

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO EVARDO Y JUAN, EFIPANIO EVARDO Y JUAN, TAMBI LADJA Y ANTISAN AND JOHN DOE, ACCUSED, NARCISO EVARDO Y JUAN, ACCUSED/APP...

G.R. No. 100724. December 01, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

Appellant Narciso Evardo y Juan together with Efipanio Evardo y Juan, Tambi Ladja y Antisan and one John Doe were charged with the crime of Robbery with Double Homicide before the Regional Trial Court of Zamboanga City in an information which reads :

“That on or about September 18, 1987, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a scythe and a paddle, conspiring and confederating together, mutually aiding and assisting with one another, by means of violence and intimidation of persons and with intent to gain, did then and there wilfully, unlawfully and feloniously take, steal and carry away from the person of Ricardo Mendoza y Concepcion, one (1) Garand Rifle with Serial Number 2489371 worth NINE THOUSAND PESOS (P9,000.00), Philippine Currency, belonging to and taken against the will of said Ricardo Mendoza y Concepcion, owner thereof; that on the occasion of the commission of the offense above-described, and for the purpose of enabling them to take, steal and carry away the above-mentioned article, herein named accused, in pursuance of their conspiracy and with intent to kill, did then and there wilfully, unlawfully and feloniously, assault, attack, hack and hit with the use of the above-mentioned weapons that they were then armed with at the persons of RICARDO MENDOZA y CONCEPCION and ROBERT MENDOZA y ALEJANDRO, thereby inflicting upon the latter’s persons mortal wounds which directly caused their deaths, to the damage and prejudice of the heirs of said victims.

CONTRARY TO LAW.” (Rollo, p. 2)

Four persons were originally charged in this case. Of the four, only appellant Narciso Evardo is under custody since two of his co-accused, namely, Efipanio Evardo y Juan and Tambi Ladja y Antisan died before the trial of the case commenced. The other accused designated as John Doe remains unidentified.

The trial court culled the following facts from the testimonies of witnesses presented by the prosecution:

“Deceased-victims Ricardo Mendoza y Concepcion and Robert Mendoza y Alejandro are father and son, respectively. Both are farmers, however, Ricardo Mendoza is also a member of the Civilian Home Defense Force or CHDF for short, and was issued a U.S. Cal. 30 Garand Rifle with Serial Number 2489371, valued at P9,000.00. Marcelina Alejandro Mendoza is the wife of Ricardo Mendoza and mother of Robert Mendoza. They all reside in Limaong Island, Vitali District, Zamboanga City, where they have a farm and house.

“At about 6:00 o’clock in the afternoon of September 18, 1987, the accused Narciso Evardo and his brother Efipanio Evardo whose mother is the first cousin of Marcelina Mendoza, arrived at the house of the Mendozas. Whereupon, Narciso Evardo invited Ricardo Mendoza and Robert Mendoza to go with him and his brother to

Kabog Island, a nearby isle, to see a hidden pumpboat engine which he allegedly found thereat, and that he wanted Ricardo Mendoza as his escort. This invitation was made in the presence of Marcelina Mendoza and Vilma Mendoza.

“Acceding to the request, Ricardo Mendoza took along his government issued Garand Rifle and was wearing a green fatigue shirt. Robert Mendoza also went along clad in a green long sleeve shirt and maong pants. The group then left the Mendoza house.

“The following day, September 19, 1987, at about 7:00 o’clock in the morning, Narciso Evardo appeared at the Mendoza’s house and asked if Ricardo Mendoza and Robert Mendoza were already home and then informed Vilma Mendoza that her father Ricardo Mendoza and brother Robert Mendoza returned to the seashore after bringing him home, purportedly to look for some fish since they (the Mendoza) did not have any viand at home. After telling Vilma Mendoza this, Narciso Evardo proceeded to the house of the auntie of Vilma Mendoza, the sister of Ricardo Mendoza, which house is about one hundred meters away from the house of the Mendoza’s, and stayed there for sometimes (sic).

“Later, at about noontime or 11:00 o’clock of the same morning of September 19, 1987, Marcelina Mendoza and her daughter Vilma were informed by some CHDF members that dead persons were found at sea, one of whom was wearing uniform fatigue shirt and the other in civilian clothing. Already suspecting that the dead persons were Ricardo Mendoza and Robert Mendoza, the Mendoza women informed the CHDF members that the last persons who were with the missing Mendoza men were the Evardo brothers. Acting on such report, Vicente Toribio, the CHDF team leader of Limaong and barrio councilman, ordered three of his team members, namely: Alberto Mendoza, Francisco Toribio and Eduardo Mendoza to search for Narciso Evardo. These three CHDF members later found Narciso Evardo near a ricefield armed with a scythe (Exhibit ‘I’). He was brought to Vicente Toribio and the latter turned him over to the Vitali Police at the Log pond at Vitali where the dead Ricardo Mendoza and Robert Mendoza were brought still inside the vinta owned by Narciso Evardo.

