

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ASTERIO ESCOSIO Y AYSON ALIAS “ARNEL” AND
MELCHOR DE LOS REYES Y MEJIA, DEFENDANTS-APPELLANTS.**

G.R. No. 101742. March 25, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision rendered by the Regional Trial Court, Branch 42, Dagupan City in Criminal Case No. D-6959 finding the accused guilty of the crime of Robbery with Homicide and sentencing them to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased Narciso Flores in the amounts of P50,000.00 for the death of said Narciso Flores, P12,648.00 as actual damages, and P200,000.00 as compensatory and moral damages, and to pay proportionate costs.

The inculpatory facts and the events that constituted the actual commission of the crime and those that preceded and followed the same are, as follows:

At about 6:00 o'clock in the evening of 13 September 1985, Avelino Flores was informed by Marlyn de los Reyes that a group of men, including her husband Melchor de los Reyes, was planning to steal bangus fingerlings that night from the Flores fishpond, located about 150 meters from their (Flores) house at Calmay District, Dagupan City. Avelino Flores notified his brothers about the planned robbery and they decided to keep watch over their fishpond. However, their mother, Lily Flores, when informed of the plan, tried to dissuade them because something bad might happen to them; anyway, according to her, somebody (a ghost) was already guarding the fishpond. But Avelino Flores and his brothers were determined to guard their fishpond.[1]

Avelino Flores and his companions went to the fishpond at about 9:00 o'clock that evening. Avelino and his brothers, Nestor and Narciso, each carried a bolo, while his other brother, Ramon, Armando Olivo and Tiddid Ventinilla carried canes. They also brought along with them three (3) flashlights. To avoid detection, they walked in a crouch and did not use their torches. They stationed themselves on an elevated portion of the fishpond, locally known as a "ponso", about six (6) meters from the watergate ("palim-ping") of the fishpond, and hid behind tall grasses and reeds that grew in the "ponso." [2]

At about 11:00 o'clock that night, two (2) unidentified persons entered their fishpond and roiled the waters to agitate the fish. Some of Avelino's companions wanted to confront the intruders but Narciso Flores prevailed upon them to desist, saying that many more would come.[3]

As expected, several persons came to the fishpond at about 3:30 o'clock in the morning of the following day, 14 September 1985, one of whom proceeded to the house of Melchor de los Reyes, located about thirty (30) meters from the fishpond of the Flores family. The said person knocked on the door of the house of Melchor de los Reyes and called him by name and a man came out from the house. Together, they went to the fishpond and opened the watergate, after which they removed the thorns placed therein. Thereafter, one of the men scooped bangus fingerlings from the Flores fishpond and handed them to his companion who transferred the fish to the adjacent

fishpond managed by Melchor de los Reyes.

At this juncture, Avelino Flores and his brothers decided that it was time for them to confront the intruders. They divided themselves into two (2) groups and surrounded the men at the watergate. Then, they focused their flashlights at the men and shouted: "Hoy, sikayo manaya so mantatakew ditan" (meaning, "Hoy, you're the ones stealing here"). As their lights shone on the two (2) men, they instantly recognized them to be Asterio Escosio and Melchor de los Reyes. Surprised, Asterio Escosio dropped the net he was using as a scoop and drew a gun from his waistline and fired three (3) shots at the group of Narciso Flores. Then, he and his companion fled in different directions.[4]

The shots hit Narciso Flores and Nestor Flores. Narciso Flores was brought to a hospital but he was dead on arrival.[5] An autopsy was conducted and it was found that Narciso sustained a gunshot wound with entry located at the back, left side along the midscapular line at the level of 5th intercostal space, 5mm. in diameter, round, edges inverted, which penetrated the lungs and heart and caused his death,[6] while Nestor Flores sustained a through-and-through gunshot wound in his left thigh,[7] which took one (1) month to heal and for which Nestor spent the amount of P1,000.00.[8]

Accordingly, on 24 October 1985, Asterio Escosio y Ayson alias "Arnel", Melchor de los Reyes y Mejia, and three (3) other persons whose identities and whereabouts are unknown were charged before the Regional Trial Court at Dagupan City with the crime donominated as "Robbery with Homicide and Attempted Homicide," committed, as follows:

