

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SOTERO LUARDO, FELICIANO INDANGAN, RODRIGO BEDICO, PROCESO (NARCISO) CAPIO & ANTONIO BAYUBAY, ACCUSED.

G.R. No. L-36788. November 24, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal to the Court of Appeals seeking to reverse and set aside the decision of the then Court of First Instance of Cebu, Barili Branch, in Criminal Case No. 214 BV dated August 12, 1968 entitled "People of the Philippines versus Sotero Luardo, Feliciano Indangan, Rodrigo Bedico, Proceso (Narciso) Capiro and Antonio Bayubay", which found defendants-appellants (except Sotero Luardo) guilty as charged of the crime of robbery in band with homicide and frustrated homicide, and sentenced them to reclusion perpetua. The dispositive portion of said decision reads:

"WHEREFORE, the Court finds the accused (except Sotero Luardo who was given a separate trial after the prosecution rested its case), Rodrigo Bedico, Feliciano Indangan, Proceso (Narciso) Capiro, and Antonio Bayubay guilty beyond reasonable doubt of the crime of ROBBERY in BAND with HOMICIDE and FRUSTRATED HOMICIDE with which they were charged in the information of the Fiscal, and, therefore, each and every one of them, is sentenced to reclusion perpetua, and to indemnity (sic) jointly and severally the heirs of the deceased Severino Capacio in the amount of P6,000.00; to return to the owners the money they carried away in the amount of P2,000.00; and each of them should pay one-fourth of the costs." (Decision, p. 74; Rollo, p. 108)

The penalty imposed being reclusion perpetua, the records of this case were forwarded to this Court by the resolution[*] of the Court of Appeals promulgated on April 11, 1973, in accordance with Section 31 in relation with section Section 17 of Republic Act No. 296 as amended (Rollo, pp. 255-258).

In the resolution of this Court of April 26, 1973, (Rollo, p. 260) the case at bar (UDR-1374 [CA-G.R. No. 11601-CR]) entitled "People v. Feliciano Indangan, et al." was one of those docketed in this Court and in the resolution of July 7, 1976 (Rollo, p. 261) referred to the Second Division.

The defendants-appellants were charged under the following information dated June 3, 1964 signed by Assistant Provincial Fiscal Alfredo S. Pancho:

"The undersigned accuses Sotero Luardo, Feliciano Indangan, Rodrigo Bedico, Proceso (Narciso) Capiro and Antonio Bayubay of the crime of Robbery in Band with Homicide and Frustrated Homicide, committed as follows:

"That on or about the 4th day of August, 1963 in the municipality of Badian, province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused with deliberate intent of gain and to kill, conspiring and confederating with one another, taking advantage of night time, superior strength and all armed with deadly weapons did, then and there willfully, criminally and feloniously enter forcibly the house of

Severino Capacio and once inside, attacked and assaulted the latter inflicting thereby upon him contused wound, middle forehead, fracture, anterior portion of the base of the skull and contusion, left ear and temporal portion of the scalp, which caused his death shortly thereafter; and that in the course of the commotion, the accused ransacked all places where townfolks usually deposit their money and valuables and were able to get and carry away with them cash in the amount of P2,000.00, more or less, to the damage and prejudice of the Capacio family in that amount; and that further, when Nicolas Capacio, another house inmate escaped out of the window for fear, he was attacked and assaulted by one of the accused who acted as lookout, inflicting upon him five (5) incised wounds and two abrasions in the different parts of the body which necessitated medical treatment for a period of from 20 to 25 days and incapacitated him from his customary labor for the same length of time; the accused having performed all the acts of execution which could have produced the crime of homicide but nevertheless were unable to consummate it for reasons or causes independent of their will, viz: the said Nicolas Capacio was able to parry further attack and the timely, able medical care rendered to him.

