

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO DE LA CRUZ Y GOMEZ @ BLUT, ACCUSED-APPELLANT.

G.R. No. 102063. January 20, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Rolando de la Cruz y Gomez @ Blut was charged with the crime of Robbery with Homicide before the Regional Trial Court (RTC) of Manila in an Information filed on 8 November 1988, the accusatory portion of which reads:

x x x

"That on or about October 1, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, by means of craft, that is, while on board a passenger jeep and pretending to be passengers thereof, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: by then and there pointing their bladed weapons and firearm and forcibly taking, robbing and carrying away the following from ABEL REQUEJO Y REFE: Citizen wristwatch -- P800.00, one (1) wallet containing P220.00, one (1) Saudi Riyal, PRC ID, driver's license and other important papers, all valued at P1,020.00 plus, belonging to said ABEL REQUEJO Y REFE, against his will to the damage and prejudice of said owner in the aforesaid amount of P1,020.00, Philippine currency; that by reason of and on the occasion of the said robbery, the said accused, in pursuance of their conspiracy and with treachery, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault an (sic) use personal violence upon the person of VENANCIO ESTACIO Y PANELO by stabbing him twice with a bladed weapon on the chest, thereby inflicting upon him stab wounds which are necessarily fatal and mortal and which were the direct and immediate cause of his death thereafter.

Contrary to law."^[1]

The case was docketed as Criminal Case No. 88-67914 and was raffled off to Branch 5 of the said court.

Upon his arraignment on 4 January 1989,^[2] Rolando de la Cruz, hereinafter referred to as the Appellant, entered a plea of not guilty.

Trial on the merits ensued thereafter. The prosecution presented as its witnesses P/Cpl. Salvador Fradejas, Sotero Dionisio, Abel Requejo, Catalina Dionisio and Dr. Maximo Reyes. Appellant took the witness stand in his defense and presented Rita dela Cruz, his mother, as his lone witness.

On 21 September 1990, the trial court promulgated its decision,^[3] dated 17 September 1990, the dispositive portion of which reads:

"WHEREFORE, finding the accused ROLANDO DELA CRUZ y GOMEZ GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, sentences (sic) him to suffer the penalty of LIFE IMPRISONMENT; to indemnify the heirs of deceased Venancio Estacio y Panelo the sum of THIRTY THOUSAND PESOS (P30,000.00) and pay the costs.

SO ORDERED."[4]

The conviction is based on the evidence for the prosecution which is summarized by the trial court as follows:

"Sotero Dionisio is a jeepney driver married to Catalina Asajar Dionisio. The jeepney that he drives belongs to his father-in-law and plies the Punta-Quiapo route. On October 1, 1988, at about 6:30 to 7:00 in the evening, as was his habit, he was driving the said jeepney accompanied by his wife, Catalina who was then, seated beside him in the front seat while picking-up passengers at P. Sanchez Street in front of the Lourdes Hospital heading towards Sta. Mesa-Quiapo according to Dionisio there were about fifteen (15) passengers beside (sic) his wife. The jeepney was travelling at its usual pace, when he heard one (sic) of the passengers was pushed outside and fell overboard. That the thrown (sic) passenger rolled on the road. Seeing the fall of the passenger, he tried to stop the jeepney, but a male passenger seated at his back poked a gun at his head and shouted to (sic) go faster or he will blow his head off. At the same time, the man hanging at the rear running board pointed a knife at the passengers. According to him, there were other members of the holdupper (sic) who were seated on the rear passenger seats who (sic) armed with knives collected from the passengers their valuables. That Dionisio was ordered to stop the jeepney in front of the NCBA where the five (5) who partook in the hold-up where (sic) the same men who, together boarded his jeepney near the foot of the Lambingan Bridge, alighted. That he came to know, aside from the hold-up, committed in his jeepney, a (sic) passenger while in the process of being divested of his valuable (sic) was stabbed by the holduppers. With the wounded passenger, he immediately proceeded to the hospital.

Abel Requejo, an engineer who was a passenger of the said jeepney during the hold-up testified that he was seated at one of the back seats. That when the hold-up was announced, he was told not to make a false move, while the holdupper's knives were pointed at the passengers including himself, he was divested of his Seiko gold watch worth Eight Hundred Pesos (P800.00), Two Hundred Pesos (P200.00) cash and other valuables by a man pointing a knife at him. He identified the man as accused Rolando dela Cruz. He claimed, the (sic) light inside the jeepney was bright at the time of the hold-up. He also said that the other passengers of the jeepney were divested of their valuables, and that, one of the passengers while being robbed by the holduppers, was stabbed and fatally wounded. Likewise, Mrs. Catalina Asajar Dionisio, wife of driver Sotero Dionisio, who at the time of the hold-up was seated at the front seat beside her driver-husband, identified accused Rolando dela Cruz as one of the holduppers who divested the passengers of the jeepney their (sic) valuables.

