

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR ARMADA, JR., ACCUSED-APPELLANT.

G.R. No. 100592. August 26, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

An information for robbery with homicide was filed in the Regional Trial Court, Iloilo City, against Jorge Espero, Angelino Lorca, Jr., Salvador Armada, Jr., and Arnulfo Cabareño.[1] Cabareño alone could not be tried because he was then at large. After the prosecution had rested its case, Jorge Espero changed his plea of not guilty to guilty and claimed that he alone committed the crime. He was eventually convicted.[2] Angelino Lorca, Jr. was discharged as a state witness. That left Salvador Armada, Jr., the herein appellant.

After trial, he was sentenced to reclusion perpetua, to pay the civil indemnity of P30,000.00, and the costs.[3]

The evidence of the prosecution showed that a week before June 23, 1987, Armada, together with Lorca, Espero and Cabareño, saw Jose Lozarita selling his female carabao with two offspring for a sum of P5,000.00. Lorca later testified that his three companions had even then already decided to rob Lozarita of the proceeds of the sale.

On June 23, 1987; at about three o'clock in the afternoon, the four men went to the farm of Lozarita in Barangay Tampucan, Lambunao, Iloilo, to execute their plan. They pretended to ask for young coconuts from him. He granted their request and even lent them his bolo for splitting the coconuts. After eating the coconuts, Espero, without much ado, started hacking Lozarita with the same bolo they had borrowed from him. Lozarita fell and died on the ground. Armada was then holding a knife and acting as watcher while Cabareño and Lorca were also looking on. Afterwards, Espero got Lozarita's money from the latter's left pocket. It was at this point that Lorca fled, leaving the other three behind.[4]

The foregoing narration was made by Lorca[5] and Bienvenido Librando,[6] another eyewitness. Librando testified that he had gone that afternoon to Lozarita's farm to buy some hardwood and he saw the killing as he crouched about ten meters away in the coffee plants. He said that he ran when Espero espied him and shouted after him, "Nong Bendoy, don't try to be involved here! Something might happen to you also!" Two days later, he went to the house of Lozarita's sister, Epifania Ermeje, to report the victim's death.[7]

The appellant denied the charge and said that at the time of the incident he was at the Lambunao Institute of Science and Technology in Poblacion Lambunao, Iloilo.[8] He was corroborated by his brother-in-law, Rolando Lozanes, who swore he saw Armada leaving for school at 12:30 in the afternoon of June 23, 1987, and returning at about 5:30 that same afternoon.[9]

The appeal brief contends that the trial court erred in discharging Angelino Lorca as state witness and in giving credence to the witnesses for the prosecution.

We sustain the prosecution.

The discharge of an accused so he may turn state witness is expressly left to the sound discretion of the court, subject to the conditions prescribed in Rule 115, Section 9, of the Rules of Court. It could be argued that there was no absolute necessity for the testimony of Lorca, considering the eyewitness testimony of Librando. Even so, Lorca's testimony may still be considered under our ruling in *People v. Jamero*,^[10] viz.:

This court has time and again declared that even if the discharged witness should lack some of the qualifications enumerated by Sec. 9, Rule 119 of the Rules of Court, his testimony will not, for that reason alone, be discarded or disregarded. In the discharge of a co-defendant, the court may reasonably be expected to err; but such error in discharging an accused has been held not to be a reversible one. This is upon the principle that such error of the court does not affect the competency and the quality of the testimony of the discharged defendant.

Lorca's testimony was correctly taken into account by the trial court, there being no impediment to its admission, and more so because he was extensively cross-examined by the defense. At any rate, assuming for the sake of argument that his testimony was inadmissible, there was still the testimony of Librando, another eyewitness of the incident, who testified on the killing of Lozarita and the participation of the appellant and his companions.

The alibi of the appellant is not believable. The rule that alibi is unavailing against the positive identification of the accused by credible witnesses is well established. Moreover, it has not been sufficiently shown that it was physically impossible for him to be at the scene of the crime at the time of its commission as there is a distance of only 3 kilometers between Lozarita's farm and Lambunao Institute. No less significantly, the prosecution established that regular classes started in the Lambunao Institute on June 28, 1987, five days after the killing. This was affirmed by Mariano Lodigoon, head of the Vocational Department of the school.^[11]

Armada's denial is self-serving, negative evidence. It cannot outweigh the positive and convincing testimony of eyewitnesses establishing his presence at the scene of the crime and his active participation in its commission.

