

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWARD VALENZUELA, DEFENDANT-APPELLANT.

G.R. No. L-37146. March 05, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appellant is one of six accused of robbery with homicide in the Court of First Instance of Rizal (Quezon City Branch) some of whom are still unidentified, while one Manolo Padilla, had a delayed trial having been pronounced unfit to undergo it for mental reasons, and another died during the trial.

This appeal is taken only by Edward Valenzuela; his co-accused Manolo Padilla, having been meted also reclusion perpetua, did not appeal.[1]

The facts as established by the evidence for the prosecution, and quoting from its brief, are as follows:

"At about 8:30 o'clock in the evening of October 13, 1970, two men entered the C and A Grocery owned by complainant Alfonso Chua, located at 215 Speaker Perez St. Sta. Mesa Heights, Quezon City. They ordered 7-up softdrinks. After drinking a little, they went outside the grocery. After a short while, the two men, together with another companion, returned and pushed inside the grocery two kids - a boy named Jesus Zablan and a girl named Rowena Paruli - both neighbors of the complainant. Two of the men were accused Manolo Padilla and Edward Valenzuela. Padilla was armed with a small gun while Valenzuela was armed with a big gun. Upon entering, one of the men told Alfonso Chua, 'Hold-up ito. Huag kang kikiilos, Pagkumilos ka o sumigaw ay babarilin ko ang anak mo.' (Exh. M., p. 16, Folder of Exhibits; p. 2, tsn, April 22, 1971).

"The hold-uppers ordered Alfonso Chua to lie down. Alfonso complied with the order and told them he will not resist and that they can get all they want. Alfonso's daughter, Ma. Cristina, also lay down beside her father as the men ransacked the store.

"Bella Bautista, Alfonso's sister-in-law, who was then behind the other counter inside the grocery, saw accused Edward Valenzuela holding a 'big gun;' accused Manolo Padilla holding with his right hand a small gun pointed at Alfonso and with an adding machine under his left armpit, she saw the third accused getting money from the counter. (id).

"Meanwhile, Jesus Zablan was able to go upstairs and he informed Mrs. Remedios Bautista Chua, Alfonso's wife, about the hold-up going on down-stairs. Mrs. Chua rushed downstairs. In the ensuing commotion, the man with the small gun (Manolo Padilla) shot Ma. Cristina. Fearing for the safety of her sister Remedios who was then pushed towards her, Bella embraced Remedios (p. 3, tsn, April 22, 1971). After embracing her sister, Bella was pistol whipped on the head by accused Valenzuela and she blacked out (id).

"The hold-uppers ran outside the grocery, followed by Remedios who shouted 'hold-up, hold-up, hold-up'. One of the hold-uppers fired at Remedios but missed. The bullet hit the window and got imbedded in the cooler. (Exhs. M and S).

"The couple then noticed their daughter Ma. Cristina bleeding. They immediately rushed her to the Chinese

General Hospital where she died a few minutes later. (Exhs. M and S).

"Dr. Alberto M. Reyes, Senior Medico-legal Officer of the National Bureau of Investigation, performed an autopsy on the person of Maria Cristina Chua and he found the cause of death to be the 'gun-shot wound on the face, left side' of the deceased. (Exh. E, p. 4, tsn, February 23, 1971).

"The hold-uppers took from the cash register P100.00 and five cartons of assorted imported cigarettes worth P120.00, or a total of P220.00. (Exh. M).

"On October 27, 1970, upon information received from a police informer, Detectives Marcos Viñas and Cesar Dalanon of the Quezon City Police Department arrested accused Manolo Padilla and Edward Valenzuela at the Honky Tonk Restaurant in Makiling Street, Cubao, Quezon City and brought them to the Detective Bureau where both were pointed to and identified by Alfonso Chua, Mrs, Remedios Bautista Chua and Bella Bautista in a police line-up as the hold-uppers who entered their grocery. They also pointed at Manolo Padilla as the person who shot Maria Cristina Chua. (p. 4, tsn, December 8, 1970; pp 3-5, tsn, April 22, 1971; pp. 1-3, tsn, May 18, 1971; Exhs. N, O, P, Q and R).

"Accused Manolo Padilla, Edward Valenzuela and Felipe Mercado, Jr. gave sworn statements to the police. (Exhs. A, B and T, respectively)."[2]

Appellant's only defense is mere alibi, which he states in his brief as follows:

"On October 13, 1970 at about five o'clock in the afternoon, the accused Edward Valenzuela, went to the house of a certain Romy Liamson at the Alta Vista Subdivision along Aurora Boulevard, going to Marikina. He was brought there by Atty. Bautista together with Edward Valenzuela, IV and Ronald Labilles because Atty. Bautista was then campaigning for the candidacy of Romy Liamson as delegate to the Constitutional Convention. Edward Valenzuela and his group stayed at the house of Romy Liamson until about ten o'clock in the eve-ning. Thereafter, Edward Valenzuela and his group returned home. They also accompanied their other companions who were members of their club in going home. Edward Valenzuela arrived home at Magat, Salamat, Project 4, Quezon City, at about past ten o'clock and he did no longer go out as the weather then was not good, (tsn, pp. 2-9, Nov. 16, 1971; 3-11, Sept. 19, 1972)."[3]

The trial court gave more weight, and rightly so, on the positive identification of appellant than the latter's alibi.[4] However, appellant seeks to destroy the positive identification made by Alfonso Chua because he was asked to lie down on his face, by Bella Bautista because she was hit, and she blacked out, and as to Remedios Bautista Chua, she was embraced by Bella thereby reducing her area of observation.