That later, after the holduppers had alighted from the jeepney, they proceeded to bring the wounded passenger at (sic) the Unciano General Hospital. The patient Venancio Panelo Estacio the jeepney passenger and one of those who were robbed of their valuables, and the one stabbed was declared dead-on-arrival. The cadaver was later brought to the International Funeral Homes at Sta. Mesa, Manila where, it was autopsied the following day by Dr. Maximo Reyes. Dr. Reyes after conducting an autopsy of the cadaver, issued a written autopsy report (Exhibit "E"), a sketch describing the two (2) stab wounds on the chest (Exhibit "E-1" and "F-1") as the first wound on the chest, not fatal. The second wound also on the chest Exhibit "E-2" and "F-2" according to him was a fatal wound. That the wound was inflicted while the victim was stooping facing the assailant. He also identified the Certificate of Identification of victim Venancio Panelo Estacio, Exhibit "D".[5]

Upon the other hand, appellant's version is summarized by the trial court in this manner:

"Accused Rolando dela Cruz claimed that he is a construction worker at the New Panadero Street, Sta. Ana, Manila. That he was employed by one Eddie San Jose. He likewise claimed, that on October 1, 1988, he reported for work. That at about 5:00 in, the afternoon, he left work and proceeded straight for home. According to him, he arrived at his house which he shared with his mother Rita, at 3290 V. Mapa Street, Sta. Cruz, Manila about (sic) 6:30 in the evening. From that time, up to the following morning, he never left his house. He denied participation to (sic) the robbery homicide he is being charged of (sic).

According to him, Pat. Intia was angry at him because Pat. Intia is the compadre of one Erning Manalo the one who stabbed him and as a result thereof, a criminal case was filed by him against said Erning Manalo. That

Pat. Intia attributed to him all the crimes and petty crimes committed in their locality. Pat. Intia is a neighbor of his house only (sic), some sixty (60) meters away from each other (sic). That he was able to talk to Engineer Requejo, one of the complainant-witnesses against him, and he claimed to have been told Requejo testified (sic) against him because he was trouble-maker (sic) in their place. In cross-examination however, he admitted not knowing any of the complainant-witnesses mentioned. He likewise admitted that his house where he claimed he was at the time of the incident was only sixty (60) meters away from the place of the incident, and that, inspite of its proximity he claim (sic) not to know that robbery-hold-up (sic) did occur in the place; that he came to know about it when he was arrested on November 22, 1988. His mother Rita dela Cruz collaborated the testimony of his (sic) son accused Rolando dela Cruz. She also claimed her (sic) son at the time he was arrested was pistol-whipped and maltreated by Pat. Intia and his police companion."[6]

We find the above summation of the evidence to be amply supported by the transcripts of the stenographic notes of the testimonies of the witnesses presented by the parties.

The trial court gave full faith and credit to the version of the prosecution. It could not believe that Abel Requejo, an educated man, and Mrs. Catalina Dionisio, the wife of the driver of the jeep which was held up, whose testimonies were clear and convincing, would lie to the court. It likewise ruled that since a conspiracy existed among the hold-uppers, each shall suffer the consequences of their criminal acts, including the homicide committed during the hold-up. It rejected the appellant's version which it described as a mere denial corroborated by the "loyalty vote" of his mother.[7]

Unable to accept the verdict, the appellant filed his notice of appeal on 25 September 1990.[8] In its Order of 26 September 1990, the trial court gave due course to the appeal, but erroneously directed the elevation of the case records to the Court of Appeals.[9] The latter, however, transmitted the same to this Court on 12 November 1991.[10] We accepted the appeal[11] on 20 November 1991.

In the Brief for the Accused-Appellant,[12] submitted by the Public Attorney's Office, only one (1) error is assigned:

"The trial court gravely erred in convicting Accused-Appellant Rolando dela Cruz despite the weakness and lack of concreteness of the prosecution's evidence on the question of whether or not the accused-appellant is the author of the crime charged."

