

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY TRAWON, SERAPIO CRODUA AND DIONISIO SEDON, ACCUSED-APPELLANTS.

G.R. No. L-51387. February 24, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the Court of First Instance of Davao, Branch VIII at Tagum, Jimmy Trawon, Serapio Crodua and Dionisio Sedon were accused of Robbery with Homicide in an information dated April 25, 1975, to wit:

"The undersigned accuses JIMMY TRAWON, SERAPIO CRODUA, and DIONISIO SEDON of the crime of Robbery with Homicide, under Art. 294 of the Revised Penal Code, committed as follows:

That on or about Feb. 24, 1975 in the Municipality of Samal, Province of Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, conspiring, confederating and mutually helping with one another, armed with revolver and bolos and with intent of gain, did then and there wilfully, unlawfully and feloniously with the use of force and violence upon things, enter the house owned and inhabited by Filomeno Montilla and once inside, by means of violence and intimidation of persons and force upon things, take and carry away personal properties and cash in the amount of THREE HUNDRED FIFTEEN PESOS (P315.00) to the damage and prejudice of the owner in the aforesaid sum; and that the occasion thereof, the above-mentioned accused, with intent to kill, did then and there wilfully, unlawfully, and feloniously attack, assault and club said Filomeno Montilla with a small iron scale thereby inflicting upon him several mortal contusions which caused his death, and further causing actual, moral and compensatory damages to offended parties or heirs of the victim."

After due trial, a decision was rendered on July 28, 1978 with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered holding the accused Jimmy Trawon, Dionisio Sedon and Serapio Crodua guilty beyond reasonable doubt as principals of the crime of robbery with homicide as charged in the information, and each of them is sentenced to suffer an imprisonment of reclusion perpetua, together with the accessories of the law. They are ordered to jointly and severally indemnify the heirs of Filomeno Montilla in the amount of P12,000.00 and to restitute the things stolen by them, or to pay the value thereof in the sum of P315.00, if restitution is no longer possible.

Costs against the accused."

The accused appealed their conviction but they were granted provisional liberty after each had posted bail for

P30,000.00. (Expediente, p. 223.) But it is noted that in the bond of Jimmy Trawon (Expediente, p. 225), Serapio Crodua (ibid, p. 238) and Dionisio Sedon (ibid, p. 242), the trial court stipulated this condition: "The owner's duplicate copy of the titles, not the xerox copy thereof, must remain in the record of the case, otherwise the bond shall be deemed invalid and cancelled." However, this condition appears to have been violated for only xerox copies of the certificates of title are found in the record.

The People's version of the facts is as follows:

On February 24, 1975 at about 6:30 in the evening, spouses Filomeno Montilla and Inocencia Montilla together with their grandchildren Emmanuel Monter and Josue Monter were in their house at Peñaplata, Samal, Davao, taking their supper (pp. 5, 35, tsn, Sept. 8, 1977; p. 45, tsn, Oct. 14, 1977). Filomeno having eaten his supper ahead, proceeded to their store to rest (p. 49, tsn, Oct. 14, 1977). At that instance, there was a knocking at the door of the house (p. 7, tsn, Sept. 8, 1977). Suddenly the door was forced open and four men entered the house, with one of them wearing a mask (pp. 7-8, tsn, ibid). The said intruders rushed to Filomeno but the latter was able to rip off the mask worn by one of them (p. 9, tsn, ibid). Emmanuel recognized Jimmy Trawon as the person whose mask was ripped off. Emmanuel likewise recognized the companions of Jimmy as Serapio Crodua whom he saw holding a gun, Dionisio Sedon who was armed with a knife and the fourth one holding a hunting knife (pp. 9-12, tsn, ibid). Josue on the other hand, recognized Serapio and Dionisio only because he immediately fled after they entered their house (pp. 36-37, tsn, ibid). After Filomeno ripped off the mask of Jimmy the latter retaliated by hitting the former with an iron bar scale at the nape, saying: 'This is yours' (pp. 9, 25, 26, tsn, ibid). Filomeno fell sitting on the floor. He then asked Inocencia to seek for help (p. 9, tsn, Sept. 8, 1977; p. 49, tsn, Oct. 14, 1977). Struck with fear Inocencia ran to their neighbors to ask for help (p. 49, tsn, Oct. 14, 1977). On the other hand, Emmanuel thinking that his grandfather had died, fled and proceeded to the house of their neighbor Isidro Bejor (pp. 13, 21, tsn, Sept. 8, 1977). Thereafter, Isidro went to see Nong Tiago, their barrio captain (ibid). It was at the same time when Marcial Miñosa was playing with his younger brother and sisters in the yard of their house (pp. 5-7, tsn, Oct. 14, 1977). At that juncture, Marcial saw Dionisio fire at Isidro at fifteen (15) meters (pp. 8-10, tsn, ibid). Before Dionisio fired at Isidro, Marcial heard the former said: 'Nobody must get near' (p. 11, tsn, ibid). Isidro ran toward his house (p. 12, tsn, ibid). Marcial and his brother and sisters also ran away and they hid behind the trunk of a coconut tree with hanging leaves (pp. 12-14, tsn, ibid). After about thirty minutes, Marcial together with his brother and sisters came out from their hiding and proceeded to the house of Filomeno. At there, they saw Filomeno lying on the ground with his two arms covering his face. He was dead (pp. 14-16, tsn, ibid). Meanwhile, after going as far as half a kilometer away from their house, seeking for help, Inocencia returned and found the robbers gone and her husband Filomeno dead (pp. 45, 53, tsn, ibid). At that time, several persons including the barrio captain already arrived to help Inocencia. Said barrio captain later reported the incident to the police authorities of Peñaplata (p. 47, tsn, ibid). Meanwhile, Inocencia discovered that they were robbed of the following articles:

