told you that you have an important thing to talk about, what else transpired, if any?

A

He told me further that I wait for a few minutes because I will send for Enrico Cabatingan from Cataingan.

Q

And after you were told that he will send for Enrico Cabatingan, what transpired if any?

A

He did not talk anything except ordered Pablo to fetch Enrico Cabatingan.

Q Who is this Pablo?

A Pablo Mendoza.

Q

As far as you know did Pablo comply to fetch Enrico Cabatingan?

A Yes, sir.

Q

And if Enrico Cabatingan was fetched by Pablo Mendoza, what date did he arrive.

A March 17.

Q

You mentioned Juanito Alerta, could you point him if he is here inside the Courtroom?

A Yes, sir.

Q Please point to Juanito Alerta?

A

(WITNESS pointing to a certain person inside the Courtroom who when ask his name responded by the name of Juanito Alerta.)

Q

You also mentioned a certain Pablo Mendoza, if he is here inside the Courtroom, will you please point to him?

A Yes, sir.

Q Will you please do so?

A

(WITNESS pointing to a person inside the Courtroom who when ask his name responded by the name of Pablo Mendoza.)

Q

You said that Pablo Mendoza was ordered to fetch Enrico Cabatingan and who arrived on March 17, 1966, is this Enrico Cabatingan inside the Courtroom, will you please point to him?

A Yes, sir.

Q Please do so?

A

(WITNESS pointing to a person inside the Courtroom who gave his name as Enrico Cabatingan.)

.....

Q

You said that Enrico Cabatingan arrived with five others, who were those five others, if you know them?

A

Pedro Galupo, Nazalito Subing-Subing, Idoles Coro, Aquino Alvarez, and Pablo Mendoza.

.....

Q

What did you reply when they told you that—we will rob Manuel (sic) Uy?

A

I told them that I will not go with them because Manuel (sic) Uy is my landlord, but they forced me to accompany them and because I was afraid that I will be killed I was forced to accompany them.

.....

Q After you said you go with them, what transpired next?

A We rode in a banca.

COURT:

Q When?

A

We rode on a pumpboat at more or less 6:00 p.m., on March 17, 1966.

ATTY. ZEPEDA:

Q

You said 'we' who were those besides you on board this pumpboat?

A

Bonifacio Alison, Dominador Alerta, Juanito Alerta, Romulo Cabatingan.

Q Who else?

A

Gerardo Santiago, Pablo Mendoza, Enrico Cabatingan, Nazalito Subing-Subing, Pedro Galupo, Aquino Alvarez and Idoles Coro.

Q

Could you tell the Court, who was the owner of the pumpboat on which you and the 11 persons you mentioned boarded on that afternoon of March 17, 1966?

A Yes, sir.

Q Who was that?

A

"Pablo Mendoza." (TSN, pp. 5-20, February 15, 1967 hearing)

We find nothing in the record which would cast doubt on the credibility of these three witnesses.

We have held in several cases that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the lower court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. (People vs. Garcia, 89 SCRA 440).

In the case at bar, the trial court correctly ruled that alibi is a weak defense not only because it is easy to fabricate but also because human memory on dates or days is frail, and unless the day is an extraordinary or unusual one for the witnesses, there is no reasonable assurance of its correctness. (People vs. Dasig, 93 Phil. 618).

However, the defense contends, and rightly so, that if at all, Romulo Cabatingan and Pedro Galupo should have not been convicted of the complex crime of robbery in band with double murder and attempted murder because from the testimony of defendant Jimenez, who turned state witness, the plan was only to rob Juanito Uy and the killing of the PC soldiers came about only when Aquino Alvarez, Enrico Cabatingan, Juanito Alerta and Pablo Mendoza entered the room where the victims were sleeping. Otherwise stated, the killing or the assault upon the PC soldiers were not known to the other accused who were left outside to guard the premises and to Pedro Galupo who stayed in the pumpboat. The crime committed by these two appellants Romulo Cabatingan and Pedro Galupo is only robbery in band, attended by the aggravating circumstances of nighttime and evident premeditation, punishable by prision mayor in its medium period.

With respect to appellants Aquino Alvarez, Enrico Cabatingan, Juanito Alerta, and Pablo Mendoza who were sentenced to "death by electrocution", for lack of necessary votes, each is hereby sentenced to the next lower penalty of reclusion perpetua.

WHEREFORE, as modified in the sense that Aquino Alvarez, Enrico Cabatingan, Juanito Alerta and Pablo Mendoza are each sentenced to suffer reclusion perpetua and that Romulo Cabatingan and Pedro Galupo are each sentenced to SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY, as minimum to TEN YEARS of prision mayor, as maximum, the appealed judgment is hereby AFFIRMED in all other respects.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Fernando, C.J., is on official leave.

Aquino, J., took no part.

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