

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LODRIGO IJURCADAS, MARCELINO DUMAYAN AND ILDEFONSO
IJURCADAS, ET AL., DEFENDANTS-APPELLANTS.**

G.R. No. L-41992. May 30, 1983

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This is an automatic review of the decision of the Court of First Instance of Samar, Branch V, stationed at Calbayog City convicting appellants Rodrigo (or Rodrigo) Ijurcadas, Ildefonso (or Eldie) Ijurcadas and Marcelino Dumayan of the crime of robbery with double homicide and sentencing each to suffer the supreme penalty of death; to pay their respective share of the costs of the proceedings; to indemnify the heirs of the victims the amount of TWENTY FOUR THOUSAND (P24,000.00) PESOS, jointly and severally; and to suffer such other accessory penalties provided by law.

The charge arose from the double slaying of Damian del Monte and his son, Rogelio del Monte in the night of May 29, 1972 at Sitio Guinbauyan, Bo. Cogon, Calbayog City. The information originally charged seven persons but only the three herein appellants were brought to trial. One of the accused, Crespin Ijurcadas was provisionally discharged from the information on motion of the prosecuting fiscal on the ground that the evidence against him was merely circumstantial evidence. The others, Pedring Ijurcadas, Fulgencio Dumayan and Pepe Jumediao were not apprehended and still remain at large.

According to the information filed with the Samar trial court, "on or about the 29th day of May, 1972, in the evening, in sitio Guinbauyan, Bo. Cogon, Calbayog City, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and helping one another, with intent to gain, without the consent and against the will of the owner, by means of force and violence and all armed with deadly weapon, did then and there wilfully, unlawfully and feloniously take, rob and carry away with them case money of P500.00, belonging to one Damian del Monte, to the damage and prejudice of said Damian del Monte in the said sum of Five HUNDRED PESOS (P500.00), Philippine currency, and the accused, in the course of the robbery, with intent to kill, armed with their deadly weapons and conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, strike and stab with their weapons Damian del Monte and Rogelio del Monte, who, as a result thereof, sustained wounds on their bodies which caused their death."

Appellants were identified by Caridad Sagala, wife of the victim Damian del Monte, Sr. who testified that at about six o'clock in the evening of May 19, 1972, while the family was resting in their house at Sitio Guinbauyan, Bo. Cogon, Calbayog City, six men suddenly barged into their house. One of them, whom Caridad recognized as Lodrigo Ijurcadas, poked a pointed bolo at her and demanded from her where they kept their money. The five others, two of whom were recognized by Caridad as Ildefonso Ijurcadas and Marcelino Dumayan approached Damian, Sr. who was then eating on the kitchen table with their son, Rogelio. They immediately seized Damian,

Sr. Rogelio picked up a bolo and hacked at the five men holding his father, hitting Marcelino at the left side of his abdomen. The five men retaliated by hacking to death Damian, Sr. and Rogelio. Terrified, Caridad finally pointed to a trunk where she kept the P500.00 the family had been saving to buy a carabao. After they got the money, the six men left, leaving behind the lifeless bodies of the hapless father and son, Damian, Sr. and Rogelio.

On their way, they passed by the house of Damian del Monte, Jr., which is about 15 arms length away from the house of victim Damian, Sr. At the witness stand, Damian, Jr. testified that at about six o'clock in the evening of May 29, 1972, several persons knocked at their door. The door was opened by his wife. One man went inside while the others remained at their yard. Damian took hold of a spear but could not spear the man because the latter was holding his sister-in-law. He was not able to identify the man because the latter blew the light of the lamp held by his sister-in-law. As he went to the kitchen to make a light by the use of firewood, the man jumped out of the window. Thereafter, he immediately went to the house of his parents to investigate, but he was shot at by Ildefonso Ijurcadas on his way and was hit in the right thigh. He was able to proceed only after the robbers left.

Damian, Jr., together with his mother Caridad reported the incident to the barrio captain of Bo. Cogon. Together, they went to Calbayog City to report the crime to the police. The police went with them to the scene of the killing where they found four hats, a gun sling and a gunsight left by the robbers. A witness, Arsenio Calagos identified the gunsight as belonging to Ildefonso Ijurcadas, declaring that he was commissioned by Ildefonso to make the same for him.

