

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANOLITO TIDONG Y LASCANO, ACCUSED-APPELLANT.

G.R. No. 101583. August 13, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

The alleged refusal of an employer to accede to the demand of an employee for his separation pay, which the latter believed he was rightfully entitled to, resulted in the former's death and the latter's indictment and conviction for robbery with homicide and double frustrated homicide.

Accused-appellant Manolito Tidong was charged before Branch 172 of the Regional Trial Court of Valenzuela, Metro Manila, with homicide and double frustrated homicide in its Criminal Case No. 177-V-91. The accusatory portion of the information alleges:

"That on or about the 27th day of March 1991 in Valenzuela, MM and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously take, rob and carry away the amount of P5,000.00 from VICENTE CO Y SY; that on the occasion of said robbery and for the purpose of enabling him to take, steal and carry away the aforementioned amount, said accused with intent to kill, did then and there wilfully, unlawfully and feloniously stab said Vicente Co y Sy causing the latter sustained (sic) physical injuries which caused his death; that as a further consequence, said accused also stabbed MARIO CO Y SY and MARTIN CO Y SY, causing both to sustain serious physical injuries which however, did not result to their death, due to the timely,, efficient intervention rendered to them by the FATIMA MEDICAL CENTER, Valenzuela." [1]

Duly assisted by counsel, accused entered a plea of not guilty when arraigned on April 22, 1991. After trial on the merits, on August 7, 1991 the lower court promulgated its judgment convicting appellant of the crime charged, under the following disposition:

"WHEREFORE, in view of the foregoing, the Court finds the accused guilty beyond reasonable doubt of the crime of Robbery with Homicide and Double Frustrated Homicide, and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of Vicente Co in the sum of P50,000.00; to indemnify the complaining witnesses in the unrecovered amount of P800.00 and to pay the costs.

"The accused shall be credited with the full term of his preventive imprisonment." [2]

Appellant has now come to us on appeal, and in his brief, he imputes to the trial court the following errors: (1) in giving credence to the testimonies of the prosecution witnesses which are replete with bias and material inconsistencies; (2) in refusing to acquit him although the evidence adduced by the prosecution failed to overcome the constitutional presumption of innocence by clear and convincing evidence establishing his guilt beyond reasonable doubt; and (3) assuming ex gratia argumenti that he was responsible for the injuries sustained by Mario Co, Martin Co and the deceased Vicente Co, in finding him guilty of robbery with homicide and double frustrated homicide and without appreciating the mitigating circumstance of voluntary surrender.[3]

The pertinent confluence of facts which gave rise to this prosecution is commendably summarized by the Solicitor General, as set forth hereunder, on the bases of the evidence of record correspondingly cited in authentication thereof.

"Around 7:00 o'clock in the evening of March 27, 1992, appellant entered the Co residence at Rincon Street, Malinta, Valenzuela, Metro Manila. The same address housed the wiring and cable business of the Co family. Appellant was familiar with the layout of the place, having worked there for at least three years, from 1988 to 1991 (tsn, May 10, 1991, pp. 2-3).

"Once inside, appellant grabbed Joan* Co, the six-year old daughter of Martin Co. The commotion attracted the attention of the Co brothers who rushed to the scene and pleaded with appellant not to harm the child. Appellant, while poking a knife at the neck of Joan, demanded money from the Cos. He threatened to kill the child if he was not given the amount of P5,000.00 (id., p. 4).

"Vicente Co left to get the money. When he returned, appellant told him to place the money on the floor. When Vicente did as instructed, appellant picked up the money and placed it in his pocket. Then appellant started retreating towards an alley. All this time, the Co family pleaded with him to release Joan. After retreating about ten (10) meters, appellant suddenly pushed Joan, who fell on the ground. Vicente was the first to react. He rushed to help the fallen child. As he came nearer, appellant stabbed him on the chest. In rapid succession, Martin Co instinctively rushed to assist Vicente and Joan. He was stabbed at the back by appellant. Then, Mario Co also tried to help his brothers but was stabbed, too. Mario sustained injuries on his left wrist and left ear. He was, however, able to shout for help from the neighbors. Hearing this, appellant ran away (tsn, April 29, 1991, pp. 4-6).

