

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTORIO VENEZUELA, ET AL., ACCUSED. EXPEDITO MAGNO,
DEFENDANT-APPELLANT.**

G.R. No. L-48057. August 19, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Convicted with Victorio Venezuela and Sotero Aros, Jr. of the crime of attempted robbery with homicide, by the Court of First Instance of Leyte, Expedito Magno appeals from the decision of conviction, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring accused Victorio Venezuela, Expedito Magno and Sotero Aras, Jr. guilty of the offense of attempted robbery with homicide, punished by Art. 297 of the Rev. Penal Code, with the attendance of two aggravating circumstances not offset by any mitigating circumstance, and each of them is hereby sentenced to suffer the penalty of reclusion perpetua, to jointly and severally in-demnify the heirs of deceased Cirilo Maano in the amount of P12,000.00 and to pay 1/4 of the costs.

"It appearing from the records that they signed agreements to abide by the same rules imposed upon convicted prisoners while on detention and considering the ruling of the Supreme Court in *U.S. vs. Ortencio*, 38 Phil. 341, the preventive imprisonment undergone by the above-named three accused shall be deducted from the term of imprisonment imposed herein to its full extent. According to the records, they have been under preventive detention since August 11, 1975 until the present.

"Judgment is also rendered declaring accused Salvador Aras not guilty of the offense of robbery with homicide charged in the information, and is hereby acquitted in this case, with 1/4 of the costs de oficio.

"Considering that he is presently detained in the Provincial Jail, the Officer-in-Charge of said jail is hereby ordered to immediately release therefrom accused Salvador Aras, unless he is held therein also for other charges."^[1]

His two (2) abovementioned co-accused also appealed but later withdrew their appeal.^[2]

As proven by the evidence of the prosecution, and quoting from the appellee's brief, the facts of this case are as follows:

"At about two o'clock in the morning of August 7, 1975, Cirilo Maano was sleeping with his common-law wife, Saturnina Corpus in their house at Ormacay, Marikina, Leyte. (pp. 3-4, *tsn*, Oct. 7, 1977). By accident, Cirilo hit Saturnina on the face, waking her. As Saturnina awoke, she heard someone shout in Visayan three times, "Podila", meaning "shoot". (pp. 5, 25, *tsn*, Oct. 7, 1977) She was astonished to see inside the house three persons, namely, Sotero Aras, Victorio Venezuela and the appellant Expedito Magno. (p. 26, *tsn*, Oct. 7, 1977) She watched in fear as the three abovenamed persons attacked her common-law husband without warning. Sotero Aras pinned down the legs of Cirilo by holding his knees down. Afterwards, he stabbed him with a bolo

on the left side below the groin. (p. 6, tsn, Oct. 7, 1977) Somehow Cirilo managed to get up. While he was leaning on a wall, appellant held him by the waist and took money therefrom. On the other hand, Victorio Venezuela approached Cirilo, held him by the shoulder and stabbed him with a bolo. (p. 6, tsn, Oct. 7, 1977) Seeing what was happening, Saturnina shouted for help. Victorio Venezuela was alarmed. He turned towards Saturnina and thrust a knife at her. Fortunately, Saturnina was not hit. She managed to jump out of the window and ran to the house of her neighbor for help. (pp. 28-29, tsn, Oct. 7, 1977) Mean-while, appellant and his co-accused also jumped out of the window after killing Cirilo Maano. They were seen and recognized by Estrella Parado. (p. 8, tsn, Oct. 16, 1975) When Saturnina went back to her house, she found Cirilo already dead from stab wounds on different parts of his body. (Exhibit A)"[3]

Appellant's defense is that of alibi, for which he imputes errors to the trial court in not giving credence thereto, and in giving instead full faith and credit to the testimony of the prosecution witnesses which appellant claims to be inherently incredible and full of contradictions. We find no merit in appellant's claim of error against the trial court in both instances as herein indicated.

We find the testimony of the state witnesses perfectly credible. Whatever contradictions there might be in said testimony, are either inconsequential because they refer to minor matters, or have been fully explained to erase the supposed contradictions. This is shown by the Solicitor General with such clarity and convincingness, We quote from the People's brief the portion thereof pertinent to this matter the follow-ing:

"(a) The testimony of Estrella Parado that she heard someone shout in Visayan "Shoot him, shoot him, shoot him" is allegedly incredible because Cirilo Maano did not die of bullet wounds but of stab wounds.

