

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIMON JAVA Y MERCADO, ACCUSED-APPELLANT.

G.R. No. 104611. November 10, 1993

Ponente: NOCON, J.

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NOCON, J.:

Convicted of the crime of robbery with homicide in Criminal Case No. 88-372 before the Regional Trial Court of Quezon City, Branch CIII, accused Felimon Java y Mercado interposed this present appeal. Enumerating eight (8) errors which the trial court allegedly committed, he dutifully discussed each of them and insisted on his innocence. Sequentially, we will analyze the merit of each of the said errors, to wit:

"I

"X X X IN HOLDING THAT SALVADOR CAMBAYA POSITIVELY IDENTIFIED ACCUSED-APPELLANT AS A PRINCIPAL ACTOR IN THE COMMISSION OF THE CRIME AT BAR.

"II

"X X X IN HOLDING THAT ACCUSED-APPELLANT COMMITTED ROBBERY AGAINST THE PERSONS OF MICHAEL VALDEZ AND VIRGINIA VALDEZ.

"III

"X X X IN GIVING CREDENCE TO THE TESTIMONY OF PASTOR VALDEZ IN SPITE THE FACT THAT HIS TESTIMONY WAS NOT FORMALLY OFFERED BY THE PROSECUTION.

"IV

"X X X IN HOLDING THAT VIRGINIA VALDEZ POSITIVELY IDENTIFIED ACCUSED-APPELLANT AS A PRINCIPAL ACTOR IN THE COMMISSION OF THE CRIME AT BAR.

"V

"X X X IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF ROBBERY WITH HOMICIDE.

"VI

"X X X IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF ROBBERY WITH HOMICIDE BASED ON EVIDENCE NOT ON RECORD.

"VII

"X X X IN NOT GIVING CREDENCE TO THE TESTIMONY OF COL. RODOLFO GARCIA AND OTHER DEFENSE WITNESSES.

"VIII

"X X X IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI OF ACCUSED-APPELLANT."[1]

The facts upon which the trial court based its decision convicting the accused are as follows:

At about 3:00 p.m. on March 19, 1988, at the V. Valdez Trading, a gavel and sand establishment located at P. Tuazon Street, Cubao, Quezon City, two men appearing to be customers, arrived. One of them proceeded to the office building while the other approached Salvador Cambaya, a truck helper, while the latter was weighing cement in front of the establishment. This man poked a gun at Cambaya, announced a hold-up, divested him of his P20.00 and ordered him to enter the office building where he and other employees and a customer were gathered in front of the counter by the man identified later as accused Felimon Java. The other man ransacked the drawers and found some money which he took. Then he proceeded to the room where Michael Valdez, the son of the owner of the establishment was. Michael was heard as saying "Wala sa akin ang susi" and "walang pera diyan." The employees gathered in front of the counter also heard something being destroyed and after a while, saw the man rush out holding a brown envelope. The two men hurriedly left.

Meanwhile, Virginia Cabate Valdez, the mother of Michael Valdez, was at the beauty parlor in front of their establishment. She was informed by the owner of the parlor that a commotion was going on at their place. She rushed out and was informed by her son Michael, that they had just been robbed of P50,000.00. Since Michael decided to run after the holduppers and he could not be stopped from doing so, she boarded the car of Michael, a Toyota, and went with him. They drove along 20th Avenue and turned left at Boni Serrano where Michael saw and pointed to the get-away vehicle of the holduppers, which was a maroon-colored passenger jeepney. Michael bumped the jeepney several times and turned left at Katipunan Road. However, the holduppers followed them and bumped their car several times at the rear and sides. Somewhere further along the Katipunan Road, one of the holduppers fired a gun hitting the rear glass of Michael's car. While the jeepney was side by side with their car, he fired more shots at them hitting Michael on the torso and on the left side of his body. As a result, Michael died. The holduppers sped away towards Quirino Labor Hospital.