"Help arrived as angry neighbors of the Cos chased appellant. The Co brothers were rushed to Fatima Hospital for immediate medical treatment. Vicente Co died at the hospital (ibid.). He sustained two incised wounds on the face, one stab wound on the left side of the chest, and minor contusions on both knees. Cause of death was severe hemorrhage, secondary to the chest stab wound (tsn, June 3, 1991, pp. 4-5).

"Pfc. Henry Marteja of the Valenzuela Police was conducting a routine surveillance in the area at the time of the incident. He was walking near a gasoline station at the corner of Malinta when someone called his attention and informed him of a commotion at Rincon Street. Marteja went to Rincon Street to verify the reported incident. There he saw appellant being chased by the townspeople. He joined in the pursuit. As he came nearer, he saw that appellant was holding a knife. He identified himself as a police officer and ordered appellant to stop. Appellant did as ordered. Marteja then got the knife from appellant and brought him to the police station. When asked by Marteja why he was being chased by the townspeople, appellant admitted that he hostaged (sic) a child. At the police station, Marteja also recovered the amount- of P4,200.00 from appellant (tsn, June 10, 1991, pp. 2-3)."[4]

As expected, the defense came up with an entirely different story, for the details of which we go back to appellant's brief earlier adverted to and quote from the same at length, especially since the resolution of this case apparently turns on the factual presentation by the parties of their respective versions and the credibility thereof.

"Accused Manolito Tidong y Lascano, in his defense, testified that Martin, Mario and Vicente Co used to be his employers at the United Power and Industrial Corporation. He started working there in 1988. On February 22, 1991 he was suspended for 2 weeks for reasons he does not know but according to the Cos he was being suspended because he was always complaining about his work. After the 2 weeks' suspension or on March 11, 1991, he returned to work but he was not accepted anymore as according to Martin Co he already had a replacement. He demanded for his separation pay but Martin told him that he has no authority from the company to pay him. Upon hearing this, he told Martin that he would just come back on some other day. On March 25, 1991 when he went back to get his separation pay, he was advised by Martin to return on March 27, 1991 as there was yet no money. When he returned on March 27, Martin and Mario again told him that there

was no money. He then told them that if they would not give him his separation pay he would just return to work but he was told that the owner did not want him to work there anymore. So he told them that he would not leave the premises unless he was given his separation pay. Martin got angry and cursed him, saying: 'Putang-ina mo, wala ka nang karapatan na magpunta rito dahil wala ka na sa trabaho', but he insisted that he would leave only after he is paid his separation pay. At this juncture, Martin left and went inside his house and returned with a gun. Upon seeing Martin with a gun, he moved to run but as he was about to run he met Martin's helper with Jo Ann (sic). Instinctively, he grabbed the child to protect himself and prevent Martin from shooting him. He held the child by the neck and hair. Martin told him not to hurt the child and they will pay him but he told him to let go of the gun first and throw it towards his direction. At this point, Vicente Co, who was previously asked by Martin to get the money, came out and approached him to give the money but he told him to just place it on the floor, so that he could pick it after the gun was thrown in his direction. After Martin ha(d) thrown the gun, he picked up both money and gun and tucked the gun in his waist. He let go of the child and left for the exit. When he was already going out he heard the shout of Martin 'Putang ina mo Lito walang bala ang baril ko'. He looked back and saw the Cos running after him with wooden clubs. He ran outside and push(ed) the gate so hard. Outside, he was met by two men. He was stabbed once on the left arm and as he was retreating he saw Vicente and Martin come out with wooden clubs. Martin struck the man but he missed and was stabbed instead. He ran but his path was blocked and he was clubbed by the other companion of the man who stabbed Martin. He lost consciousness and did not know what happened to Vicente.

"Accused further declared that when he regained consciousness the policemen were already there. After he explained to the policemen how the money and the gun came into his possession, he was brought by the policemen to Polo Hospital where his head injuries were treated. He was transferred to the Jose Reyes Memorial Hospital where he was X-rayed and then brought to the police station where he was detained. He denied the charges against him.