- Wrist watch of Filomeno valued at P200.00;
- Flashlight valued at P8.00;
- Blanket valued at P10.00;
- Four cans of milk valued at P12.00;
- Fifteen cases of cigarettes valued at P15.00; and
- Cash money of P700.00

(Exhibit 'B'; pp. 47-49, 66, tsn, ibid).

Dr. Godfredo Adamos, municipal health officer of Samal conducted a post mortem examination on the cadaver

of Filomeno, and he found that the cause of his death was cerebral concussion from a blow on the neck caused by a blunt instrument like a steel bar scale (Exhibit 'A'; pp. 38-40, tsn, ibid)."

On the other hand, each of the accused put up the defense of alibi.

Jimmy Trawon said that in 1975 he was a resident of Mambago, Babak, Davao del Norte where he had lived since childhood. He was a carpenter and on February 24, 1975, he was building his own house in said barrio working from 7:00 to 11:00 a.m. and 2:00 to 5:00 p.m. After work, he and his helper, Rocario Barbarona, went to a house nearby where they ate supper and drank tuba until 9:00 p.m. He then went to sleep and woke up at 6:00 the next morning. His companions in the house were his parents-in-law and the brothers and sisters of his wife.

He denied the crime imputed to him. He said that he was implicated because he had a misunderstanding with the Chief of Police of Samal when he was a special policeman of Babak in 1973 as a result of which he subsequently resigned. He admitted having known his co-accused Serapio Crodua and Dionisio Sedon because they were his neighbors.

Rocario Barbarona corroborated Jimmy's alibi up to the time they parted at 9:00 p. m. on February 24, 1975.

Dionisio Sedon testified that on February 24, 1975, he worked in his farm until 4:00 p. m. Thereafter he went home, changed his clothes and then went to the house of Pedro Aguhog where he played chess with Serapio Crodua until 9:00 p.m. when he went home. Pedro Aguhog was present while Dionisio and Serapio were playing chess.

Serapio Crodua testified that he played chess on February 24, 1975, starting at 4:00 p.m. until 9:00 p.m. when he went to sleep at Pedro Aguhog's house because his house was half a kilometer away. He left for his own house the next morning without bothering to eat breakfast at Aguhog's house.

Pedro Aguhog corroborated the alibis of Dionisio and Serapio. He said that on February 24, 1975, Serapio arrived at about 4:00 p.m. and played chess with his son, Francisco Aguhog. Later, Dionisio arrived and he played chess with Serapio until 9:00 p.m.

The appellants have assigned only one error, namely:

"THAT THE IDENTITY OF THE ACCUSED-APPELLANTS WAS NOT SHOWN BEYOND REASONABLE DOUBT."

Let it be stated in the first place that alibi is a weak defense and it crumbles when the accused is positively identified as the perpetrator of the crime and that, moreover, it was not physically impossible for him to be at the scene of the crime at the time of its commission. Accordingly, the only tactic available to the appellants in connection with their defense of alibi is that they were not positively identified by the prosecution witnesses. But we hold that they were so identified.

Emmanuel Monter, grandson of the deceased Filomeno, testified, thus:

"Q Now, did you have a good look at these persons who entered your house?

A Yes, sir.

Q Now, if these persons are in court this morning, would you be able to recognize them?

A Yes, sir.

Q Please look around and point to them if they are here in court. Point to them if they are in this courtroom.

A They are there, sir. The first one with beard. They are there. (Witness pointed to the accused inside the courtroom who when asked gave their names as Jimmy Trawon, Dionisio Sedon and Serapio Crodua).

Q You said that four (4) persons entered your house. Can you tell the Court if you could recognize the fourth person?

A Yes, sir.

Q Now, as soon as these four (4) persons were inside your house, what did your grandfather do?

A He ripped off the mask of the persons.

Q Who was this person who had a mask?

A Jimmy, sir.

Q As soon as he ripped off that mask, what did that Jimmy do?

A He said, 'This is yours'.

Q And then what did he do?

A My grandfather shouted for help.

Q Did this Jimmy strike your grandfather with anything?

A Yes, sir.

Q What did he use in hitting your grandfather?

A An iron bar scale.

Q Where did Jimmy get that iron bar scale?

