

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO CRUZ, ACCUSED-APPELLANT

G.R. No. L-37173. November 29, 1984

Ponente: DE LA FUENTE, J.

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DE LA FUENTE, J.:

Automatic review of the judgment rendered in Criminal Case No. 0200-V (CFI-Bulacan)[1] wherein the accused Roberto Cruz was found "guilty beyond reasonable doubt as principal of the crime of robbery with homicide as defined in Art. 294, paragraph 1, of the Revised Penal Code with the aggravating circumstance of robbery in band with the use of unlicensed firearms as defined in Art. 296 and without any mitigating circumstance." He was accordingly sentenced to suffer the "penalty of DEATH, to indemnify the heirs of Ricardo Cruz in the amount of P12,000.00 and to pay the costs of suit." [2]

The pertinent facts, as recited in the appellee's brief which was submitted by the Solicitor General, are as follows:

"On December 23, 1970, at the apartment of Jimmy Katigbak at Paliwas, Obando, Bulacan, Eduardo Galang, Manuel Galang, Rogelio Joaquin, Ricardo Castro, Jimmy Katigbak, Gavino Caponpon, Add Angeles and Roberto Cruz planned to rob the house of Dolores Cruz San Jose (Exhibit '1', p. 141, Record). The masterminds were Ricardo Castro and Rogelio Joaquin (Exhibit '1' p. 141, Record). In the evening of December 28, 1970, they met again in the same apartment (Exhibit 1, p. 142, Record). At around 7:00 o'clock in the morning of December 29, 1970, they gathered again in the house of Jimmy Katigbak before proceeding to the house of Dolores Cruz San Jose (Exhibit T. p. 142, Record). Rogelio Joaquin left ahead driving a passenger jeep while Ricardo Castro, Jimmy Katigbak, Adel Angeles, and Roberto Cruz rode in a 'Dodge' car driven by Gavino Caponpon (Exhibit '1', p. 142, Record). All of them were armed with guns (Exhibit '1', p. 140, Record). When they arrived near the house of Dolores Cruz San Jose, at SaJuysoy, Meycauayan, Bulacan, Rogelio Joaquin who acted as look-out, signalled to them the house to be robbed (Exhibit '1' p. 142, Record). Gavino Caponpon stayed in his car (Exhibit T, p. 140, Record). Meanwhile, Zenaida Santiago was in the house of Dolores Cruz San Jose because she wanted to verify from the latter whether she was able to sell the jewelries entrusted to her (pp. 2-3, tsn, January 14, 1972). Dolores San Jose is engaged in the jewelry business and Zenaida Santiago is one of her suppliers (p. 2, tsn, January 14, 1972). After arranging the list of articles to be accounted for and while Zenaida Santiago was about to leave, the door suddenly opened and Ricardo Castro alias 'Carding Demonyo' entered with the gun pointed at the head of Dolores Cruz San Jose (p. 3, tsn, January 14, 1972). He told them to keep quiet because it was a hold-up (p. 3, tsn, January 14, 1972). He then got paper bags and gathered the jewelries that were on the table and those in the showcase which contained several trays of jewelries (p. 4, tsn, January 14, 1972).

"Subsequently, another man came, also armed with a gun, together with the two maids and one of the children of Dolores San Jose (p. 4, tsn, January 14, 1972). The two maids and the child were placed in a sofa inside the room (p. 5, tsn, January 14, 1972). Roberto Cruz, who also entered the house, even sat on a sofa pretending to be a visitor (Exhibit '1' r.P- 142, Record).

"Meanwhile, Ester Cruz-Villanueva who was pulling weeds in front of her house which is located in the same