"On cross-examination, Manolito Tidong testified that he went to the Co family at 6:45 PM because he was told to come back on March 27, 1991 after the employees have received their pay. He denied having received the P6,987.00 in January 1991, as part of his separation pay and other financial benefits, reflected in the cash voucher dated January 19, 1991 (Exh. N). Although he admitted, that the signature therein is his, he explained that everytime they received their pay they were made to sign and that he remembered he signed a voucher like Exhibit 'N' but it did not have the particulars stated therein. He also denied having signed any Affidavit of Quitclaim.

"He also declared that he does not know Pfc. Henry Marteja and he denied that a knife was ever recovered from him during the incident. He categorically declared .that he grabbed Jo Ann (sic) only to defend himself, and prevent Martin from shooting him." [5]

A careful perusal of the entire records of this case compels us to conclude that this appeal is bereft of merit and that the prosecution has established beyond reasonable doubt a case of robo con homicidio against appellant.

Martin and Mario Co both took the witness stand and identified appellant as the perpetrator of the crimes charged. Both brothers testified without vacillation and in a straightforward manner, directly inculcating appellant as alleged in the information. Although their testimonies would appear to jibe in almost every point, giving rise to a suspicion of rehearsed statements, still this fact does not necessarily discredit their declarations as a whole since such portions thereof deemed worthy of belief may be credited. [6]

The trial court has observed, and we agree with its position, that the version of the prosecution witnesses is more tenable than that of the defense. For one, we have held that credibility is a matter for the trial court to determine and, generally, we have been inclined to leave it to the sound discretion of the lower court.[7] Besides, the defense has failed to present, nor did it attempt to proffer, any evidence of ill motive on the part of the Co brothers to falsely testify against appellant. When there is no evidence indicating that the principal witness for the

prosecution was moved by any improper motive, the presumption is that he was not so moved, and his testimony is entitled to full faith and credit. [8]

Furthermore, the testimonies of the Cos were corroborated by other additional evidence presented by the prosecution, such as the sworn statement of Mario Co and the testimony of the arresting officer, Pfc. Henry Marteja.

A few hours after the incident, Mario Co executed a salaysay or sworn statement.[9] The details in the statement tallied with his declarations in open court and whatever slight discrepancies there are between the two are on minor matters. Both his testimony in court and his sworn statement conduced to one consistent basic fact, that is, that appellant obtained P5,000.00 from the offended parties through force and intimidation and, as a consequence thereof, Vicente Co died while Mario and Martin Co sustained injuries.

We agree with the trial court that the salaysay given by Mario Co just a few hours after the startling occurrence is credible since at the time the statement was given, the incident "was still fresh in his mind" and "he would have had no time yet to concoct or fabricate a story" in so short a time.[10] Stated otherwise in evidential terminology, such statements constituted part of the *res gestae*.

Appellant seeks, to assail Mario Co's credibility by pointing out an alleged inconsistency' between his sworn statement and his testimony. Appellant claims that Mario Co declared in his sworn statement "that he was inside the house when he heard a commotion outside and when he went out he saw the accused poking a knife at the child." Then, according to appellant, when Mario Co testified before the trial court, he averred that "the accused was inside the(ir) house." [11] We find such argument meritless and misleading.

In his testimony, Mario Co stated that he heard a commotion outside his room, prompting him to investigate.[12] Nowhere in his testimony did he declare that appellant was inside the house. It is highly probable that the commotion he heard was coming from outside the house, not merely outside his room. Be that as it may and even assuming that appellant's observation is true, still the most honest witness may make mistakes sometimes, but such honest lapses do not necessarily impair his credibility,[13] especially when minor details are involved.