It is a settled rule that the conclusions of the trial judge regarding their credibility command great respect and consideration, especially when they are supported by the other evidence on record. As we said in one case:^[12]

The trial judge had the opportunity to observe the witnesses personally and to determine by his own first-hand impressions the credibility of their testimony as indicated by their demeanor on the stand, the forthrightness of their declarations, the shades of tone and word and pause drawing the line between fact and fabrication. We sustain his findings on this matter, there being no showing that he has abused his discretion or had no basis for his conclusions. And while it is true that, as pointed out by the defense, there are a number of discrepancies and inconsistencies in the testimony of the prosecution witnesses, we agree that these lapses are only on minor details that do not detract from, but in fact, by their very imperfection, strengthen its veracity.

Minor inconsistencies in the testimonies of the witnesses are natural and even enhance their credibility as they indicate that the responses given were honest and unrehearsed. Such discrepancies vitalize rather than weaken the testimony as a mere concoction would have been more cleverly construed to correct any imperfection. This is especially true where, as in the case at bar, the witnesses have no motive whatsoever to lie and enmesh the accused in a fabricated charge. It has not been shown that Librando, who corroborated Lorca, had any ill feeling against the appellant.

Espero's plea of guilt and his claim that he alone committed the crime does not extinguish or mitigate the criminal liability of his co-accused, particularly since the plea was made after the prosecution had rested. His purpose is suspect. It would appear that, after realizing that his guilt had already been established, he sought to salvage the situation by taking full responsibility for the crime and thus at least absolving his companions.

Lorca admitted that he and his co-accused had a previous agreement to rob the victim, and a week later all of them

proceeded to Lozarita's farm to carry out their plan. On that fatal afternoon, the appellant, together with Lorca and Cabareño, watched as Espero hacked Lozarita to death and thereafter robbed him. It is settled that a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[13] The concerted acts of the group to attain a common criminal objective clearly signify a conspiracy.

Conspiracy having been established, all the conspirators are liable as co-principals regardless of their degree of participation in the crime. In contemplation of the law, the act of one is the act of all.[14] Armada cannot extricate himself from the killing of Lozarita which took place by reason or on the occasion of the robbery. He cannot simply disclaim any knowledge that Espero would go to the extent of hacking Lozarita to death. To free himself from criminal liability, he should show that he performed some overt act to stop or prevent the commission of the second or related felony.[15] There is no evidence of such action.

Besides, the phrases "on the occasion" and "by reason of" robbery used by Article 294, par. 1 of the Revised Penal Code, refer to a homicide committed in the course of robbery without regard to the robber's alleged lack of intention to kill another. It is the result that is taken into account in characterizing the crime as robbery with homicide, not the detailed circumstances or the specific causes or modes of intervention in its commission.[16]

The Court notes that the trial court did not order the return of the sum of P4,000.00 stolen from the victim and the sum of P16,070.00 representing the funeral expenses as established by the receipts submitted by the prosecution.

We are satisfied that Salvador Armada, Jr. was one of the conspirators in the killing and robbery of Jose Lozarita on June 23, 1987. Proof beyond reasonable doubt has overcome the constitutional presumption of innocence in favor of the appellant and has clearly established his guilt.

WHEREFORE, the decision of the trial court is AFFIRMED, with the modification that the appellant is ordered to pay to the heirs of the victim the sum of P4,000.00 stolen from the deceased, the sum of P16,070.00 representing the funeral expenses, and the civil indemnity, which is increased from P30,000.00 to P50,000.00, unless such amounts have already been paid by Jorge Espero, with whom Salvador Armada, Jr. is solidarily liable.

SO ORDERED.

Griño-Aquino, Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Rollo, p. 7.

[2] Decision penned by Regional Trial Court Judge Edgar D. Gustilo, Branch XXVIII, Iloilo City on April 22, 1991.

[3] Ibid., p. 18.

[4] TSN, February 27, 1990, pp. 4-8.

[5] Ibid., pp. 3-13.

[6] Id., February 14, 1989, pp. 8-13.

[7] Id., pp. 10-16.

[8] Id., July 4, 1989, pp. 3-6.

[9] Id., November 6, 1989, pp. 5-8.

[10] 24 SCRA 206.

[11] TSN, December 4, 1989, pp. 4-6.

[12] *People v. Delavin*, 148 SCRA 257.

[13] *People v. Villanueva*, 211 SCRA 403; *People v. Pajarit*, 214 SCRA 678; *People v. Martinado*, 214 SCRA 712; *Siton v. Court of Appeals*, 204 SCRA 473; *People v. Ballinas*, 202 SCRA 516.

[14] *People v. Pugal*, 214 SCRA 247.

[15] *People v. Degoma*, 209 SCRA 267.

[16] *Ibid.*

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