"That on or about the 14th day of September 1985, in the City of Dagupan, Philippines, and within the territorial jurisdiction of this Honorable Court, the above-named accused ASTERIO ESCOSIO y AYSON @ 'Arnel', MELCHOR DE LOS REYES y MEJIA, JOHN DOE, PETER DOE and RICHARD DOE, being then armed with a gun, and with intent to gain, and with violence against or intimidation of persons, confederating together, acting jointly and helping one another, did then and there wilfully, unlawfully and criminally, take, steal and cart away milkfish 'fingerlings' worth TWENTY THOUSAND PESOS (P20,000.00), Philippine Currency, inside the fishpond of one LILY FLORES y MANAOIS, to her damage and prejudice in said amount of P20,000.00 and with intent to kill one NARCISO FLORES y MANAOIS and NESTOR FLORES y MANAOIS, the said accused, confederating together, acting jointly and helping one another, attack, assault and use personal violence upon said NESTOR FLORES y MANAOIS and NARCISO FLORES y MANAOIS, by shooting and hitting them with said gun, thereby resulting to the death of NARCISO FLORES y MANAOIS and physical injuries to NESTOR FLORES y MANAOIS, the said accused having commenced the commission of a felony directly by overt acts, and did not perform all the acts of execution which should have produced the felony by reason of some cause or accident other than their own spontaneous desistance, to the damage and prejudice of the legal heirs of the deceased NARCISO FLORES y MANAOIS, to the tune of not less than THIRTY THOUSAND PESOS (P30,000.00), Philippine Currency, plus the damage and prejudice of said complainant, NESTOR FLORES y MANAOIS, and other consequential damages."

Upon arraignment, the two (2) accused pleaded not guilty to the charge against them. At the trial, they denied having committed the crime imputed to them and interposed the defense of alibi. The accused Asterio Escosio claimed that he was asleep in his house in Calmay district, in the evening of 13 September 1985 and came to know of the commission of the crime complained of when he woke up at about 6:00 o'clock in the morning of 14 September 1985 and was arrested by policemen. The accused, Melchor de los Reyes, for his part, stated that he was also in his house in the evening of 13 September 1985 because he was sick with the "flu" and had a fever; that he heard gunshots at about 2:00 o'clock in the morning of 14 September 1985 so that he went to the window of his house and shouted: "do not fire a shot towards here because my children are here"; and that sometime later that same morning, some policemen came and brought him to a police outpost where he saw Arnel Escosio. His

testimony was corroborated by his wife, Marlyn de los Reyes, who also denied having informed Avelino Flores that her husband was planning to steal bangus fingerlings from the fishpond of Lily Flores.

The trial court, however, gave no credence to the alibi of the accused since they had been positively identified by prosecution witnesses and sentenced them, as aforesated.

Hence, the present appeal. The appellants, in separate briefs filed, both assail the trial court's findings that they have been positively identified by prosecution witnesses as the perpetrators of the crime complained of. The appellant Asterio Escosio claims that Avelino Flores could not have made a positive identification of the appellants because his (Avelino Flores) view was blocked by the "palimping" (watergate) of the fishpond, while the appellant Melchor de los Reyes contends that the "ponso", where Avelino Flores and his companions stationed themselves on the night in question, is covered by tall grasses and shrubs which obstructed his view. In support of his contention, the appellant Asterio Escosio cited the following testimony of the prosecution witness Avelino Flores:

"Q

By the way, you said when you shouted those words you already saw Asterio Escosio scooping bangus from the fishpond, did I get you right?

A

Yes, sir.

Q

What was he using in scooping bangus?

A

Because at the precise moment I was obstructed by the palimping and he was at the other side of the palimping so I did not recognize what was used in scoping, sir."[9]

However, it is apparent therefrom that it was the instrument used by the appellants in scooping the fish from the fishpond which Avelino Flores failed to see because of the "palimping." Avelino Flores categorically stated that he saw the faces of the appellants when he focused his flashlight on them. His testimony reads as follows:

"Q

And when you uttered those words, you were facing Asterio Escosio?

A

Yes, sir, I flashed my flashlight on him so I recognized him together with Melchor de los Reyes."[10]

The tall grasses and shrubs that grew in the "ponso" could not have also blocked the view of Avelino Flores because it appears that Avelino Flores was no longer in the "ponso" when he confronted the appellants, but was on top of a dike. His testimony reads as follows:

"Q

At the time you focused your flashlight, where were you?

A

I was on the dike connected with the watergate, sir.

Q

You mean to say that you were on top of the dike?

A

Yes, sir.

Q

The persons on whom you were focusing your flashlight were inside the fishpond, is it not?

A

Yes, sir."[11]

We have examined the record of the case with minute care and find no reason to set aside the findings of the trial court as to the identity of the culprits. The appellants have been positively identified by prosecution witnesses. Avelino Flores declared as follows:

"Q

Where did you focus your flashlight?