"CONTRARY TO LAW." (Rollo, pp. 22-23)

Upon being arraigned, on August 5, 1964, all the accused pleaded not guilty. Trial commenced on August 31, 1964 and the prosecution presented the testimonies of the following witnesses:

Nicolas Capacio, brother of the deceased, testified that at around 11:00 o'clock in the evening of August 4, 1963, while he and his brother Severino and sisters Quirina and Asuncion were already retired to bed in their house at Sulsugan, Badian, Cebu, they heard the howling of a dog. They all stood up and heard a shout "open the door because we have been commanded by the MPC". Herein witness recognized the voice as one belonging to accused Bedico because they sometimes went together to the cockpit. As the door was not opened, the intruders banged at the door. Unable to open it, they went down and managed to open the door in the kitchen and then entered the dining room. They lighted a lamp (tingkarol) and gained entrance at the sala by opening a hole on the wall, breaking the wooden lock of the door and firing a shot from their revolver. When the door was opened, herein witness who was then at the window to get a bolo from the kitchen saw the four (4) accused - Bedico with a revolver and flashlight, Indangan and Bayubay with a piece of wood, and Capio with a small lamp. He reached the ground by sliding down the post; but upon reaching thereat, he was hacked five (5) times by accused Luardo resulting in injuries in the head, face and right shoulder. He managed however, to run to the house of Apolonio Costanilla who blew a horn to ask help; that he went home alone and upon reaching their house, he saw his brother tied lying face down and already dead and his sisters tied to two posts facing each other. Upon inspection of the house, the cabinet and trunk were found opened and the money amounting to more than P2,000.00 was gone.

On cross-examination, witness testified that he did not open the door even when he heard and recognized the voice of accused Bedico, his relative, who shouted at the occupant to open the door as they were sent by the constabulary, due to his apprehension that it was not the proper time; that the accused did not wear masks but wore their hair down; that he saw the four accused lighting the lamp when he opened the door of the sala a little and closed it when they were moving towards the door; that when he was about to go out of the window he saw four accused rush at his brother; that he did not immediately tell the peace authorities who investigated the incident on the following day, August 5, 1963, the identities of the accused because of fear that they would come back; neither did he reveal the identities of the accused to Dr. Lucero who treated him because he was accompanied by accused Bedico; but on August 6, 1963, because of the assurance of the P.C. authorities that nothing would happen to them, he divulge to Sgt. Gumersindo Ebalan of the PC detachment in Dumanjug, Cebu, the identities of accused Luardo who was then the barrio lieutenant, Bedico, a distant relative, and Capio whom he used to see when he would come down from the mountain, while on August 9, 1963, he identified Bayubay and Indangan in a police line-up of five persons; that because of the nature of his injuries and upon advice of his

doctor, he never returned to their house where the crime happened for more than one (1) month; that he suffered scratch wounds in the neck because he had to run past trees and bushes (Hearings of September 30, 1964, TSN pp. 38-81; November 25, 1964, TSN pp. 82-106).

Asuncion Capacio, one of the residents of the house, the scene of the crime, and the sister of deceased Severino, Nicolas and Quirina, on direct examination, corroborated the testimony of Nicolas Capacio on all material points. She further testified that four men actually entered the sala of their house, led by Rodrigo Bedico who carried a gun and followed by accused Capio and Indangan and Bayubay, all armed with "garote" (a piece of wood approximately 3/4 meters long); that they beat and hit Severino in the forehead until he fell with his face downward; that Indangan and Bayubay tied the deceased with a rope and a piece of wire; that out of fear, Quirina gave accused Bedico the key to the trunk where the money was kept and then she and Quirina were dragged to the dining room and tied with a rope to the post; that witness was tied by accused Bayubay and Quirina by Indangan whom they recognized only by face; that a belt was used to tie her neck against the post and a shirt ("Play Boy") was used to gag her sister; that the witness heard the accused open the trunk and aparador; that she was warned by accused Bedico to keep quiet otherwise they would return; that when Nicolas arrived he untied them and administered first aid treatment to Severino not knowing that he was already dead at that time; that on August 6, 1963, she revealed to Sgt. Ebalan who assured that nothing would happen to them if they would tell the truth, the identities of accused Bedico, Capio and those persons she could recognize only by face by identifying them in a police line-up on August 9, 1963; and that the accused took the amount of P2,000.00 from the trunk and aparador. On cross-examination, witness admitted that she knew, only the accused Bedico and Capio but could recognize the faces of Indangan and Bayubay; that she immediately recognized the faces of the first two accused after they entered the house, although she and her sister did not recognize the voice commanding them to open the door as that of accused Bedico because it was a shout; that it was accused Bedico who told her in a low voice not to tell anybody because he is going to return; that she and her sister were looking from the door when Severino, who attempted to fight back, was hit by the accused. They shouted for help and cried but could not do anything for fear of being included in the beating and they insisted that they saw clearly the beating because of the light from the "tingkarol" (a bottle with a big wick) which was already lighted and very bright when the accused broke the door and entered the dining room, and parilla. The accused Bayubay and Indangan had their hair down to the eyebrows but she recognized them as the persons she used to see on the road and in the market and she readily identified them on August 9, 1963 as requested by Sgt. Ebalan in a police line-up (Hearings of April 1, 1965, July 26, 1965, TSN pp. 174-192).