Clearly, the issue raised is factual and involves the credibility of the witnesses, a matter addressed to the trial court[13] because it is in a better position to decide such questions, having heard the witnesses and observed their deportment and manner of testifying during the trial.[14] Hence, its findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[15] That absence is all too evident in the instant case. The identity of the appellant and his participation in the daring robbery were established beyond doubt principally by the testimonies of Abel Requejo and Mrs. Catalina Dionisio. The appellant sought to discredit the evidence for the prosecution as regards his identification on the basis of the alleged weakness of the testimony of the driver of the passenger jeepney, Sotero Dionisio, who admitted that since he was driving the vehicle and managed only a quick glance at the mirror, he could not state what role the appellant played. The appellant likewise challenges the testimony of Abel Requejo which allegedly did not actually show that the latter positively saw the face of the former. The very portions of the transcripts of the stenographic notes of the testimonies of the said witnesses, reproduced by the appellant in his Brief to prove the foregoing conclusions, establish a contrary conclusion. Although Sotero admitted that he was driving the jeepney throughout the incident, it is clear from his testimony that although he was unable to state the specific role played by the appellant during the hold-up, he (Sotero) was

able to identify the latter as one of the five (5) hold-uppers inside the jeepney. Thus, even from the portion quoted by the appellant, We have the following question propounded to and answer given by Sotero:

"FISCAL BAUTISTA

(to witness)

Q

So, in other words, will you be able to tell the court, what role the accused played actually inside the jeepney from the time the gun was poked to your head up to the time that you stopped?

A

I cannot really state what role he played, but I saw him there inside the jeepney."[16](Emphasis supplied)

x x x

The defense was quite unfair to this Court in reproducing the above-quoted portion for only that segment favorable to the appellant was cited. It is to be observed that on the very page containing the above-quoted portion is to be found Sotero's categorical declaration that the appellant was indeed one of the five (5) hold-uppers. Thus:

"FISCAL BAUTISTA

Q

What about the man holding a gun, was he in the group?

A

Yes, sir.

Q

Now, would you be able to identify any of those five men?

A

Yes, sir.

Q

Who among the five men can you identify?

A

I can identify at least two if I can see them.

Q

Now, will you look around inside the courtroom and tell the Honorable Court if any of those five men is (sic) inside the court room today?

A

Yes, sir.

Q

Will you please look around and point to the man?

INTERPRETER:

Witness pointing to a person who answers in (sic) the name of Rolando dela Cruz."[17](Emphasis supplied)

Aside from this, the following answers of witness Requejo on cross-examination -- also quoted in the Brief -- are erroneously interpreted to mean that the said witness did not see the appellant's face:

"FISCAL BAUTISTA

(to witness):

Q

So, you are saying that the accused poked a knife at you while you were facing one another?

A

Yes, sir.

x x x

Q

So, while you were doing these, you are (sic) more concentrated in looking at your watch and your wallet?

A

Yes, sir.

Q

So, you have no time in looking (sic) at that person poking the knife?

A

Yes, sir."[18]

We are at a loss as to how these questions and answers could have been misunderstood and used to support the appellant's conclusion. It is clear that the said witness was "facing" the appellant during the hold-up. The answer to the last question reproduced above confirms the fact that indeed, the witness was facing the appellant and therefore, had an unobstructed view of his face.

The identification of the appellant as one of the hold-uppers was further bolstered by the testimony of Catalina Dionisio who declared thus:

"FISCAL BAUTISTA

(to witness)

Q

With respect to those five companions together with that man, could you see whether anyone of them is now present in this court?

A

Yes, sir.

Q

Will you point to him if anyone of those persons who were divesting the passengers is inside the court room now?

A

Yes, sir.

Q

Will you please point to him?

INTERPRETER:

Witness pointing to a person who answers in (sic) the name of Rolando dela Cruz."[19]

In the light of his being positively identified as one of the hold-uppers, the appellant's defense of alibi, which the trial court erroneously characterized as denial,[20] must necessarily fail. Deeply rooted in our criminal jurisprudence is the rule that alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove;[21] it cannot prevail over the positive identification of the accused by the witnesses.[22] Moreover, for that defense to prosper, it is not sufficient that the accused prove that he was somewhere else when the crime was committed; he must also show that it was physically impossible for him to have been at the scene of the crime at the time the crime was committed.[23] That physical impossibility was not present in this case. Appellant admitted in open court that he was in his house -- a mere sixty (60) meters from the scene of the incident -- at the time the crime was committed.[24] Given such proximity, it was not only possible but also quite probable for him to have been at the crime scene at the time of the crime's commission.