On the witness stand, Pfc. Henry Marteja testified that at around 7:00 P.M. of March 27, 1991, while he was conducting routine surveillance, somebody approached him and informed him that there was a commotion in Rincon, Malinta, Valenzuela. He immediately proceeded to the scene and saw a man being chased by the townspeople. He also gave chase and ordered the man to stop. The man, later identified as appellant, stopped and surrendered to him. A knife and P4,200.00 were recovered from the former.[14]

It appears that although the Co brothers testified that they gave appellant the sum of P5,000.00, what was actually recovered from the latter was only P4,200.00. The discrepancy may be explained by the fact that when appellant came out of the compound, he encountered the neighbors of the Cos who subsequently mauled him. It is not far-fetched to conclude that the P800.00 deficit may either have been lost or was taken from him during the melee.

The testimony of Pfc. Marteja is significant because it corroborates the earlier claims of the Co brothers that indeed appellant threatened Joan with a knife and forcibly took P5,000.00 from them. The statements of this police officer thus demolishes appellant's account of what supposedly transpired on that occasion. In his testimony, appellant asserted that Martin Co brought out a gun, prompting him to hold Joan by the hair and neck and that he was able to gain possession of the gun which he tucked in his waistline before he went out of the Cos' compound.[15] No mention was ever made by appellant of having any knife with him prior to his arrest. If appellant's version of the incident is to be believed, how then would he explain the fact that the arresting officer

recovered from him a knife and not a gun?

In the absence of any countervailing evidence, the testimony of police authorities are given full faith and credence as they are presumed to be in the regular performance of their official duties.[16] Furthermore, no iota of evidence was ever presented to even suggest that Pfc. Marteja had dubious or evil motives to implicate appellant in the dastardly attack against the Co brothers and little Joan.

The defense argues that appellant never had the original design to rob when he went to the Co compound. That may be so. The compound of the Cos is fenced and the only entrance is through the gate with a security guard. It was only 7:00 o'clock in the evening and a number of people were still awake, hardly the proper occasion for staging a successful robbery. Notable too is the fact that the amount recovered from appellant was only in the amount of the separation pay which he demanded, leading to the inference that perhaps appellant had no original intent to rob the Cos.

Nonetheless, even if there was no original design to commit robbery, appellant is still liable for robbery if at the time of the taking of the personal property of another with violence or intimidation there was intent to gain. Although the Court gives considerable weight to the theory of the prosecution, we are not inclined to entirely do away with the version of the defense, especially with regard to his claim that he went to the Co compound to demand his separation pay. Although disputed by the Cos, it is possible that appellant believed, rightly or wrongly, that he had the right to a separation pay.

It is likewise probable that while appellant was inside the compound, a disagreement between him and one of the Co brothers took place. Exasperated with his employers' continuing intransigence against, giving him his separation pay, he threatened the Cos, which resulted in an altercation culminating in the tragedy. Yet, assuming that appellant had all the legal right to demand his separation pay, he should not have taken the law into his hands but should have gone through legal channels to demand his rights. While we empathize with the plight of the overworked and underpaid Filipino laborer, that does not warrant the grant of a license for lawlessness.

Even if we were to accept appellant's version as partially quoted below, still by his very own admission the money he got from the Cos was not given voluntarily by them. Consider his testimony on the succession of events coetaneous with and subsequent to the killing:

"Q What happened after Mario Co came out of his residence with a gun?

A Upon seeing the gun I was about to run but I met their, helper together with Jo-Ann (sic) so I grabbed Jo-Ann (sic), sir.

Q Why did you have to grab the child Jo-Ann (sic)?

A Because I was afraid that I might be shot, sir.

Q Shot by whom?

A Martin, sir.

Q After you grabbed the child in order to protect yourself from (sic) fear that you will be shot by Martin Co, what happened after that?

A I held the child by the neck and the hair, sir.

Q When Martin Co saw what you did with the child what did he do, if he did anything?

A They told me not to hurt the child and they will pay me, sir.

x x x

Q Why did you have to ask him to throw the gun near you?

A To make sure that I would not be shot, sir.

Q Did he throw the gun near you?

A It took him some time, sir. He first tended (sic) the money.

Q Who tended (sic) the money?