Gumersindo Ebalan, a Sergeant of the Philippine Constabulary in Dumanjug, Cebu, corroborated the testimonies of Nicolas and Asuncion Capacio, on the fact that he indeed investigated them and their sister Quirina in connection with the robbery and that they revealed to him the identities of Luardo, Capio and Bedico whom they personally know and two others Indangan and Bayubay whom they recognized only by face, but were able to point out in a police line-up, as among the perpetrators of the crime. Witness testified further that it was Luardo who reported to him the incident so that the latter was with him during the investigation, although it was not within Luardo's hearing distance; that after the investigation he took along Luardo to the P.C. detachment to get more vital information from him and also to protect him from outside elements who might try to eliminate him. Witness stated that he picked up Indangan and brought with him Luardo and his wife who stayed with him at the P.C. headquarters from August 6, 1963 to August 12, 1963 when Luardo was turned over to the Chief of Police of Badian and that he was able to get the bolo used by Luardo in attacking Nicolas Capacio based on Luardo's confession, from the latter's house where he noticed blood stains and a bloody hand at the door (Hearings of December 16, 1964, TSN pp. 107-117; February 24, 1965, TSN pp. 117-151).

Dr. Felicisimo Lucero, Municipal Health Officer of Badian, Cebu, testified that he conducted a post mortem

examination of the body of Severino Capacio in the afternoon of August 5, 1963 and issued a medical certificate (Exhibit "B"); that he found signs of violence on the fore-head, nose and ears, and the fractured skull of Severino Capacio caused by a blunt instrument, possibly a piece of wood; that he placed the time of death between 10:00 o'clock in the evening of August 4, 1963 and 2:00 o'clock of the following morning; that from the positions of the wounds, the assailant was facing the victim. The doctor also testified that he conducted a physical examination on Nicolas Capacio in the morning of August 5, 1963 and issued a medical certificate (Exhibit "A"); that Nicolas Capacio had five wounds caused by a sharp-bladed instrument, possibly a bolo; that from the positions of the wounds, the assailant must have been facing the victim (Hearing of August 31, 1964, TSN pp. 1-32).

Lourdes Dima, a municipal judge of Ronda, Cebu, testified that at the request of Sgt. Ebalan, she administered the oath on the prepared affidavit of Porferia Luardo (Exhibit "E"), against her husband Sotero Luardo in Dumanjug, Cebu on August 11, 1963 (Hearing of January 31, 1966, TSN pp. 243-255). The said affidavit was, however, objected to by the defense during the formal offer of evidence for being self-serving and hearsay, for Porferia Luardo was not presented, she having died during the trial of the case, and therefore, not admitted by the Court (Hearing of February 23, 1966, TSN pp. 262-264).

With the presentation of the foregoing testimonies and various exhibits, consisting of documentary evidence and physical evidence, the prosecution rested its case on February 23, 1966.

Sometime thereafter, accused Sotero Luardo was observed to be behaving strangely in court and upon the joint motion of the prosecution and the defense, the trial court, on June 1, 1966 ordered the examination of said accused. Dr. Racul Alonzo, a psychiatrist, found Luardo mentally ill and unable to stand trial. Consequently, again on petition of both the prosecution and the defense, the trial court directed, in its order of November 25, 1966, the resumption of the trial against the remaining four accused, Bedico, Capio, Indangan and Bayubay.

Appellants' primary defense is alibi.