Ildefonso Ijurcadas was apprehended in his house at Bo. Cadada-ohan and after investigation confessed that he participated in the robbery-killing of Damian del Monte and his son, Rogelio. He also pointed to Marcelino Dumayan and Lodrigio Ijurcadas as among his companions. On their way to Calbayog City, while the police who were guarding him were sleeping in the house of the barrio captain of Bo. Cagbanayacao, Ildefonso Ijurcadas escaped. Ildefonso and the other suspects went into hiding and could not be arrested inspite of the efforts of the Calbayog police force. It was only through the help of the Philippine Constabulary that one of the suspects Crespin Ijurcadas was apprehended in Sta. Margarita, Samar in 1973. On March 28, 1974, a joint PC-Police team caught up with Ildefonso Ijurcadas and arrested him together with his two co-appellants Lodrigio Ijurcadas and Marcelino Dumayan in Sta. Margarita, Samar. The three other suspects who were never brought to trial and remained at large (*supra*, at page 2 hereof) were never arrested and were reportedly hiding in Mati, Davao Oriental.

The case was tried and after due hearing, the trial court found the three herein appellants guilty beyond reasonable doubt of the complex crime of robbery with double homicide as charged in the information attended by the aggravating circumstance of nighttime, superiority of strength, band, and morada with no mitigating circumstance. They were sentenced as previously indicated, hence this automatic review of the death penalty.

In a well-prepared brief—under the facts and circumstances of the case—Court-appointed counsel Mario E. Ongkiko assigns two errors of the trial court (a) in holding that the three accused were positively identified by the prosecution witnesses Caridad Sagala and Damian del Monte, Jr. and (b) in rejecting the accused's defense of alibi. The errors raise essentially factual questions and will be dealt with hereinbelow in the same sequence.

I. As the first assigned error, appellants contend that the trial court erred in holding that they were positively identified by the victim's wife Caridad Sagala and son Damian del Monte, Jr. They claim that the identification by Caridad Sagala was improbable. To support their cause, appellants argue that Caridad admitted on cross-examination that "she did not recognize them when they came up because they have masks." This is without merit, for as pointed out by in the People's brief, "the aforementioned statement of Caridad is just the first portion of her answer which refers only to five of the suspects as they were yet coming up the house. It does not refer to the

appellant Lodrigo Ijurcadas, who was readily recognized by Caridad Sagala, as clearly indicated by the second portion of her answer, thus:

"Q.

And when you saw them coming up, you still did not recognize those six persons?

A.

I did not recognize them when they came up because they have masks on their faces. I only recognized the one who approached me, Lodrigo."[1]

Caridad Sagala further testified:

"Q.

While you were lying in the said sala of your house what happened?

A.

Six (6) persons went up the house.

Q.

Where did these six (6) persons proceed, upon going up your house?

A.

Five (5) approached Damian del Monte and One (1) to me.

Q.

Do you know that person who approached you?

A.

Yes, sir.

Q.

Who was that person?

A.

Lolong Ijurcadas.

Q.

Is he the same Lodrigo Ijurcadas or Rodrigo Ijurcadas whom you pointed a while ago?

A.

Yes, sir."[2]

With respect to the other two appellants, it is true that Caridad Sagala did not immediately recognize them as they came up the house. However, when they were already inside the house, which was brightly illuminated by three lamps, Caridad recognized them. All three appellants were identified by Caridad because they were personally known and familiar to her. They were former barriomates of hers in Bo. Apo, Calbayog City. She even referred to them by their nicknames. Thus, she testified as follows:

"Q.

Who were these five persons if you know who approached your husband?

A.

I only recognized Ilde and Marcelino Dumayan and I did not recognize the rest.

Q.

When you mentioned Ilde and Marcelino, you are referring to the accused Ildefonso and Marcelino Dumayan?

A.

Yes, sir."^[3]

In trying to discredit Caridad Sagala's testimony, appellants also point out the fact that later in the evening, only one lamp remained lighted and Caridad Sagala could not even recognize the person who was holding the lamp in order to aid them in opening the trunk. They insist that "if Caridad Sagala failed to recognize the person who was already holding the gas lamp (who normally would place the gas lamp at about waist level), how could she have recognized the three (3) accused who were far from the lighted gas lamp."

As already indicated, Caridad Sagala did not recognize the person who held the lighted lamp, because he was not personally known to her. Of the six persons who barged into their house that evening of May 29, 1972, she was able to recognize only the three herein appellants because they are personally known to her. The identities of the other malefactors were given by Lodrigo Ijurcadas to the police only when he was apprehended.

Appellants also question that Caridad Sagala was never made to confront any of the three appellants when they were placed in police custody. This is of no moment, considering the fact that they had already been positively identified by Caridad Sagala as her former barriomates and that Ildefonso Ijurcadas when arrested, admitted his participation in the crime and named Marcelino Dumayan and Rodrigo Ijurcadas as his companions in the robbery-slaying.