A

To the place where the two (2) people were scooping the bangus, sir.

Q

And what did you see when you focused your flashlight to the two (2) people scooping the bangus?

A

I first saw Arnel Escosio who faced me quite scared, sir.

Q

If Arnel Escosio is inside the courtroom, will you point to him?

A

(Witness pointed to a man at the back who answered when asked that his name is Arnel Escosio.)

Q

What about the other person, were you able to flash your light on him?

A

Yes, sir, and I saw Melchor delos Reyes. (Witness pointing to a person beside his counsel, Atty. Gubatan, as Melchor delos Reyes.) "[12]

Nestor Flores also declared as follows:

"Q

When you flashed your flashlights simultaneously to the palimping, what did you see?

A

We saw Arnel Escosio and Melchor de los Reyes scooping bangus, sir." [13]

The prosecution witnesses could not have been mistaken in pointing to the appellants as the perpetrators of the crime complained of. The appellants are well known to them since they reside in the same place and in fact, the appellant Asterio Escosio is related to the prosecution witnesses and Avelino Flores used to hire the services of said appellant when he harvested fish from the fishpond. We quote with approval the following observations of the trial court which are supported by evidence:

"x x x Asterio Escosio and the Flores family are related to each others. Asterio Escosio is the son of a nephew to a first cousin of Lurly Manaois who is a younger sister of Lily Flores, the mother of prosecution witness Avelino Flores and Nestor Flores. They reside in the same place. Avelino Flores used to hire the services of Asterio Escosio when he harvest [sic] bangus in his fishpond. With these circumstances, there is no reason that Avelino Flores or Nestor Flores could not recognized (sic) the person of Asterio Escosio at the first blast of the lights of their flashlights much more taking into consideration their distance, which is about three (3) meters the distance of Avelino Flores to the accused and about a few meters the distance of Nestor Flores from the accused. The same is true with accused Melchor de los Reyes who, although not related to the Flores family, had been residing in the same place almost two years already before the incident and that Melchor de los Reyes knew Avelino Flores as a caretaker of fishpond also. In fact the fishpond of Melchor delos Reyes which he is taking cared (sic) of and the fishpond of Avelino Flores, which is the same fishpond Melchor delos Reyes and his companions planned to steal on that night, as they in fact did steal, is separated only by a dike. Moreover, as testified to by Melchor delos Reyes himself, he used to see Avelino every morning and afternoon visiting his said fishpond. With these circumstances, it can be assumed that Avelino Flores is already familiar with the face of Melchor delos Reyes and Avelino Flores can also recognize Melchor delos Reyes at the first opportunity, like in that situation when he turned the light of his flashlight to his (Melchor's) place." [14]

In the barrios, people generally know one another well. [15] Hence, the prosecution witnesses could not have erred in identifying the appellants as the culprits.

Considering that the prosecution witnesses have no possible motive to testify falsely against the appellants, we see no reason why the appellants' denial that they are the culprits should prevail over the positive identification made by the prosecution witnesses. The settled rule is that the defense of alibi cannot prevail over the positive identification of the accused by witnesses for the prosecution and that to establish it, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission. [16] In the instant case, the appellants have not shown that it was impossible for them to have been present at the Flores fishpond when the offense complained of was committed.

The appellant Melchor de los Reyes also claims that it was Avelino Flores who shot Narciso Flores. In support of his claim he points to the location of the wound sustained by the deceased and the statement of Lily Flores blaming Avelino for the death of his brother Narciso.

The fact that the wound at entry is located at the back of the deceased Narciso Flores, [17] does not prove that the said deceased was shot from behind by Avelino Flores. To begin with, the prosecution witnesses categorically declared that it was the appellant Asterio Escosio who fired three (3) shots at the direction of the group of Narciso and Nestor Flores. Secondly, Avelino and Nestor Flores both testified that they only carried canes and bolos with them when they stood watch over their fishpond on that fateful night of 13 September 1985. [18] Thirdly, the trajectory of the bullet which caused the death of Narciso Flores is, according to the medical examiner, "diagonally upward" and that "the assailant must be in a lower level than the victim," [19] in order to produce such effect, so that Avelino Flores, who was standing on top of the dike, which is on the same level with the "ponso" [20] where Narciso Flores was standing when shot, [21] could not have fired the fatal bullet. Had he done

so, the path of the bullet would have been straight or downward, not upward, as in this case. On the other hand, the trajectory of the bullet lends credence to the prosecution theory that the deceased was shot by the appellant, Asterio Escosio, who was inside the fishpond and standing in a spot lower than that of the deceased.