Briefly the testimonies of the defense witnesses are as follows:

Accused Feliciano Indangan testified that at the time the crime was committed, he was in barrio Ubong, Dalaguete, Cebu. He was in-charge of the mahjong game played in the cockpit from 11:00 o'clock noon of August 4, 1963 until 1:00 o'clock dawn of August 5, 1963; that he was included as one of the accused because of the affidavit executed on August 10, 1967 by Porferia Sabanal (Exhibit "E"), the wife of accused Luardo who was repeatedly administered with "7-Up treatment" at the PC Headquarters by forcing her to lie down in bed, holding her firmly, covering her mouth and acquiring a 7-Up softdrink after shaking it up directly in the nose of the victim; that during such treatment on August 10, 1963 at 8:00 o'clock in the morning, she also mentioned Andres Capacio, Bernardino Capacio and Emelio Celino as the authors of the crime; that accused Luardo was also tortured by Sgts. Ebalan and Eballo until he lost consciousness the night before; that after the "7-Up treatment", Luardo was brought to the kitchen where he was mauled and constrained to plead for his life to shout "Sergeant, please don't kill me"; that witness does not know accused Bayubay whom he first saw on August 10, 1963, and Bedico whom he first saw on August 12, 1963 at the Badian Municipal Building (Hearings of December 13, 1966, TSN pp. 367-411; February 3, 1967, TSN pp. 412-427).

Lucrecio Osorio and Apolinar Jimenez, members of the Municipal Police Force, corroborated the statements of Indangan to the effect that the latter was at the cockpit of sitio Liyab, Bo. Bobong, Dalaguete, Cebu as a tong collector from 12:00 midnight of August 4, 1963 to about 1:00 o'clock in the morning the following day or approximately the time the crime happened in Bo. Sulsugan, Badian, Cebu (Hearing of February 23, 1966, TSN pp. 264-299).

Valeriano Sadua, a member of the Badian, Cebu Police Force, testified that he made the initial investigation of the reported robbery with homicide and frustrated homicide incident in Bo. Sulsugan upon orders of the Chief of Police in the morning of August 5, 1963; that when he arrived, the blood stain on the floor was already washed and the deceased was already in bed and dressed in new clothes; that he was informed that the fresh blood on the clothes was dry; that he met Quirina and Asuncion Capacio who informed him that they were robbed by five unknown persons whom they could not identify because they looked very unfamiliar to them; that he found footprints in the premises, and the wall between the kitchen and dining room was actually damaged; that they were robbed in the amount of P3,000.00, more or less, which was kept in the trunk cabinet and near the bed; that he was presented the bundle of wire (Exhibit "I") supposed to be the one used in tying Severino Capacio, the bolo (Exhibit "G") used in breaking the lock and slashing the victim; and the lead (Exhibit "Q") of a .22 caliber gun used during the robbery; that when the justice of the peace and the doctor investigated Nicolas Capacio, the latter could not identify the robbers; that he stopped the investigation because the Philippine Constabulary took over the investigation of the crime (Hearings of March 9, 1966, TSN pp. 300-334).

Pedro Taboada, a patrolman of the Badian Police Force, fully corroborated the testimony of Sadua and stated that the sisters were pale and trembling (Hearings of March 9, April 13 and April 30, 1966, TSN pp. 334-366).

Accused Antonio Bayubay testified on direct examination that he came to know that he was one of the accused on August 12, 1963 from Sgt. Ebalan; that on August 10, 1963, he was fetched from his house at the Lepanto Mountain by a child who misled him to believe that his wife arrived in Matutinao from Negros and his children were sick; that upon arrival, he was held and brought to the constabulary headquarters at Dumanjug by Odon Capacio and accused Bedico where he was tortured the whole night; that on the following day, he met accused Indangan and Luardo; that he and Indangan first met Quirina, Asuncion and Nicolas on August 11, 1963 when the latter were asked to identify the perpetrators of the crime; that Bayubay and Indangan were ordered to stand during the identification; that Quirina and Asuncion answered that they are similar but Nicolas answered "we can not be sure of the man", however, Sgt. Ebalan stamped his feet forcefully and said to them to be sure. He further testified that Lepanto is about 14 to 15 kilometers from Sulsugan and he was informed by his mother that he had visited Sulsugan as a small boy. On cross-examination, accused Bayubay admitted that he arrived in Lepanto in July 1963 from Negros to work in his rice-field; that on August 4, 1963 he met Mariano Iran in the market place, and had a practice boxing episode with a sparring partner using gloves made of sack and later had a drinking spree of tuba up to midnight (Hearings of March 7, 1967, TSN pp. 451-484; April 7, 1967, TSN pp. 486-491).