"This is an empty argument. The testimony of Estrella Parado was corroborated by Saturnina Corpuz. It was not rebutted by appellant. That the utterance was made by appellant and his co-accused is therefore an established fact. The fact that Cirilo Maano was not really shot is of no moment. Appellant and his co-accused may have had any number of reasons for not carrying out their threat to shoot him.

"(b) Appellant likewise states that the claim of Estrella Parado that upon hearing the words "shoot him, shoot him, shoot him," she dragged her husband to the footbridge near her house is also incredible because it is against human nature for a person to unnecessarily expose his self and his family to danger.

"Appellant's portrayal of Estrella Parado as a totally reckless woman is unjustified. Estrella Parado did not drag her husband out of their house to rush head-long to the house of Cirilo Maano. She did so merely to "verify" what she heard.

"Q. What did you do upon hearing this voice?

A. I stood up and took hold of my husband.

Q. What did you do to your husband?

A. I dragged him to the porch.

Q. Why did you drag him to the porch?

A. Because I heard shouts in order to verify." (p. 6, tsn, October 16, 1975)

"It is next contended by appellant that the testimony of Estrella Parado that when she and her husband went to the house of Cirilo Maano, they saw thereat a child and Saturnina Corpus is contradicted by the testimony of Saturnina Corpus that she went to the house of Estrella Parado.

"Evidence on record shows that Estrella Parado met Saturnina Corpus outside of their respective houses. (p. 9, tsn, Oct. 7, 1977) Eventually they went to the house of the latter to assist Cirilo Maano.

"(d) According to appellant, the testimony of Saturnina Corpus that she was awakened when she was accidentally hit by her husband is contradicted by her statement to the police that she was awakened by the shouts of appellant and his co-accused.

"This witness clarified her seemingly contradictory statements when she declared under cross-examination that she was roused from sleep by the blow which her husband accidentally dealt her and when she was fully awake she then heard someone shout three times in Visayan, "Shoot him." (pp. 24-25, tsn, Oct. 7, 1977)

"(e) Another alleged contradictory testimony of Saturnina Corpus refers to the part of the body of Cirilo Maano that accused Sotero Aras, Jr. held. She allegedly testified at one point that it was the knees and at another point, the thighs.

"Likewise, Saturnina Corpus clarified on cross-examination where Sotero Aras, Jr. held her husband before the latter was stabbed. Thus, she categorically stated that accused Sotero Aras, Jr. held her husband on the knees before the stabbing. (p. 17, tsn, Oct. 7, 1977)

"(f) Corpus allegedly testified falsely about the nature of her relationship with Cirilo Maano. On direct examination, she allegedly claimed that Cirilo Maano was her husband when actually he was only her paramour.

"The fact that Saturnina Corpus stated during direct examination that Cirilo Maano was her husband should not detract from her credibility, firstly because they were living together in all respects as husband and wife although without the benefit of marriage and secondly, because she readily admitted during cross-examination her true relation-ship with him.

"(g) Lastly, it is claimed that Saturnina Corpus' testimony that when she jumped out of the window she saw and recognized Salvador Aras is contradicted by her state-ment given to the police that she did not recognize the person she saw outside of her house. Assuming there is such contradiction, Saturnina Corpus corrected it while she was on the witness stand by stating that she did not actually recognize the person she saw."[4]

As may be seen from how the Solicitor General refuted the alleged existence of contradictions in the testimony of the state witnesses, these supposed contradictions either do not exist actually, or that they refer to immaterial details to have any adverse effect on the credibility of said witnesses. Where there exist seeming contradictions, they are of a nature that enhance rather than detract from their credibility.[5]

What has been established beyond doubt by the testimony of the state witnesses is the identity of the appellant and his two convicted co-accused, who as earlier stated, withdrew their appeal rather than run the risk of being sentenced to a higher penalty, as is now recom-mended by the Solicitor General against appellant herein. With posi-tiveness, said witnesses pointed to appellant as one of the nocturnal intruders, into the house of the deceased where they, without qualm but with manifest callousness, committed the crime charged.