“In the meantime, Marcelina Mendoza and her daughter Vilma went to the logpond at Vitali to verify the identity of the reported dead persons thereat. The policemen stationed at the Vitali Police Sub-Station who were previously informed by CHDF members of the presence of dead persons at the logpond were also present. Police Investigator Cresencio Guevarra conducted an investigation and caused some photographs (Exhibits ‘A’, ‘B’, ‘C’, ‘D’, ‘E’ and ‘F’) to be taken under his direction of the deceased-victims as they lay dead in the vinta. Found on board the vinta, containing the dead bodies of the deceased-victims, was also a wooden paddle (Exhibit ‘J’) owned by Narciso Evardo, but the Garand Rifle of Ricardo Mendoza was nowhere to be found. Guevarra also investigated Marcelina Mendoza and the latter told him that the persons of Efipanio and Narciso Evardo went to pick up the victims at their house on the pretext of getting a pumpboat engine at Kabog Island and thereafter both the deceased-victims Ricardo Mendoza and Robert Mendoza never returned home.

“Police Investigator Guevarra said he was the one who prepared the Initial Investigation Report (Exhibit ‘G’) and the Final Report (Exhibit ‘H’). He further said that he included in his report the fact that the accused Narciso Evardo admitted to him having participated in the killing of the deceased-victims and implicating even Tambi Ladja. Guevarra also said that he was present during the preliminary investigation of this case at the Fiscal’s Office and he was only one meter away from Narciso Evardo when the latter admitted before the Investigating Fiscal and Atty. Edding that he and Efipanio Evardo were the ones who killed the deceased-victims (Rollo, pp. 12-14).”

On the other hand, appellant testified that he was working as a janitor of a certain Dr. Ahmad in Basilan for eight (8) years. On September 11, 1987, he received a letter from his mother informing him that his father was sick and that he was needed to help harvest the palay in their farm at Limaong Island. While in said island, he stayed with the other accused, his younger brother Efipanio (Decision, p. 5). He denied having knowledge of the

circumstances surrounding the death of his uncle and cousin and further claimed that he and his companions, namely, Jalil Darusalem and Tambi Ladja were tortured by CHDF members (Rollo, p. 19). To corroborate his testimony that he was maltreated, the defense presented PFC Rodolfo Rodriguez, a policeman assigned to the Zamboanga City Jail who testified that in accordance with the entry in the logbook of the police station, when accused Narciso Evardo was admitted to the City Jail together with his companions Jalil Darusalem and Tambi Ladja, they had lacerated and cut wounds and also contusions on different parts of their bodies. Furthermore, to show the extent of the injuries he suffered as well as the other persons arrested in connection with this case, appellant presented Purificacion Nualla, a records clerk of the Zamboanga Regional Training Hospital who testified in connection with the Medico-Legal Certificates of appellant (Exhibit '1'), Jalil Darusalem (Exhibit '2') and Tambi Ladja (Exhibit '3') (Rollo, p. 17). Also presented was the Certificate of Death of Tambi Ladja (Exhibit '4'), who died at the hospital as the result of the injuries he sustained allegedly in the hands of some CHDF members of Vitali, Zamboanga City (Ibid.).

After trial, the court a quo rendered the assailed judgment as follows:

“WHEREFORE, in the light of all the foregoing, this Court finds the accused NARCISO EVARDO y JUAN, guilty beyond reasonable doubt as principal of the crime of ROBBERY WITH DOUBLE HOMICIDE and there being neither aggravating or mitigating circumstance attending the commission thereof hereby sentences him to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of the deceased victims Ricardo Mendoza y Concepcion and Robert Mendoza y Alejandro the total amount of P 60,000.00 and to pay the costs.

“Being a detention prisoner, the said accused Narciso Evardo shall be credited with the full time of the period of his detention during the pendency of this case provided he has voluntarily agreed in writing to abide by the same disciplinary rules imposed on convicted prisoners.

“It appearing that there remains up to the moment an unidentified accused in this case, let the records of the case against such accused be sent to the files without prejudice to its re-instatement upon his subsequent identification and arrest.