Accused Rodrigo Bedico testified under direct examination that on August 4, 1963 from 8:00 o'clock in the evening to past 12:00 o'clock midnight, he was in the house of Jesus Capacio for a drinking spree after unloading the carabaos and cows of Rogelio Capacio from the motor launch "Shooting Star"; that he is a third degree cousin of the victims; that he and accused Capio attended the wake and the funeral of Severino Capacio and both helped carry the bier; that he was requested by Nicolas Capacio to accompany him to the doctor for medical treatment; that Nicolas Capacio told him that the malefactors are not known to him and they are from another place; that he was even in the company of the constabulary who arrested accused Indangan in the mountain of Compostela on August 9, 1963; and that he was arrested on August 12, 1963 in Matutinao, Badian, Cebu together with accused Capio. On cross-examination, he testified that he came to know of the crime in the morning of August 5, 1963 from Nicolas Capacio whom he accompanied for medical treatment; that he was present during the investigation conducted by the municipal judge when the body of Severino Capacio was transferred from Sulsugan to Matutinao. (Hearings of February 19, 1968, TSN pp. 593-629; March 5, 1968, TSN pp. 630-636).

Jesus Capacio, a cousin of the victims, and a resident of Matutinao, Badian, Cebu, corroborated the testimony of accused Rodrigo Bedico. He stated that accused Bedico and his company ordered liquor from his store which is

also his house at past 9:00 o'clock in the evening of August 4, 1963 and went home at about 12:30 midnight after consuming four bottles of brandy; that Sulsugan is about 2 1/2 kms. from his house and could be reached by about a 40-minute walk because Sulsugan is located in the mountains; that during the investigation, he heard the victims tell the Chief of Police and the municipal judge that they cannot identify the malefactors (Hearing of October 16, 1967, TSN pp. 523-543).

Rogelio Capacio was presented to corroborate the testimony of Jesus Capacio. He testified that he arrived in Badian, Cebu from Negros at past 7:00 o'clock in the evening of August 4, 1963 as a businessman in the buy and sell of large cattle; that one of the persons who unloaded the cattle which work was finished at past 8:00 o'clock in the evening was accused Bedico; that he served Old Special Brandy to the group of accused Bedico and paid for the drink; and that he left his father's house at past 12:00 o'clock midnight (Hearing of October 26, 1967, TSN pp. 544-563). Rogelio Capacio's testimony was corroborated by Marcos Lucero, the one in-charge of the motor launch in transporting the large cattle (Hearing of December 21, 1967, TSN pp. 573-592).

Accused Proceso Capio testified that on August 4, 1963, he was on vacation in Badian, Cebu to supervise the construction of their house and defray the expenses; that in the morning of August 4, 1963, he attended mass in a Catholic Church in Badian, and went home afterwards, breakfasted and stayed at home; that he retired in the evening at 8:00 o'clock but woke up at about 12:00 o'clock when he was offered to partake of fish cooked by his brother who was with Francisco Divinagracia, but he refused and went back to sleep because he was not feeling well; that he knew Bayubay, Indangan, Luardo and Bedico but did not go with them at anytime on August 4, 1963; that he was arrested on August 12, 1963 but came to know of the crime on August 5, 1963 and the cadaver was even placed in his house and his co-accused Bedico and Luardo attended the vigil and funeral; that he was one of those who carried the coffin during the funeral; that accused Bedico was one of the pallbearers; that during the investigation conducted by the municipal judge and the chief of police on August 5, 1963, the victims told them that they did not know the malefactors in the presence of herein witness, and his co-accused Bedico and Luardo and other people crowding around them. On cross-examination, witness admitted that although he had no knowledge about house building, he came to supervise the construction of their house; that the scene of the crime was three kilometers away from his house; and that he had no quarrel with the Capacio family. On re-direct examination, he further testified that he heard Quirina and Asuncion Capacio answer that they could not recognize the perpetrators because they were wearing masks, had long hair and were barefooted (Hearing of September 18, 1967, TSN pp. 506-528).