Before, having been made to lie down on his face, Alfonso Chua had all the opportunity to look at the robbers, specially as he must have endeavored to know their identity, before obeying the order to lie down on his face.

Likewise, in the case of Bella, she was hit only after having enough time also to know the identity of the intruders. She was hit on the forehead, so the assailant whom she specified as the appellant with a bigger gun was in front of her to be clearly seen.

By being embraced by Bella did not entirely shut the eyes of Remedios Bautista Chua to be completely unable to know or observe the identity of the appellant and his companions.

Above all, in a police line-up, the appellant was identi-fied even after being made to change his clothes to test the certainty of the witnesses' identification.

Appellant, however, questions the reliability of the identification in a line-up because the room where the suspects were and where the witnesses' were to point at the suspects, had a nylon divider. This may be true, but the divider was heavily draped, such that what was going on inside one room cannot be seen from the other room.

On the other hand, what corroboration had appellant to support his alibi? He presented one Enrique Villanueva who showed unreliability when he admitted that on a different day, he could not state whether he was with appellant, say on October 17, instead of October 13, the day of the incident.

Moreover, the place he claims to be at the time of the robbery is not at such distance that it was impossible for him to be in the latter place at the time of the robbery.

The last question is whether appellant was in conspiracy with the other accused. The Solicitor General suggests an affirmative answer with the following circumstances:

"1. Appellant and his co-accused met in Cubao, Quezon City, and agreed to 'magdedelheniya ng panginum.' They boarded a taxicab and proceeded to Speaker Eugenio Perez Street (Exh. T);

"2. Appellant, Manolo Padilla and another co-accused entered the C and A Grocery owned by complainant Alfonso Chua. Appellant and Padilla were both armed with guns which they pointed at Alfonso, his daughter Maria Cristina, and his sister-in-law Bella Bautista, while their com-panion was getting the money from the cash regis-ter (Exh. M; pp. 2-3, April 22, 1971);

"3. After Manolo shot Maria Cristina, appellant hit Bella on the head. Thereafter, the robbers ran outside. When Remedios Bautista Chua followed them, appellant fired at her but missed. The bullet, a .45 caliber slug, was embedded in the cooler. (p. 2, tsn, April 22, 1971; Exh. M);

"4. Appellant and his companions boarded the same taxicab and fled from the scene;

"5. Appellant, Manolo Padilla and Felipe Mercado, Jr., gave sworn statements which partake the nature of interlocking confessions. (Exhs. A, B and T)."[5]

The foregoing circumstances indeed, show a single purpose, and action all leading to, in unison with each acts to the attainment of said purpose, again clearly showing common sentiment to constitute conspiracy. Appellant's liability must, therefore, be a collective one with his co accused. Perhaps, it is of some significance that his co-accused, Manolo Padilla, has not appealed the decision, which imposed the same penalty, upon him, and found him guilty on the basis of the same evidence.

WHEREFORE, the judgment of the trial court convicting appellant Edward Valenzuela of the crime of robbery with homicide and sentencing him to a penalty of reclusion perpetua, to indemnify Alfonso Chua y Lim one-sixth (1/6) of the indemnity in the amount of P12,000.00 for the death of Maria Cristina Chua, to suffer the accessory penalties of the law and to pay the costs, is hereby affirmed, but modified as to the civil liability of appellant which should be joint and several with his co-accused Manolo Padilla, at P30,000.00 as recommended by the Solicitor General. No costs.

SO ORDERED.

Makasiar, Acting C.J., (Chairman), Aquino, Concepcion, Jr., Guerrero and Escolin, JJ., concur.

Abad Santos, J., concurs but the civil liability of Edward Valenzuela for the death of Maria Cristina Chu should be solidarily with Manolo Padilla for the full amount of P30,000.00 and not merely 1/6 thereof and the same is true for the value of the property robbed which is P220.00.

[1] p. 7, Appellee's Brief.

[2] pp. 7-10, Appellee's Brief.

[3] pp. 2-3, Appellant's Brief, pp. 2-3, Rollo.

[4] *People vs. Dimatulac*, 122 SCRA 47; *People vs. Abadilla*, 121 SCRA 268; *People vs. Gamayon*, 121 SCRA 642; *People vs. Yutila*, 102 SCRA 264; *People vs. Reyes*, 103 SCRA 103.

[5] p. 23, Appellee's Brief.

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