SO ORDERED.” (Rollo, p. 20)

In this appeal, appellant assigns the following as errors:

“I. That the Honorable Trial Court has erred in finding accused guilty on the basis of the following Circumstantial Evidence, to wit:

“A) That it was accused and his brother Epifanio who invited both the deceased-victims to accompany him and serve as his guard on his trip to Kabug Island purposely to see a pumpboat engine on said Island;

“B) That ownership of a vinta or banca belongs to accused;

“C) That accused attempted to establish an alibi when he told Vilma Mendoza that her father and brother has (sic) already returned to Limaong Island but has (sic) gone back to the sea to look for some fish to be used as their viand at home;

“D) That accused admitted that he is a Muslim convert, which according to the Trial Court provides motive for the crime.” (Appellant’s Brief, pp. 2-3)

Appellant argues that the records do not contain any evidence that he ever participated directly or indirectly in the commission of the crime charged (Appellant’s Brief, pp. 3-4). In support thereof, he cites part of the trial court’s decision, to wit:

“A thorough examination of the evidence presented in this case clearly indicates that there is no evidence directly pointing to the herein accused as one of the malefactors in the commission of the crime charged. All

that the prosecution was able to present are circumstantial evidences which tend to link the herein accused in the killing of the deceased victims.” (Appellant’s Brief, p. 3)

In other words, appellant faults the trial court for convicting him based on circumstantial evidence.

Circumstantial evidence is sufficient to convict if there is: (a) more than one circumstance, (b) the facts from which the inferences are derived are proven and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (Section 5, Rule 133 of the Rules of Court; see also *People v. Santito, Jr.*, 201 SCRA 87 [1991]; *People v. Lazarte*, 200 SCRA 361 [1991]; *People v. De la Cruz*, 200 SCRA 379 [1991]; *People v. Austria*, 195 SCRA 700 [1991]).

In determining whether circumstantial evidence is sufficient to support a conviction, all the facts and circumstances involved in the case are to be considered together as a whole (*People v. Pedrosa*, 169 SCRA 545 [1989]).

The trial court in convicting the accused in the case at bar, enumerates four proven circumstances.

The first circumstance established by the prosecution is the fact that it was appellant Narciso Evardo and his brother Efipanio who invited both the deceased-victims to accompany him and serve as his guard on his trip to Kabog Island purportedly to see a pumpboat engine which he said he found on said island (Rollo, p. 18).

The second circumstance established by the prosecution is the ownership of the vinta or banca where the deceased victims were found dead. Although appellant denies ownership of this vinta or banca, as well as the wooden paddle found in it, yet the testimonies of Vicente Toribio, Alberto Mendoza and Francisco Toribio strongly points to the accused Narciso Evardo as the owner of said banca. As a matter of fact, Vicente Toribio even said that he borrowed the same banca once from the accused (TSN, July 6, 1988, p. 72). In the case of Alberto Mendoza, he identified the banca depicted in the photographs marked Exhibits ‘A’ to ‘F’, as the one belonging to herein accused (Rollo, p. 18). While Francisco Toribio declared having known the accused since childhood and he knows that the banca where the deceased-victims were found is the very banca owned by the accused (TSN, July 6, 1988, pp. 82-83).

Appellant vehemently denies, however, having been to Kabog Island and further avers that the banca where the cadavers of the victims were found, belongs to the CHDF or ACTS members since it bears a number and the words “Service for ACTS members only” written at its side.

After examining the photographs of said banca (Exhibits ‘A’ to ‘F’) however, the trial court saw none of the alleged markings on the subject vessel. What is clear, on the other hand, is that the prosecution was able to prove that appellant actually owned the aforesaid banca. Appellant failed to disprove the detailed testimonies of the three prosecution witnesses who pointed to him as the owner of the banca. In the absence of any improper motive of the witnesses to implicate appellant, we respect the findings of the trial court in the matter of credibility of witnesses (*People v. Caraig*, 202 SCRA 357 [1991]; *People v. Ballinas*, 202 SCRA 516 [1991]).

More importantly, the third circumstance that links the accused Narciso Evardo to the crime was his attempt to put up an alibi or calculated excuse when he told Vilma Mendoza that her father and brother had already returned to Limaong Island but had gone back to the sea to look for some fish to be used as their viand at home (Rollo, p. 19). The accused made this gesture when he went back to the house of the Mendoza’s at about 7:00 o’clock in the morning of September 19, 1987. The only plausible reason for this behavior of the accused, according to the trial court, is to delude the women folks of the Mendoza victims that all was well when he and the deceased victims parted, and therefore he could not be blamed for whatever may have befallen them thereafter.