A That bar scale was placed on top of the cases of Coca-cola.

Q Now, how about the other companions of Jimmy, what did they do in particular?

A One was holding a pistol.

Q And the other one?

A He was holding a knife.

COURT:

Q Who was holding a gun?

A The other man.

Q Was he among the three accused in court?

A Yes, sir.

Q Point to the court who among the three (3) accused was holding the gun?

A This is the one, sir. (Witness pointing to a person who gave his name as Serapio Crodua).

FISCAL:

Q Was it a knife or a bolo?

A A knife, sir.

COURT:

Q Who was holding the knife?

A The other one, sir.

Q The one at the middle?

A The one seated on the extreme left.

Q The same person who was holding the gun?

A No sir.

COURT:

Proceed.

FISCAL:

Q Now, who was holding the knife, can you point to him?

A The one in the middle. (Witness pointed to the person seated in the middle who gave his name as Dionisio Sedon). (pp. 7-11, tsn, Sept. 8, 1977.)"

Josue Monter, Emmanuel's younger brother also testified, thus:

"BY THE FISCAL:

Q On the night of the incident, where were you? Can you tell this Court?

A I was in our house, sir.

Q What were you doing on that particular evening?

A I was eating, sir.

Q Now, while you were eating can you remember anybody enter in your house?

A I don't remember.

Q Who were your companions when you were eating?

A My grandfather, my grandmother and my older brother.

Q While you were eating, you heard a knock?

A Yes, sir.

Q When you heard this knock, what did your grandfather do?

A The door was pushed.

COURT:

Q Where is your grandfather now?

A He is already dead, sir.

Q Why did he die?

A He was robbed.

Q Do you know the persons who robbed him?

A Yes, sir.

Q Will you show them to us if they are in court?

A Yes, sir.

Q You look around and point to them if they are here.

A They are there, sir.

Q Go to them and touch them.

(At this juncture, the witness went down the witness stand and touched the persons of the accused Serapio Crodua and Dionisio Sedon).

A These two persons.

(p. 35, tsn, ibid)."

And it was Marcial Minosa, a 15-year old boy and a neighbor of the Montillas who additionally identified Dionisio Sedon as the person who shot and warned Isidro Bejor not to go near the victim's house. Marcial's relevant testimony is as follows:

"[Fiscal]

Q Now, if you were a resident of Samal on February 24, 1975, can you tell this Court where were you at about 6:30 of that date?

A I was playing, sir.

Q You were playing where?

A In the house, sir.

Q Now, where is your house when you said your house?

A Near our neighbor, Nang Sencia.

Q When you say Nang Sencia, is she the widow of Filomeno Montilla?

A Yes, sir.

Q Now, if you were there at about 6:30 of that date which you just mentioned, can you tell this Court what particular incident you remember happened at that precise time?

A Yes, sir.

Q Now, will you please tell the Court what was that all about?

A Nong Sidro was shot.

Q Now, you said that Nong Sidro was shot. Can you tell the Court who was that fellow who shot at Nong Sidro?

ATTY. ALTAMERA:

No basis. Your Honor.

COURT:

Witness may answer.

WITNESS:

A That person wearing white T-shirt. (Witness pointed to the accused inside the courtroom who gave his name as Dionisio Sedon).

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Q Now, how far, to the best of your observation, was the distance of the person who shot Isidro Bejor from Isidro Bejor?

A About fifteen (15) meters.

Q Can you tell the Court if the person who shot Isidro Bejor said anything before he shot Isidro Bejor?

A Yes, sir, he said 'Nobody must get near'.

Q Now, you said that you saw this man shoot at Isidro, will you please tell this court why you said that you saw him?

COURT:

He saw him.

FISCAL:

I withdraw.

Q Now, it was 6:30 in the evening when this thing happened, is that correct?

A Yes, sir.

Q Now, what was the condition of visibility at that time, will you please tell the Court?

A It was bright at that time. (pp. 5-11, tsn, Oct. 14, 1977)"

The appellants claim that their identification by Emmanuel Monter in the office of the Chief of Police was defective because the manner it was done created an impression that the persons identified were the very robbers and assailants of Filomeno Montilla. But as the Solicitor General has stated: "A careful reading of the testimony of said prosecution witness will show that at worst what the police authorities of Samal did was to give the names of the appellants to said witness during their aforesaid confrontation but the latter actually identified them as the culprits."

The appellants also harp on the inability of Inocencia Montilla to identify them. But Inocencia was unable to do so because she was candid enough to admit that she did not recognize the four persons who robbed and killed her husband because she immediately fled from the scene.

The claim of Jimmy Trawon that he was implicated by the police because of a previous misunderstanding with the Chief of Police of Samal deserves scant consideration because it happened long before the crime was committed and was trivial in nature.

In the light of the foregoing, we find that the trial court correctly found the appellants guilty as charged.

WHEREFORE, finding the appealed judgment to be in accordance with both the facts and the law, it is hereby affirmed in all respects. Costs de oficio.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr. and De Castro, JJ., concur.

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