A Vicente came out and he was the one who brought the money, sir." (Emphasis ours.) [17]

Thus, appellant himself revealed that the Cos were only compelled to give him the P5,000.00. The Cos, apparently fearing for the safety of Joan, pleaded to him not to hurt the child and informed him that they were willing to give him his separation pay. Apparently, appellant received the money with the conscious knowledge that the Cos parted with the money, to say the least, unwillingly. Appellant said Martin Co took some time to give him the gun because Vicente had to get the money inside the house. If his primary purpose was to use Joan only as a shield to protect himself, why did he have to wait for Vicente Co to get the money? Fearing for his life, definitely his immediate impulse at that very moment would have been to get away from the compound as soon as possible, instead of tarrying there just for the money.

Appellant's main defense is denial of both criminal intent and the overt felonious act. Denial, like alibi, is inherently weak and cannot prevail over the positive and credible testimonies of the prosecution that the accused committed the crime.[18] In the case at bar, the denial of appellant is unsubstantiated by any positive evidence necessary and sufficient to overthrow the cogent and plausible testimonies of the prosecution witnesses.

Appellant, as the only witness for the defense, denied the charges against him, foisting the blame instead on the Cos. The allegations of appellant do not and cannot inspire belief. He was arrested near the crime scene, with the knife and money recovered from him. He disclaimed authorship of the death of Vicente Co and the injuries sustained by Mario and Martin Co, his lame and easily fabricated excuse being that it was done by two unknown men whom he providentially met on his way out of the compound. According to appellant, these two men attacked him and the Co brothers.[19] Said pretension, to say the least, is fantastic. These supposedly anonymous persons were never presented in court nor at least identified. Besides, why would two unknown persons, unprovoked and for no apparent reason, attack him and the Co brothers at that very moment and conveniently disappear upon the arrival of the policeman? This claim approximates a phantasmagoria conceived by an overly fertile imagination.

Proceeding on the possibility of an acquittal, appellant theorizes that assuming arguendo his responsibility for the injuries sustained by the Cos, still it was done purely in self-defense. Suffice it to say that, under the evidence on record, appellant miserably failed to substantiate this improbable claim. An accused who admits inflicting a fatal injury on his victim and invokes self-defense must rely on the strength of his own evidence and not on the weakness of that of the prosecution for, even if weak, the prosecution evidence gains more credibility.[20]

Appellant seeks to capitalize on the failure of the Cos to call for police assistance, despite the opportunity to do so. That may be the most logical course of action they could have taken but not necessarily the only one. The workings of the human mind when placed under emotional stress are unpredictable and people react differently.[21] The actuations of appellant himself on that occasion cannot but be categorized as either abnormal or sub-normal.

Regarding the stab wounds inflicted on the victims, appellant asserts that he could not have inflicted the stab

wounds on the left side of the chest of Vicente Co, the stab wounds at the back of Martin nor the lacerated wounds sustained by Mario, because "according to Mario Co, the accused was running towards the gate when he released the child," hence he was in no position to inflict injuries on the Cos.[22] The records of the case, however, show that the injuries sustained by the Co brothers could have been easily and conceivably inflicted by appellant.

Dr. Prospero A. Cabanayan, who conducted the autopsy on Vicente Co, noted that the deceased sustained three wounds, two on the face and one on the left side of the chest. The doctor concluded that the victim could have been kneeling down when he sustained the wound in his left chest, considering the presence of two contusions on both knees of the deceased. [23] This finding is in harmony with the testimony of the Co brothers that Vicente Co was attacked while he was trying to help Joan who was at that time on the ground after appellant pushed her.