The finding of the court a quo regarding the fourth circumstance which states that:

“The fourth circumstance which is admitted by the accused Narciso Evardo himself is the fact that he is a Muslim convert. This circumstance also provides the motive for the crime. It is of judicial knowledge that there still exist the armed movement of the Moro National Liberation Front or MNLF for short, in Mindanao and Sulu and that its members are still active in the Vitali area of Zamboanga City. It is of common knowledge that this movement lack arms and materials to pursue their goals and the only way to replenish or increase their armory is either to purchase or grab guns where ever it is available.

x x x

“It is therefore not farfetched to assume that the accused Narciso Evardo is sympathetic to the cause of the MNLF and the only reason why he could have committed the crime was because he coveted the Garand rifle which was issued to his uncle Ricardo Mendoza as a CHDF member. And the fact that this rifle is missing even after the discovery of the dead bodies of the deceased victims in the bank owned by the accused, only proves the point.” (Rollo, p. 19).

dwelled on the realm of speculation and unjustly prejudiced appellant’s religious conviction. Suffice it to say that being a Muslim convert per se does not necessarily make one a member of the MNLF. For the same reason, a Christian convert cannot be said to be a member of the NPA. In any event, the conclusion arrived at is purely conjectural and does not by itself provide sufficient proof to sustain a conviction for robbery.

Save for the inference that appellant is a member of the MNLF, no incontrovertible proof was adduced by the prosecution in support of the charge of robbery and the trial court, therefore, erred in convicting appellant with the complex crime of robbery with homicide. Robbery itself must be proven, otherwise, the accused may be convicted only of the killing, homicide or murder, as the case may be (People v. Badilla, 185 SCRA 554 [1990]). To sustain conviction for the special complex crime of robbery with homicide, it must be established with certitude that the killing was a mere incident to the robbery, the latter being the main purpose and objective of the criminals. It contemplates a situation where the homicide resulted by reason or on the occasion of the robbery (People vs. Robante, 178 SCRA 552 [1989]). In the case at bar, appellant can only be convicted of two counts of homicide there being no proof with moral certainty that the homicide was committed by reason or on the occasion of robbery.

In sum, We find the circumstantial evidence presented and proved before the trial court constituted an unbroken chain of events which established the guilt of the accused beyond reasonable doubt on two counts of homicide.

Appellant’s denials regarding his invitation to the victims to accompany him to see a pumpboat engine as well as ownership of the vinta where the cadavers of the victims were found were not supported by clear and convincing evidence. On the contrary, his bare denials only served to strengthen the prosecution’s claim that he participated in the commission of the offense proven.

In People v. Arbolante (203 SCRA 85 [1991]), We held that “denial, like alibi, is inherently a weak defense and can easily be defeated by the affirmative and credible testimonies of prosecution witnesses pointing to the accused as the perpetrators of the crime for which they are charged.” Denial of guilt, uncorroborated by any reliable evidence, cannot overthrow the clear and convincing testimonies of prosecution witnesses as to the culpability of the accused (People v. Arceo, 202 SCRA 170 [1991]).

As to the credibility of witnesses, We find no cogent reason to disturb the findings of the trial court since it is in a better position to decide the matter having had the opportunity to observe the behavior, demeanor, conduct and attitude of the witness at the trial (People v. Briones, 202 SCRA 708 [1991]; and a long line of cases).

Lastly, appellant puts up the defense of alibi but in order for such defense to prosper, it is not enough to prove that he was somewhere when the crime was committed. He must likewise demonstrate that it was physically

impossible for him to have been at the scene of the crime (*People v. Urquia, Jr.*, 203 SCRA 735 [1991]).

In the case at bar, although the appellant may have been possibly in his brother's house in the evening of September 18, 1987, he failed to prove that it was physically impossible for him to be at the crime scene or at the vicinity thereof at the time the crime was committed.

He who raises the defense of alibi bears the burden of proving by clear, full and satisfactory evidence the facts he alleges. In the absence thereof, alibi is bound to fail (*People v. Alvarez*, 169 SCRA 730 [1989]).

WHEREFORE, the appealed judgment is hereby MODIFIED to the extent that appellant Narciso Evardo y Juan is found guilty of two (2) counts of Homicide and there being neither aggravating nor mitigating circumstance attending the commission of the crime, the Court hereby sentences him twice to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years, four (4) months of reclusion temporal, as maximum. The civil liability of appellant is increased to P50,000.00 for each set of heirs or a total of P100,000.00 for both sets of heirs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

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