compound where the house of Dolores San Jose is located, saw the men enter the house of Dolores San Jose so she went to the latter's house, but when she was near the door of the office, one of the men grabbed her, but because she was shouting continuously, he slapped and boxed her (pp. 9-10, tsn, January 31, 1972; p. 11, tsn, January 14, 1972). But just the same, she continued shouting so two of the men, one of whom was Roberto Cruz ganged up on her (p. 10, tsn, January 31, 1972). She was hit on her left eye whereupon she fell on the floor in a sitting position (p. 11, tsn, January 31, 1972). Dolores San Jose heard Ester C. Villanueva screaming for help and she saw the latter sitting on the floor, her nose bleeding, with Roberto Cruz beside her (pp. 6-7, tsn, January 14, 1972). Then another man entered the room who told the one inside the room "come let's go" and hurriedly left after divesting Dolores San Jose of her wrist watch (p. 7, tsn, January 14, 1972). They took along with them jewelries worth around P151,900.00 more or less (p. 8, tsn, January 14, 1972; Exhibit 'D' and 'D'1' p. 65, Record). After the robbers left, she attempted to follow but she heard gunshots so she chose to stay in the room together with the maids, her child and Zenaida Santiago (p. 10, tsn, January 14, 1972). The firing of the gunshots lasted from two to three minutes (p. 10, tsn, January 14, 1972). Ester Cruz Villanueva who followed the robbers, saw one of the intruders who came out of the house of Dolores San Jose fire upon Ricardo Cruz at his back as a result of which the latter fell down (p. 11, tsn, January 31, 1972). When Dolores San Jose went out after the firing stopped, she also saw Ricardo Cruz, wearing a blue bathrobe, lying flat on the driveway, seriously wounded (pp. 10-11, tsn, January 14, 1972). Ricardo Cruz was living inside the compound where there are six houses (p. 11, tsn, January 14, 1972). She also saw the daughters of Ricardo Cruz, one of whom was even cradling the head of their father (p. 13, tsn, January 14, 1972). Dolores San Jose shouted for help and after a few minutes, one of their neighbors got a jeep and brought Ricardo Cruz to Dr. Palaganas who has a clinic at Meycauayan, Bulacan, but he was pronounced dead on arrival (p. 13, tsn, January 14, 1972).

"The cadaver of deceased Ricardo Cruz was autopsied by Dr. Jose Villas in under the supervision of Dr. Jesus D. Crisostomo, Supervising Medical Legal Officer of the National Bureau of Investigation, the result of which autopsy is embodied in the Necropsy Report he submitted (Exhibit 'E' p. 113, Record; pp. 2-3, tsn, April 17, 1972). Dr. Crisostomo opined that Ricardo Cruz died from gunshot wounds on his left arm and body (p. 8, tsn, April 17, 1972)." [3]

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"After the incident in the case at bar, the Mayor of Meycauayan, Bulacan sought the services of the CIS, particularly Severino D. Constantino to investigate the said robbery with homicide (pp. 4-5, tsn, February 21, 1972). In the progress of their investigation, they apprehended a certain Romeo Lodia at Meycauayan, Bulacan on December 31, 1970 who confessed that he was with the group that staged the robbery at the Cruz residence at Saluysoy, Meycauayan, Bulacan and pointed to the hiding place of the other members responsible for the crime (pp. 5-6, tsn, February 21, 1972). In the early morning of January 5, 1971, after forming a raiding team, they went to Paliwas, Obando, Bulacan where they encountered the members of the syndicate (p. 6, tsn, February 21, 1972). They apprehended accused-appellant Roberto Cruz alias Obet with his firearm, from whom they recovered a bag of jewelries allegedly stolen from the Cruz residence (pp. 6-7, tsn, February 21, 1972). Roberto Cruz was then sent to Camp Crame for investigation (p. 7, tsn, February 21, 1972)."

"Dolores Cruz-San Jose, when confronted with the jewelries recovered from Roberto Cruz identified 72 pieces of paper containing two or more pieces of jewelry each (Exhibits 'A-A-71'), and four pieces of cardboard with golden chains tied around each cardboard, Exhibits 'B' to B-3 as those taken from her by the robbers (pp. 8-9, tsn, January 14, 1972)."

"Appellant Roberto Cruz gave a written statement to Investigating Agent Emelito Recuenco at CIS, Camp Crame, Quezon City wherein he admitted having participated in the planning and the actual execution of the robbery in the house of Dolores Cruz-San Jose on December 29, 1970 (Exhibit T, pp. 140-145, Record). Said statement was signed and sworn to by him before Fiscal Liberate Reyes of Bulacan who investigated him and apprised him of his right to counsel (p. 2, tsn, July 3, 1972). Appellant was likewise asked by Fiscal Reyes

whether he had read and understood the contents of his sworn statements and if he was willing to sign the same to which questions he answered in the affirmative (pp. 2-3, tsn, July 3, 1972). Appellant was asked to sign again his statement before the inquest fiscal because the latter wanted to be sure that appellant had signed his confession voluntarily (p. 4, tsn, July 3, 1972)."[4]

In his brief the appellant argues that the evidence adduced by the prosecution is not sufficient to prove his guilt beyond reasonable doubt, and that the trial court erred in disregarding his testimony and evidence given by his witnesses.