Francisco Divinagracia corroborated the testimony of Proceso Capio stating that he knows accused Capio and Bedico since they are from the same place; that on August 4, 1963 at about 5:00 o'clock to 6:00 o'clock in the afternoon, he saw accused Capio digging and levelling the ground of the latter's house; that he went fishing in the sea with the brother of the accused and returned at about 11:00 o'clock to 12:00 o'clock on the evening of August 4, 1963; that he saw accused sleeping when he arrived and left at about 1:00 o'clock (Hearing of April 7, 1967, TSN pp. 492- 505).

Another witness for the defense was Jesus Orlanes, a prisoner of the Cebu Provincial Jail, who admitted the commission of the crime, together with a group composed of Andres Capacio, the leader, and a relative of the victims, Bernan Capacio, Domingo Celino and Alfredo Ramirez on August 4, 1963 in Sulsugan, Badian at around 12:00 o'clock midnight. According to him he first met the group except Alfredo Ramirez, whom he had known personally for a long time, at the motor launch, where they had a drinking spree on August 2, 1963, and planned the robbery in the instant case. They stayed in the house of Domingo Celino in Sulsugan where they finalized their plan. Then, he, armed with a .22 caliber pistol and Alfredo Ramirez with a .38 caliber gun with Andres Capacio, Bernan Capacio, and Domingo Celino armed with fan knives, proceeded to the site of the crime and

committed the same as narrated by the prosecution except for the fact that the perpetrators were different. He claimed that it was Domingo Celino and Andres Capacio who took the money, jumped out of the window and disappeared, so that he and Alfredo did not know the amount taken nor were they able to get their share.

On cross-examination, witness insisted that August 4, 1963 was the last time they saw Andres and Domingo. He and Alfredo did not go to Matutinao for fear of being arrested.

Witness, however, admitted having been convicted of two robbery cases in Compostela and of pickpocketing and that he was in the provincial jail sometime in December, 1964 and was continuously in jail since then, so that when the five accused were detained, he was already in the provincial jail. He insisted that they belong to different groups and he had no occasion to converse with them because, while they could mix with the others, usually friends mingled only with friends. In fact, he discovered what transpired, only when he heard Sotero Luardo mumbling and he was told that the latter got crazy because of the robbery in Sulsugan. He took pity on him and his co-accused for being blamed for the crime he committed. He therefore, asked Indangan to contact his lawyer, Atty. Jumapao, and he executed an affidavit (Hearing of August 28, 1965, TSN pp. 193-213).

The testimony of Orlanes was presented by Atty. Juma-pao, counsel for Indangan, and was adopted by the accused Bayubay, Bedico and Capio.

The prosecution, however, presented a rebuttal witness, Antioco Saornido, a guard at the Cebu Provincial Jail, who testified that the prisoners except those in the bartolina, mixed with one another from 5:30 A.M. to 12:00 o'clock high noon everyday (Hearing of March 5, 1968, TSN pp. 636-639).

After assessing the evidence adduced by both parties, both testimonial and documentary, and other proofs, the trial court gave more credence to the version of the prosecution and as aforesaid, found all the accused except Sotero Luardo who was given a separate trial, guilty as charged of the crime of robbery in band with homicide, and frustrated homicide, and sentenced them to reclusion perpetua (Rollo, p. 99).

On the other hand, trial was resumed against Sotero Luardo after the latter regained sanity, but by another Judge, Hon. Alfredo Marigomen, who acquitted him (Rollo, p. 155).

Hence, this appeal filed by Feliciano Indangan, Pro-ceso (Narciso) Capio, Antonio Bayubay and Rodrigo Bedico. But in view of the letter of Feliciano Indangan dated September 6, 1972 to the Superintendent of the Bureau of Prisons and Penal Farm Zamboanga City, which was forwarded to the Court of Appeals stating that he was not appealing his case (Rollo, pp. 196-198), said appellate court in the resolution of October 13, 1972 (Rollo, p. 203) dismissed the supposed appeal of said defendant-appellant and entered judgment on November 15, 1972 (Rollo, p. 251).

Defendants-appellants Rodrigo Bedico and Proceso (Narciso) Capio raised the following alleged errors:

I

THAT THE TRIAL COURT ERRED IN CONVICTING THE APPELLANTS ON THE UNRELIABLE TESTIMONY OF NICOLAS CAPACIO AND ASUNCION CAPACIO.