The statement of Lily Flores, blaming Avelino Flores for the death of Narciso, would not also prove that Avelino Flores shot his brother. The statement was sufficiently explained by the trial court as follows:

"And with respect further to her testimony that she heard Lily Flores, the mother of the victim, exclaiming 'agi, antoy ginawam ed agim, pinatey mo, ibabagak lan ibabaga ed sika', or its translation in English 'son, what have you done to your brother, you killed him, I have been telling you then', the said exclamation does not mean that it was Avelino Flores who killed his brother Narciso Flores. To the mind of the Court, Lily Flores was emphasizing her feelings against her son Avelino Flores who did not heed her advice for him not to go ahead with his plan to watch their fishpond or else something bad might happen to them; that against this advice of Lily Flores, he instead went ahead to such plan, together with his three brothers and two others, which finally resulted to [sic] such an unfateful incident." [22]

Appellant Melchor de los Reyes also contends that no robbery was committed since no bangus fingerlings were removed from the Flores fishpond. He cites the testimony of Avelino Flores to the effect that Asterio Escosio dropped the scooping instrument when he drew a gun from his waistline.

While it may be true that the appellant Asterio Escosio dropped the net he used in scooping out the fish fingerlings when Avelino Flores and his brothers directed their flashlights at them (the intruders), it appears that the two (2) accused, Asterio Escosio and Melchor de los Reyes, had earlier scooped out bangus fingerlings from the Flores fishpond and transferred them to the adjacent fishpond operated by Melchor de los Reyes before Avelino Flores and his brothers confronted said accused. The testimony of Avelino Flores reads as follows:

"Q

After the two (2) men went down the fishpond, one at the tip of the palimping and another on the base, what happened?

A

When we sensed that they were already getting the bangus because of their movement, we agreed to surround them, our group shall separate, one group shall go southward and the other will go northward, sir." [23]

Nestor Flores also testified as follows:

"Q

What happened when one of them knocked at the door of the house of Melchor delos Reyes?

A

We sensed someone came out of the door and both of them went back to the palimping, sir.

Q

After that what happened?

A

One of them removed the wood stopping the water from the palimping and the other went down the fishpond to the palimping and removed thorns, sir.

Q

Where are those thorns located?

A

Between the sides of the palimping, sir.

Q

Do you know the purpose why the thorns were removed by that other person?

ATTY. GUBATAN

Objection, Your Honor, leading.

COURT

Sustained.

FISCAL

Q

What is the effect of the removal of those thorns?

A

So that it will be clear and there will be no obstruction when they will gather the bangus fry, sir.

Q

After that what happened?

Q

By what means did they gather fish?

A

Beside the palimping where the bangus are swimming against the current and they used a fish net (tapigo), sir.

Q

What did you do upon knowing that the two (2) persons have started gathering fish?

A

We agreed that we will allow them to gather fish and by the time they have gathered fish then that will be the time that we will surround them, sir.

Q

Were they able to gather fish?

A

Yes, sir.

Q

Where did they put the fish?

A

At the other fishpond, sir.

Q

How far is that other fishpond from the palimping?

A

About two (2) meters, sir.

Q

Who owns that fishpond?

A

One of those being taken cared of by Melchor de los Reyes, sir.

Q

How many times were they able to transfer fish which they caught from your fishpond?

A

Two (2) times and on the third time that was the time we surrounded them, sir.

Q

Now, can you estimate the contents of the fish net or tapigo which was used in transferring the bangus which they caught from your fishpond to the other fishpond?

A

My estimate sir is about 700 fishes per transfer.

Q

How much is one fish or semilia at that time?

A

From P2.00 to P2.50, sir."[24]

The appellant Melchor de los Reyes further contends that the trial court erred in convicting him of the crime of Robbery with Homicide on the basis of a defective information.