The case against the appellant rests on the testimonies of prosecution witnesses Dolores Cruz-San Jose and Ester Cruz- Villanueva, sisters of the deceased Ricardo Cruz, and his daughter Herminia S. Cruz; and the extra-judicial confession executed by the said appellant in Camp Crame where he was brought by the agents of the Criminal Investigation Service, Philippine Constabulary, after his arrest in Obando, Bulacan, on January 5, 1971.

It is contended that the testimonies of the three prosecution witnesses (Dolores and Ester, sisters of the deceased Ricardo Cruz, and his daughter Herminia) are hostile or biased against the accused. We are unable to agree. Where, as here, there is no showing of improper motives⁵ on the part of a witness, mere relationship of said witness to the victim would not impair his/her credibility.⁶ And it is settled that the factual findings of the trial court deserve great respect or full faith and credit⁷ and are generally not disturbed on appeal⁸ whenever the issues to be resolved by the appellate court depend upon the credibility of witnesses.

That the appellant was positively identified by the prosecution witnesses is quite clear. The robbery took place in broad daylight. The malefactors, appellant amongst others, did not bother to cover their faces as they entered the residence of Dolores Cruz-San Jose and took the pieces of jewelry they found on the table and inside the showcase. Despite the suddenness of the robbery and the absence of a showing as to its duration or the number of times the appellant and his companions were seen by the eyewitnesses, their identification of some of the malefactors during the subsequent investigation and trial of the case can be given credence. For the victim or his relatives /members of his family who actually witnessed the robbery would strive to remember the uncovered faces of the malefactors.⁹ We find no merit in the appellant's argument that the "length of tune that had lapsed" - a little over one year - before they testified would make "the identification of accused Roberto Cruz by these witnesses . . . highly improbable." He was seen at close range by two prosecution witnesses, when he and a companion ganged-up on Ester Cruz-Villanueva.

Regarding Exhibit I, his extrajudicial confession, the appellant claims that he was maltreated by the CIS investigators and then forced to sign it. It is noted, however, that the appellant himself admitted having signed said statement before Assistant Provincial Fiscal Libcrato Reyes who apprised him of his right to counsel. He was asked whether he had read the sworn statement he gave to CIS Agent E. Recuenco and understood its contents. He answered in the affirmative without making any complaint about his alleged maltreatment. Then, he was asked to sign again the said statement in the presence of Fiscal Reyes, who wanted to make certain that it was voluntary.

Under the circumstances, there being no strong and convincing evidence to the contrary, the presumption of voluntariness of an extra-judicial confession^[10] finds application to Exhibit I. Moreover, the recitals therein reflect spontaneity and coherence which psychologically cannot be associated with a mind of a person to which violence and torture had been applied.^[11] The said statement or confession is also replete with details that only appellant could have supplied.^[12] And, the appellant's answers to the questions asked are fully informative, which strongly indicate the freedom of the confessant from extraneous restraints.^[13]

Undoubtedly, the crime committed by the appellant and his companions is robbery with homicide defined and punishable under Article 294(1) of the Revised Penal Code. As alleged in the information and duly established at

the trial, the said robbery was committed by a band. There were at least four armed malefactors in its commission. It is contended, however, that the court a quo erred in rendering judgment which took into account "the aggravating circumstance of robbery in band with the use of unlicensed firearms as defined in Art. 296." Appellant's submission is correct.