II

THAT THE TRIAL COURT ERRED IN NOT ACQUITTING THE APPELLANTS ON GROUND OF REASONABLE DOUBT. (Brief for the Appellee, p. 10; Rollo, p. 246).

Defendant-appellant Antonio Bayubay raised the following alleged errors:

I

THAT THE TRIAL COURT ERRED IN HOLDING THAT ROBBERY WITH HOMICIDE WAS COMMITTED.

II

THAT THE TRIAL COURT ERRED IN CONSIDERING THAT THE IDENTITY OF DEFENDANT-APPELLANT BAYUBAY WAS SUFFICIENTLY ESTABLISHED.

III

THAT THE TRIAL COURT ERRED IN NOT CONSIDERING THE INVESTIGATION OF THE POLICE INVESTIGATOR IN HIS FAVOR.

IV

THAT THE TRIAL COURT ERRED IN NOT CONSIDERING THE TESTIMONIES OF JESUS ORLANES IN HIS FAVOR. (Ibid.)

There is no debate on the well-established principle that alibi cannot prevail over the positive testimony and identification by the prosecution witnesses. (People v. Ebor, 141 SCRA 282 [1986]; People v. De las Pinas, 141 SCRA 379 [1986]; People v. Valentino, 141 SCRA 397 [1986]; People v. Cruz, 142 SCRA 476 [1986]; People v. Casunde, 134 SCRA 197 [1985]; People v. Rosario, 134 SCRA 496 [1985]; People v. Manalo, 135 SCRA 84 [1985]; People v. Basadre, 128 SCRA 641 [1984]; People v. Tajon, 128 SCRA 656 [1984]).

There is no question that the accused were positively identified by the victims. The accused were personally known to them except two whom they also knew by face and the room was admittedly well lighted and the former stayed in the house for sometime, ransacking the room of its valuables, mauling and tying up the victims; that it was impossible for the latter to have been mistaken in their identification. More than that, no motive whatsoever, could be perceived why the witnesses would level such a serious charge against appellants if no offense at all was committed by the latter. Thus, as ruled by this Court in People v. Canada, (144 SCRA 122 [1986]), the fact that the witnesses are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in insuring the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the latter would thereby gain immunity (citing People v. Radones, 141 SCRA 548 [1986]; People v. Jabequero, 125 SCRA 144 [1983]; and People v. Alcantara, 33 SCRA 812 [1970]).

On the other hand, the following defects were noted by the trial court on the alibis of the accused, to wit:

Feliciano Indangan claimed that he had never gone to Barrio Sulsugan where the offense was committed except when he was a boy, but his own witness Lucrecio Osorio testified that he knew for a fact that Indangan used to go to that place. Further, he claimed that his brother-in-law Luardo and his wife were mauled and given "hi-fi" or "Seven-up" treatment by P.C. Sgt. Ebalan. In fact he himself was mauled by said officer and that he reported the matter to Pat. Pedro Taboada who promised to report the same to the Judge. But Taboada who testified for the defense, never mentioned any mauling and "hi-fi" treatment in open court.

The trial court took note that it could not have taken accused Bayubay and his aunt from 6:00 P.M. to 12:00 midnight to consume two big containers of tuba and considered it significant that they were supposed to be drinking in a place 14 to 15 kms. away from the scene of the crime, not to mention the fact that his own corroborating witness Mariano Iran, left the drinking spree at 7:00 P.M. or only one hour later after it began.

Proceso (Narciso) Capió's alibi that he was all the time in his house in Bo. Matutinao which is not far from the scene of the crime cannot prevail against the identification of the offended parties who saw him come up the

house and help in beating up the victim to death.

Rodrigo Bedico claimed that he had a drinking spree in Jesus Capacio's house up to 12:00 midnight after they had unloaded the cows and carabaos from the motor launch, but from his own testimony, it has been established that his house was only two kilometers away from the victim's house (Rollo, pp. 104-106).

In *People v. Cruz* (142 SCRA 578 [1986]), this Court ruled that for alibi to serve as a basis for acquittal, it must be established by clear and convincing evidence. The requisites of time and place must be strictly met. The accused must show that he was at some other place for such period of time as to preclude or render impossible his presence at the place where the crime was committed at the time of commission.