Appellants also question the trial court's acceptance of the testimony of Damian del Monte, Jr. who testified that he recognized Ildefonso Ijurcadas as the person who shot him in the right thigh on his way to his parent's house. They claim that his statements should not have been relied upon by the trial court because the basis for his recognition of Ildefonso Ijurcadas was the wide brimmed hat that the latter was allegedly wearing, which is easily available in rural areas. The basis for Damian Jr's. identification of appellant Ildefonso Ijurcadas, however, is that the latter is personally known to him. The mention of the fact that Ildefonso Ijurcadas was wearing a wide-brimmed hat was merely to confirm Damian's identification of Ildefonso, whom he used to see wearing said hat even before the incident.

II. In the plea for their acquittal, appellants raise the defense of alibi. They presented Federico Belino, barrio captain of Bo. Longoyon, Calbayog City, who testified that on May 29, 1972, the three appellants were his guests in the celebration of the death anniversary of his father. Belino testified that the three arrived in his house at 6:00

o'clock in the afternoon; they had drinks while the food was not yet cooked; they spent the whole night in the barrio and left the following morning and went to their farm at Bo. Dao. Belino also testified that it takes twelve (12) hours to negotiate Bo. Longoyon to Bo. Dao and that Bo. Cogon, where the crime was committed, is very far and that it would take one day's travel from Bo. Longoyon to go to that barrio.

The defense of alibi cannot prevail over the positive identification of the appellants by the prosecution witnesses.[4] More so, like in the case at bar, where one accused, Ildefonso Ijurcadas, named and identified his co-conspirators and companions in the commission of the crime.

In cases of positive identification of the culprit by reliable witnesses, the defense of alibi must be established by full, clear and satisfactory evidence.[5] In the case at bar, it is correctly observed by the Solicitor General in the People's brief that accused-appellants "defense of alibi is not persuasive, strong and convincing. A judiciously observed by the trial court, the investigation of Detective Ortiz somehow proved that the three accused know where Bo. Cogon is, contrary to the claim of the defendants that they could not be in that place as they do not know where Cogon is. The Ortiz group, the record shows, left Calbayog City in the afternoon of May 30, 1972. They arrived the same afternoon at Gaza, Cogon and even went beyond the scene of the incident. In Gaza they met Zosimo Cananan and the latter fetched Arsenio Calagos upon orders of Ortiz. When interrogated, Arsenio identified the gunsight he himself made which was owned by Ildefonso Ijurcadas. That same afternoon the group of Ortiz arrested Ildefonso Ijurcadas at Cadada-ohan. All these demonstrate beyond question that Cadada-ohan where Rodrigo, Marcelino and Ildefonso reside is not too far away from Bo. Cogon and consequently, they cannot be trusted when they said that they do not know where Bo. Cogon is." The defense of alibi carries no weight when it appears concocted.

Considering, therefore, the totality of the evidence on record, the Court affirms the trial court's finding that appellants Lodrigo Ijurcadas, Marcelino Dumayan and Ildefonso Ijurcadas committed the crime of robbery with double homicide as charged. Robbery with homicide is punished by reclusion perpetua to death. The offense being attended by four aggravating circumstances and no mitigating circumstance, the penalty provided for in Article 294, paragraph 1 of the Revised Penal Code should be imposed in its maximum period. For lack of the required ten votes to affirm the imposition of the death penalty, however, the penalty next lower in degree shall be imposed, as provided by the Judiciary Act, Republic Act 296, section 9, as amended.

ACCORDINGLY, the death sentence imposed by the trial Court is hereby reduced to the penalty of reclusion perpetua. The trial court's judgment is affirmed in all other respects.

SO ORDERED.

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

Aquino, J., in the result.

Relova, J., took no part.

[1] P. 47, TSN, Azanza.

[2] Pp. 28, 29, TSN, Ibid.

[3] Pp. 24-30, TSN, Ibid.

[4] People vs. Madera, et al., 57 SCRA 349; People vs. Abletes, 58 SCRA 241; People vs. Mojica, 70 SCRA 502; People vs. Naba-unag, 79 SCRA 33; People vs. Lucero, 96 SCRA 694; People vs. Martinez, 96 SCRA 714.

[5] People vs. Pili, *supra*; People vs. Edano, June 30, 1975; People vs. Victoria, June 27, 1975; People vs. Balmaceda, 87 SCRA 94.

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