By the positive manner with which appellant and his co-accused were identified, the lower court was justified in rejecting their defense of alibi.[6] The least vestige of doubt if any as to the worthiness of their defense of alibi, dissipates entirely when we consider that his co-accused who were similarly identified as the perpetrators of the das-tardly crime, accepted the verdict of conviction and the life sentence that went with it, as shown by their withdrawal of their appeal.

The nature of the offense is next raised by appellant claiming it to be that of simple homicide, on his allegation that robbery was not sufficiently proved. What the trial court found, with which We agree, is that the amount supposedly taken from the waist of the deceased has not been proven.[7] For this reason, the trial court held that the crime is only attempted robbery with homicide, not robbery with ho-micide as charged. If the robbery has been proved beyond reasonable doubt, as it has to be in order to be considered as one of the component offenses

in the special complex crime of robbery with homicide, the exact amount stolen would be immaterial. We are of the opinion, however, that the evidence does not suffice to prove robbery in the manner legally required, to warrant convicting appellant with the capital crime of robbery with homicide as charged.

The fact that no amount allegedly stolen could even be given by Saturnina Corpus cannot but raise doubt that robbery was actually committed. The only testimony relevant to robbery is that appellant had his hands on the waist of the deceased, Cirilo Maano, in order to get money therefrom.[8] The act imputed to appellant is not sufficient to show that the purpose is to search for money. It could as reasonably be interpreted as feeling for a weapon possibly tucked at the waist, as appellant contends not without some plausibility. This is so in the absence, as none was presented, of any evidence that Cirilo Maano kept his money at, or around his waist, much less that the appellant knew beforehand that money was to be found at that place. What naturally would the robbers do is to ask the money to be handed over to them, or to ask where the money is kept and for them to get it from there. If robbery was also a motive of the intrusion into the house of the deceased, some other valuables should have been asked for and carried away. With these circumstances as just pointed out, the Court cannot rest at ease with its conscience that robbery was committed, specially considering that finding said offense to have been perpetrated would call for the imposition of the death penalty as recommended by the Solicitor General.

We are, therefore, constrained to sustain appellant's contention that from the state of evidence, robbery has not been conclusively proven as is an essentially indispensable requirement, to justify conviction for the very grave offense charged herein. Consequently, only for the killing may appellant be convicted, which for lack of allegation of any qualifying circumstance in the information, may not be raised to a higher offense, even if abuse of superior strength, if not treachery, may have been shown by the evidence to qualify it to murder, had they been alleged.

Appellant may then be found guilty of homicide, aggravated by abuse of superior strength, nighttime and dwelling, with no mitigating circumstance to offset any of them. We cannot sustain appellant's contention that nighttime and dwelling may not be considered, the reason he advanced in support of his contention being untenable in the face of the facts duly proven.

WHEREFORE, the judgment appealed from should be modified by finding appellant guilty of homicide, aggravated by abuse of superior strength, nighttime and dwelling, without any mitigating circumstance to offset any of the said aggravating circumstances. Accordingly, the penalty should be the maximum of that prescribed for homicide which is 20 years of reclusion temporal, this to serve as the maximum of the indeterminate penalty, whose minimum shall be 12 years of prision mayor. With this modification, the judgment appealed from is affirmed in all other respects, with costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur. Barredo, J., (Chairman), I concur in the dissent of J. Aquino. Aquino, J., I dissent. I vote for the affirmance of the trial court's decision for reasons stated in the Solicitor General's brief.

[1] p. 1, Appellee's Brief, p. 117, Rollo.

[2] p. 138, Rollo.

[3] pp. 2-3, Appellee's Brief, p. 117, Rollo.

[4] pp. 3-6, Appellee's Brief, p. 117, Rollo.

[5] People vs. De Gracia, 18 SCRA 197.

[6] People vs. Lugtu, 108 SCRA 84; People vs. Blas, 106 SCRA 305; People vs. Candado, 84 SCRA 508.

[7] p. 9, Decision, p. 87, Rollo.

[8] p. 6, tsn, October 7, 1977.

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