Considering modern means of transportation, the Court ruled further that a distance of thirty (30) kilometers between the place where appellant claimed to be and where the crime was committed does not rule out the possibility of appellant being at the latter place when the crime was committed (*Ibid.*).

Tested against such yardstick, it is evident that appellants' alibis must fail.

The main thrust of appellants' objection is on the issue of credibility which is hinged on the alleged hesitancy and delay of the prosecution witnesses to report the names and identities of the defendants-appellants to the initial investigators, such as the Municipal Judge, the Chief of Police, the policeman and the municipal doctor.

It is settled that delay of witnesses in informing others of what they know about the commission of a criminal offense, will not affect their credibility, where the delay is satisfactorily explained (*People v. Cruz*, 142 SCRA 576 [1986]; *People v. Andres*, 155 SCRA 290 [1987]).

Under the circumstances, (their brother had been killed and they had their own harrowing experience as victims themselves) it cannot be doubted that the prosecution witnesses were in mortal fear for their lives.

As clearly explained by them, they denied knowing the identities of their assailants to the local authorities who investigated the incident on the following day because of fear that the assailants would come back and retaliate. In fact, Nicolas Capacio stated that he could not reveal the identities of the accused to Dr. Lucero who treated him because he was accompanied by one of the accused, Bedico. Asuncion Capacio who was tied to a post by a belt around her neck while her sister was gagged, testified that Bedico warned her to keep quiet, otherwise they would return. That the fear of the sisters was real was confirmed by the defense witness, Pedro Taboada himself, a patrolman of the Badian Police Force, that the sisters "were trembling and pale" during the investigation.

In any case, the delay in the revelation of identities complained of, was only 48 hours after the commission of the crime, or until the appearance of Sgt. Gumersindo Ebalan who assured the witnesses of their safety.

The defense laid stress on the fact that appellants could have escaped, but did not. On the contrary, both Bedico and Capio attended the vigil and funeral of the deceased and even helped carry the bier of the latter. Antonio Bayubay was cooperative and docile from the time he was fetched from the mountains to his delivery to the Constabulary.

Verily, there is no argument on the fact that flight is indicative of guilt so that it may be considered in favor of the accused in the case at bar that they did not escape. Nonetheless, it has also been held by this Court that the fact that the accused did not take flight but even helped the police to locate the supposed culprits, is not a sufficient ground to exculpate them from the proved criminal liability (*People v. Caitor*, 137 SCRA 762 [1985]).

As correctly found by the trial court, the testimony of the convict Jesus Orlanes who volunteered to rescue the accused by owning responsibility for the commission of the crime charged in this case, does not inspire belief.

Among others, it is highly improbable that a man who apparently lived on pickpocketing and robbery and who carefully planned the robbery in the case at bar, should allow his co-accused to get away with the loot without even an iota of effort to find them and retrieve his share and that of his friend and co-accused Alfredo.

The trial court likewise observed that Jesus Orlanes, who had been found guilty of serious offenses and was already undergoing imprisonment before he testified in court unsuccessfully tried to show his motive for robbing and killing Severino Capacio. Hence, as ruled by this Court, evidence must not only proceed from the mouth of a credible witness, but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances (*People v. Patag*, 144 SCRA 431 [1986]).

Finally, where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, unless it has plainly overlooked certain facts of substance and value which if considered might affect the result of the case (*People v. Cruz*, 142 SCRA 578 [1986]; *People v. Patag*, 144 SCRA 429 [1986]; *People v. Valentino*, 141 SCRA 397 [1986]; *People v. Patola*, 141 SCRA 401 [1986]).

Herein appellants failed to demonstrate that this case falls under the exceptions which will justify their acquittal.

PREMISES CONSIDERED, the judgment appealed from is AFFIRMED, except as to the indemnity to be given to the heirs of the deceased which should be increased from P6,000.00 to P30,000.00 (*People v. Mananquil*, 132 SCRA 196; *People v. Cruz*, *supra*).

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Resolution promulgated on April 11, 1973 penned by Justice Ramon G. Gaviola, Jr. and concurred in by Justice Ruperto G. Martin and Justice Lourdes P. San Diego.

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