We also agree with the trial court that the crime committed by the appellant and his confederates, whose identities remain unknown, is robbery with homicide (robo con homicidio) defined and penalized under Article 294(1) of the Revised Penal Code which reads:

"ART. 294. Robbery with violence against or intimidation of persons -- Penalties. -- Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed."

x x x

To sustain a conviction for robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any essential element of a crime.[25]

There is not the slightest doubt in Our minds that the appellant and his unidentified cohorts employed violence against and intimidation of persons to consummate their criminal intent to take away, for personal gain, the personal property of the passengers of the jeepney. One of them used a bladed weapon to stab to death one of the victims, Venancio Estacio. The others also used bladed weapons and a firearm to intimidate and threaten the other passengers into turning over their personal property. One of the victims, Abel Requejo, was divested of a Seiko gold watch worth P800.00, cash of P200.00 and other valuables and important papers.

Conspiracy among the perpetrators was duly proven. Pretending to be passengers, they boarded the jeepney at the same time near the foot of the Lambingan Bridge. When the hold-up was announced, each moved with precision in pursuit of an assigned task -- obviously earlier agreed upon. One poked his gun at the head of the driver while the rest pointed their knives at the passengers. At the same time, they divested the said passengers of their valuables. They all alighted from the jeepney at the same time with the loot. These acts, taken together, are

sufficient to establish the existence of a common design among the appellant and his companions to commit the offense charged. Otherwise stated, such acts showed nothing less than a joint purpose and design, and a concerted action and community of interest; these establish beyond reasonable doubt the existence of conspiracy.[26] Direct proof is not essential to prove conspiracy;[27] it may be shown by acts and circumstances from which may logically be inferred the existence of a common design,[28] or may be deduced from the mode and manner in which the offense was perpetrated.[29]

That a homicide was committed on the occasion of the robbery is equally beyond dispute. Venancio Estacio was stabbed twice in his chest at the time he was divested of his personal property: He was pronounced dead on arrival upon reaching the hospital. For robbery with homicide to exist, it is enough that a homicide would result by reason or on the occasion of the robbery.[30] The rule is likewise settled that when homicide takes place as a consequence or on the occasion of a robbery, all those who took part in the robbery are guilty as principals of the crime of robbery with homicide unless proof is presented that the accused tried to prevent the killing.[31] There is no showing that the appellant tried to prevent the stabbing of Venancio.

Appellant then is liable for the crime of robbery with homicide under Article 294(1) of the Revised Penal Code. The crime was committed with the aggravating circumstances of band[32] and craft.[33] While the first is not specifically alleged in the information, it was proven without objection on the part of the defense. Hence, it can be properly appreciated against the appellant.[34]

An offense shall be deemed to have been committed by a band whenever more than three (3) armed malefactors shall have acted together in the commission thereof.[35] In the instant case, it was duly proven that there were five (5) armed malefactors. It should be emphasized here that the circumstance of band is inherent in brigandage and in robbery in band; if, however, the information does not charge these offenses, as in this case, then such circumstance can only, be appreciated as a generic aggravating circumstance.[36]

Craft is present because the appellant and his co--conspirators pretended to be bona fide passengers of the jeepney so as not to arouse any suspicion as regards their criminal scheme to commit the robbery.[37]

The penalty for robbery with homicide is composed of two (2) indivisible penalties, namely reclusion perpetua to death. Taking into account the two (2) generic aggravating circumstances of band and craft, and pursuant to the rule laid down in the second paragraph, Article 63 of the Revised Penal Code, the greater penalty -- death -- should be imposed. In view, however, of Section 19(1), Article III of the 1987 Constitution which prohibits the imposition of the death penalty, and in view of the rule laid down in *People vs. Muñoz*,[38] the appropriate imposable penalty should be reclusion perpetua.

The trial court erroneously imposed the penalty of life imprisonment. This Court has ruled time and again that the penalty of reclusion perpetua is not synonymous with life imprisonment for the reason that the latter does not carry with it accessory penalties and does not have a definite duration. Furthermore, it is not the penalty provided by law for the crime of robbery with homicide.[39] It is extremely exasperating to find some judges still unable to heed Our pronouncement on this matter.

Finally, since every person criminally liable for a felony is also civilly liable,[40] the trial court should also have made a disposition on the appellant's civil liability to Abel Requejo, the passenger who was divested of his watch and cash.

IN VIEW OF ALL THE FOREGOING, the appealed decision of the Regional Trial Court in Criminal Case No. 88-67914 is hereby **AFFIRMED** subject to the following modifications: (a) the penalty should be reclusion perpetua, instead of life imprisonment, (b) consistent with the current policy of this Court, the indemnity should

be increased from P30,000.00 to P50,000.00 and (c) the appellant is hereby ordered to return to Abel Requejo the Seiko gold watch -- if that is no longer possible, the appellant should indemnify the latter its value in the sum of P800.00 -and pay the sum of P200.00 as reimbursement for the money taken from the said victim.