The special aggravating circumstance of "use of unlicensed firearm" mentioned in said Article 296 is applicable only to cases of robbery committed by a band therein defined, which fall within the scope of and are punishable under Article 295 (as amended) in relation to subdivisions (3), (4) and (5) of Article 294. This was explained by this Court in *People vs. Apduhan, Jr.*, as follows:

"... said article [296] is exclusively linked and singularly applicable to the immediately antecedent provision of Art. 295 on robbery in band, as the latter article, in turn, is explicitly limited in scope to subdivisions 3, 4, and 5 of Art. 294. Consequently, although the use of unlicensed firearm is a special aggravating circumstance under Art. 296, as amended by Rep. Act 12, it cannot be appreciated as such in relation to robbery with homicide, described and penalized under paragraph 1 of Art. 294.

"As previously slated, Art. 295 provides that if any of the classes of robbery described in subdivisions 3, 4, and 5 of Art. 294 is committed by a band, the offender shall be punished by the maximum period of the proper penalty x x x Verily, in order that the aforesaid special aggravating circumstance of use of unlicensed firearm may be appreciated to justify the imposition of the maximum period of the proper penalty it is a condition sine qua non that the offense charged be robbery committed by a band within the contemplation of Art. 295. To reiterate, since Art. 295 does not apply to subdivisions 1 and 2 of Art. 294, then the special aggravating factor in question, which is solely applicable to robbery in band under Art. 295, cannot be considered in fixing the penalty imposable for robbery with homicide under Art. 294 (1), even if the said crime was committed by a band with the use of unlicensed firearms" [14]

Notwithstanding the foregoing ruling in the case of *Apduhan, Jr.*, which in effect sustains the appellant's submission that the trial court erred in taking into account the aforementioned special aggravating circumstance, this error cannot alter the result or have any effect on the penalty imposed. For the "robbery with homicide" in the instant case was committed by a "band" (cuadrilla) which is a generic aggravating circumstance under Article 14 of the Code. As also stressed in the cited case: "If robbery with homicide is committed by a band, the indictable offense would still be denominated as 'robbery with homicide' under Art. 294 (1) but the element of band, as abovestated, would be appreciated as an ordinary aggravating circumstance."

In consonance with the foregoing, there being no mitigating circumstance to offset the ordinary aggravating circumstance of cuadrilla, the proper imposable penalty for the crime of "robbery with homicide" (which is punishable by two indivisible penalties, reclusion perpetua to death) is the greater penalty.[15] However, for lack of the necessary votes for the imposition of the death penalty, the lesser penalty of reclusion perpetua should be imposed upon the appellant.

WHEREFORE, with the modification that the penalty imposed upon appellant Roberto Cruz is reduced to reclusion perpetua and the indemnity is increased to P30,000.00, the judgment a quo is affirmed in all other respects.

No pronouncement as to costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Conception Jr., Abad Santos, Melencio-Herrera, Fiona, Escolin, Gutierrez, Jr. and Cuevas. JJ., concur.

Relova, J, took no part.

[1] By then Judge, now Associate Appellate Justice, Eduardo P. Caguioa

[2] Original Record, p. 270.

[3] Italics supplied; appellee's brief, pp. 2-6; Rollo, p. 85.

[4] Ibid., pp. 6-8; italics supplied.

[5] *People vs. Ibasan, Jr.*, 129 SCRA 695 (1984) and *People vs. Veloso*, 92 SCRA 515 (1979).

[6] *People vs. Gacho*, 124 SCRA 671 (1983) and *People vs. Oqueflo*, 122 SCRA 797 (1983).

[7] *People vs. Alcantara*, 126 SCRA 425 (1983) and *People vs. Maranan*, 124 SCRA 716 (1983); *People vs. Mosquera*, 124 SCRA 775 (1983); and *People vs. Oliveno*, 120 SCRA 22 (1982).

[8] *People vs. Macayan*, 126 SCRA 322 (1983) and *People vs. Galicia*, 123 SCRA 550(1983).

[9] *People vs. Gacho*, supra, and *People vs. Bemat*, 120 SCRA 918 (1983).

[10] *People vs. Jose*, 37 SCRA 450 (1971); *People vs. Dorado*, 30 SCRA 53 (1966); and *People vs. Reyes*, 17 SCRA 279 (1966).

[11] *People vs. Castro*, 11 SCRA 699 (1969); and *People vs. Cruz* 73 Phil 65 J (1942).

[13] *People vs. Cruz*, supra.

[14] Italics supplied; 24 SCRA 798 (1968), see 806-831.

[15] Article 63(1), Revised Penal Code.

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