On the other hand, Dr. Elvis Verzo, who personally treated Martin and Mario Co, testified that Martin sustained a lacerated wound at the back of his ear while Mario suffered slight physical injuries. Appellant argues that the attending physician testified that the lacerated wounds sustained by both brothers were caused by a blunt instrument, hence appellant could not have possibly inflicted them since it was a knife which was found in his possession. We reject this reasoning. A reading of the doctor's testimony shows that although Dr. Verzo testified that sharp instruments usually cause incised wounds, he also stated that the same instrument may also cause lacerated wounds.[24]

As to the designation of the offense of which appellant was convicted, a modification is in order. The information charges appellant with the crime of robbery with homicide and double frustrated homicide. The trial court erred when it likewise convicted the accused of robbery with homicide and double frustrated homicide. It is true that there was a direct relation and an intimate connection between the robbery and the killing of Vicente Co. Said information, however, should have charged the accused only with the special complex crime of robbery with homicide under paragraph 1, Article 294 of the Revised Penal Code, and the court below should have convicted appellant only for the same offense.

There is no special complex crime of robbery with homicide and double frustrated homicide. The offense should have been designated as robbery with homicide alone, regardless of the number of homicides or injuries committed. These other felonies have, at the most and under appropriate circumstances, been considered merely as generic aggravating circumstances which can be offset by mitigating circumstances.[25] The term "homicide" in paragraph 1 of Article 294 is used in its generic sense, that is, any act that results in death. Any other act producing injuries short of death is integrated in the "homicide" committed by reason or on the occasion of the robbery, assuming, of course, that the homicide is consummated. If no death supervenes, the accused should be held liable for separate crimes of robbery and frustrated or attempted homicide or murder (provided that there was intent to kill) if the latter offenses were not necessary for the commission of the robbery, or for a complex crime of robbery and frustrated or attempted homicide or murder under Article 48 of the Code if the latter offenses were the necessary means for the commission of the robbery.

One last point. Anent the issue of whether or not the trial court erred in not appreciating the mitigating circumstance of voluntary surrender, we agree with appellant and the Solicitor General that the trial court acted erroneously on this matter. The records show that appellant, who was running away from the crowd mauling him, voluntarily surrendered to Pfc. Marteja when the latter subsequently pursued him and shouted that he was a policeman.

However, notwithstanding the presence of the mitigating circumstance of voluntary surrender, the criminal liability of appellant remains the same. The aforesaid composite crime of robbery with homicide is punishable by

reclusion perpetua to death. Article 63 of the Code provides that where the law prescribes a penalty composed of two indivisible penalties and the commission of the act is attended by ordinary mitigating circumstances, with no aggravating circumstance, the lesser penalty shall be applied. Hence, even with the presence of the mitigating circumstance of voluntary surrender, the penalty imposable in this case is still reclusion perpetua.

WHEREFORE, subject to the aforestated modification that the offense committed by appellant and for which he should be convicted and punished is the special complex crime of robbery with homicide, the impugned judgment of the court a quo is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon and Puno, JJ., concur.

[1] Original Record, 1.

[2] Ibid., 70.

[3] Rollo, 35: Appellant's Brief, 1.

* In other parts of the record, she is referred to as Jo-Ann.

[4] Rollo, 103-106; Brief for the Appellee, 3-6.

[5] Rollo, 51-53; Appellant's Brief, 6-8.

[6] *People vs. Arbolante, et al.*, 203 SCRA 85 (1991).

[7] *People vs. Repuela, et al.*, 183 SCRA 244 (1990).

[8] *People vs. Belibet, et al.*, 199 SCRA 587 (1991).

[9] TSN, May 3, 1991, 2.

[10] Original Record, 68.

[11] Rollo, 57.

[12] TSN, April 29, 1991, 3.

[13] *People vs. Natan*, 193 SCRA 355 (1991).

[14] TSN, June 10, 1991, 2-3.

[15] Ibid., July 17, 1991, 6-8.

[16] *People vs. Enrique, Jr.*, 204 SCRA 674 (1991).

[17] TSN, July 17, 1991, 7-8.

[18] *People vs. Belibet*, *supra*, Fn 8.

[19] TSN, July 17, 1991, 10.

[20] *People vs. Pinto, Jr., et al.*, 204 SCRA 9 (1991).

[21] *People vs. Biago*, 182 SCRA 411 (1990).

[22] Rollo, 61-62.

[23] TSN, June 3, 1991, 4.

[24] TSN, June 26, 1991, 3.

[25] People vs. Mendoza, 204 SCRA 288 (1991).

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