The alleged defect, however, is in the designation of the offense committed, which the prosecutor termed as "Robbery with Homicide and Attempted Homicide," but not the narration of the ultimate facts. Appellants were not, therefore, denied their right to be informed of the nature and cause of the accusation against them and to fully defend themselves. The Court has repeatedly held that what controls is not the designation of the offense charged or the particular law or part thereof allegedly violated but the description of the offense claimed to have been committed. The Court has said:

"As to whether the information against accused Reyes should be designated as Violation of Section 3(b) or (c) of Republic Act No. 3019 is inconsequential. What controls is not the designation of the offense charged or the particular law or part thereof allegedly violated but the description of the offense claimed to have been committed (Tugbang v. Court of Appeals, 174 SCRA 424 [1989]). In considering indictments that where an offense may be committed in any of several modes, and the offense, in any particular instance, is alleged to

have been committed in two or more modes specified, it is sufficient to prove the offense committed in anyone of them, provided that it be such as to constitute the substantive offense (*Tugbang v. Court of Appeals*, *ibid.*).

"The real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of the law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information. It is not the technical name given by the fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the information (*People v. Mendoza*, G.R. No. 67610, July 31, 1989)."[25]

Appellant Melchor de los Reyes finally contends that the trial court erred in holding him liable as principal in the crime of Robbery with Homicide claiming that there is no proof of conspiracy in the robbery or in the shooting of Narciso Flores by Asterio Escosio.

Again, we find this contention of appellant devoid of merit. Conspiracy need not be proved by direct evidence but may be inferred from the facts and circumstances attending the commission of the crime which are indicative of the common design to accomplish a criminal purpose and objective.[26] We agree with the Solicitor General that the following circumstances in this case show the existence of a conspiracy and unity of criminal purpose: the appellant, Melchor de los Reyes, whose house was near the fishpond, was summoned by the robbers; that said appellant accompanied them to the Flores fishpond; he even helped the appellant Asterio Escosio in scooping bangus fry from the Flores fishpond; and he was seen escaping from the scene after Narciso Flores was shot. Conspiracy to commit the crime of robbery having been established by the concerted acts of the appellants and homicide having occurred as a consequence thereof, the appellant Melchor de los Reyes is liable for the crime of Robbery with Homicide, whether or not he actually participated in the killing of Narciso Flores, for the settled rule is that when a homicide takes place as a consequence of or on the occasion of the robbery, all those who took part in the robbery shall be guilty of the complex crime of robbery with homicide whether or not they actually participated in the killing unless there is proof that they had endeavored to prevent the killing.[27]

Turning to the civil aspect of the case, we find that the trial court failed to provide indemnity for the injury sustained by Nestor Flores on the occasion of the robbery. According to Nestor Flores, he sustained a gunshot wound in the thigh which took a month to heal and for which he spent the amount of P1,000.00 for treatment. The defendants-appellants should be ordered to pay Nestor Flores, jointly and severally, said amount of P1,000.00.

With the modification above-indicated, the judgment appealed from should be, as it is hereby, **AFFIRMED**, with costs against the defendants-appellants.
SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Campos, Jr., JJ., concur.

[1] Tsn Doria, Session of July 17, 1986, pp. 2-5

[2] *Id.*, pp. 2-8

[3] Tsn, Doria, Session of September 23, 1986, pp. 3-5

[4] *Id.*, pp. 5-11

[5] *Id.*, pp. 12-13; see also tsn, Doria, Session of May 5, 1988, p. 8

[6] Exhibit B

[7] Exhibit O

- [8] Tsn, Doria, Session of May 5, 1988, p. 15
- [9] Tsn, Albay, Session of July 1, 1987, p. 4
- [10] Id.
- [11] Tsn Doria, Session of September 23, 1986, p. 32
- [12] Id., pp. 9-10
- [13] Tsn, Doria, Session of May 5, 1988, p. 3
- [14] Decision, p. 23
- [15] People vs. Loste, G.R. No. 94785, July 1, 1992
- [16] People vs. Albores, G.R. Nos. 101122-23, December 9, 1992
- [17] Exhibits B, B-3
- [18] Tsn, Doria, Session of July 17, 1986, p. 5; tsn, Albay, Session of June 21, 1988, p. 14
- [19] Tsn, Albay, Session of February 3, 1986, pp. 10-11
- [20] Tsn, Cruz, Session of April 1, 1986, p. 14
- [21] Tsn, Doria, Session of September 23, 1986, p. 33
- [22] Decision, p. 24
- [23] Tsn, Doria, Session of September 23, 1986, p. 8
- [24] Tsn, Cruz, Session of November 13, 1987, pp. 5-7
- [25] Reyes vs. Camilon, G.R. No. L-46198, December 20, 1990, 192 SCRA 445, 453.
- [26] People vs. Caranza, G.R. No. 76743, May 22, 1992, 209 SCRA 232, and cases cited therein.
- [27] People vs. Degoma, G.R. No. 89404-05, May 22, 1992, 209 SCRA 266.

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