Costs against the appellant.

SO ORDERED.

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

[1] Original Records, 1; Rollo, 6.

[2] Id., 10.

[3] Id., 157-161; Id., 16-20.

[4] Original Records, 161; Rollo, 20.

[5] Original Records, 159-160; Rollo, 18-19.

[6] Original Records, 160-161; Rollo, 19-20.

[7] Original Records, 161; Rollo, 20.

[8] Id., 162; Id., 21.

[9] Id., 163.

[10] Id., 1.

[11] Id., 22.

[12] Id., 29-41.

[13] *People vs. Verzo*, 65 SCRA 324 [1975].

[14] *People vs. Garcia*, 89 SCRA 440 [1979]; *People vs. Bautista*, 92 SCRA 465 [1979] *People vs. Abejuela*, 92 SCRA 503 [1979]; *People vs. Pido*, 200 SCRA 45 [1991].

[15] *People vs. Gonzaga* 77 SCRA 140 [1977]; *People vs. Oñate*, 78 SCRA 43 [1977]; *People vs. Ramos*, 167 SCRA 476 [1988]; *People vs. Payumo*, 187 SCRA 64 [1990]; *People vs. Vocente*, 188 SCRA 100 [1990].

[16] TSN, 14 July 1989, 8.

[17] TSN, 14 July 1989, 8.

[18] TSN, 21 September 1989, 9-10 quoted on page 8 of Brief of Appellant; Rollo, 38.

[19] TSN, 16 October 1989, 9.

[20] Judges should be careful to distinguish between alibi and denial. While denial is necessarily inherent in alibi, the former may be inconsistent with the latter as when the accused himself is at the scene of the crime but denies having committed the crime.

[21] *People vs. Dereje*, 56 SCRA 554 [1974]; *People vs. Santito*, 201 SCRA 87 [1991]; *People vs. Bugho*, 202 SCRA 164 [1991].

[22] *People vs. Esmael*, 37 SCRA 601 [1971]; *People vs. Mercado*, 38 SCRA 168 [1971] *People vs. Genoguin*, 56

SCRA 181 [1974] People vs. Cardenas, 56 SCRA 631 [1974]; People vs. Gonzaga, 77 SCRA 140 (1977); People vs. Barba, 203 SCRA 436 [1991].

[23] People vs. Brioso, 37 SCRA 336 [1971]; People vs. Tamani, 55 SCRA 153 [1974]; People vs. Diaz, 55 SCRA 178 [1974]; People vs. Dueño, 90 SCRA 23 [1979]; People vs. Mercado, 97 SCRA 232 [1980].

[24] TSN, 13 February 1990, 15; 17-18.

[25] People vs. Pacala, 58 SCRA 370 [1974].

[26] People vs. Lunar, 45 SCRA 119 [1972]; People vs. Custodio, 47 SCRA 289 [1972].

[27] People vs. Cabiling, 74 SCRA 285 [1976]; People vs. Cercano, 87 SCRA 1 [1978].

[28] People vs. Tingson, 47 SCRA 243 [1972].

[29] People vs. Alonzo, 73 SCRA 484 [1976].

[30] People vs. Saliling, 69 SCRA 427 [1976].

[31] People vs. Garillo, 84 SCRA 537 [1978]; People vs. Bernales, 94 SCRA 604 [1979].

[32] Article 14(6), Revised Penal Code.

[33] Article 14(14), id.

[34] People vs. Tabion, 93 SCRA 566 [1979].

[35] Article 14(6), Revised Penal Code, op. cit.

[36] AQUINO, R.C., The Revised Penal Code, vol. I, 1987 ed., 341, citing U.S. vs. De Torres, 5 Phil. 501 [1906]; U.S. vs. Sol, 9 Phil. 265 [1907]; People vs. Sawajan, 53 Phil. 689 [1927].

[37] People vs. Daos, 60 Phil. 143 [1934]; People vs. Vallente, 144 SCRA 495 [1986]; People vs. Lee, 204 SCRA 900 [1991].

[38] 170 SCRA 107 [1989]; see also People vs. Lee, supra.

[39] See People vs. Mobe 81 Phil. 58 [1948]; People vs. Abletes, 58 SCRA 241, [1974]; People vs. Gonzales, 58 SCRA 266 [1974]; People vs. Pilonos, 84 SCRA 167 [1978]; People vs. Sumadic, 113 SCRA 689 [1982]; People vs. Baguio, 196 SCRA 459 [1991]; People vs. Ramos, 203 SCRA 237 [1991]; People vs. Penillos, 205 SCRA 546 [1992].

[40] Article 100, Revised Penal Code.

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