Salvador Cambaya described to the Quezon City cartographer the physical characteristics of the man who accosted him as follows: "5'5" ang taas, mga 28-30 ang edad, maitim, mabilog ang katawan, kulot na medyo maikli ang buhok, pabilog din ang mukha." [2]

On the other hand, Mrs. Valdez described the man who killed her son as:

"Bilog ang mukha, maitim, bilog ang katawan, mga 35-40 ang edad, kulot ang buhok."[3]

On August 25, 1988 at around 11:00 a.m., Pat. Zaragosa, a police operative, went to see Mrs. Valdez and asked her whether she would be able to recognize the man who killed her son if she saw him again. Answering in the affirmative, she was brought to Quezon City Hall and advised to be observant. When they were on a street near the office of the Metro Manila Commission, she saw a man inside the building which was 20 to 25 meters away. She could see him from the neck up as the latter was facing the window. She positively declared that he was the gunman and could not be wrong because she could not forget the face, especially the eyes of the man who shot her son.

As a result of such identification, accused was arrested on August 26, 1988 and on August 29, 1988, an

information was filed with the Regional Trial Court of Quezon City charging him with the crime of Robbery with Homicide, which read as follows:

"That on or about the 19th day of March, 1988, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together, confederating with and mutually helping one another, with intent of gain, with violence and/or intimidation of person, did, then and there, willfully, unlawfully and feloniously (sic) VIRGINIA VALDEZ y CABOTE and MICHAEL VALDEZ y CABOTE, mother and son respectively, by then and there, pointing their respective firearms at them and thereafter take, rob and divested the victims' collection for the day amounting to P50,000.00, Philippine Currency, to the damage and prejudice of the said owner thereof in the total sum; that on the occasion of the said robbery, the said accused, conspiring together, confederating with and mutually helping one another with intent to kill attack, assault and employ personal violence against Michael Valdez y Cabote, by then and there shooting him with a .38 cal. revolver marked Smith and Wesson, hitting him on his left breast, thereby inflicting him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said Michael Valdez in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."[4]

At the trial of the case, Salvador Cambaya and Mrs. Valdez recounted the aforesaid facts. Mrs. Valdez testified further that her family spent P13,833.20 for the Manila Memorial Park lot, P55,000.00 for the funeral services and P20,000.00 for the wake or a total of P48,833.20.

Pastor Valdez, Michael's father testified that his establishment lost P50,000.00 to the robbers. He explained that Michael had collected P40,000.00 from a customer in Taguig, Rizal and the P10,000.00 came from the proceeds of the sale of construction materials that day. He handed the P10,000.00 to Michael to be placed together with the P40,000.00 in the cabinet.

The defense evidence consisted, among others, of the testimony of accused Felimon Java and his witnesses, namely: Col. Rodolfo Garcia, Patrolman Jose Malasa and Pfc. Mario Almariego. All their testimonies evinced the theory that accused could not have committed the crime charged as he was at the office of Colonel Rodolfo Garcia, who was then the Station Commander of the Quezon City Police Force at the precise time and date as that of the commission of the offense.

Felimon Java testified that he was a former Quezon City policeman; that he was dismissed from the service on April 24, 1987 in view of an administrative case against him for violation of domicile; that when he was separated from the service, he bought a tricycle to earn a living; that in the month of July, 1988, he was a member of the Quezon City People's Patrol serving as security guard for Sonny Pumarada; and that from August 1, 1988 up to the time of his arrest, he was working as civilian agent of Western Sector Command, Malacañang Park, Metro Manila. On August 26, 1988, he was at Quezon City Hall particularly at the Metro Manila Commission Compound, together with one Sgt. Caingles, conducting a surveillance, when he was apprehended by Patrolman Zaragosa and brought to the office of one Major Rosales at Kamuning, EDSA. He claimed that Major Rosales, being the Supreme of the Guardians Chapter and Pat. Zaragosa, a member thereof, had both an ax to grind against him because on January 13, 1987, he shot dead two marines who were members of the Guardians who attacked their headquarters at Kamuning, Quezon City during the coup attempt. He was then a sentinel at the said police headquarters.

On March 19, 1988, from 2:30 to 4:00 p.m., he was at the office of Col. Rodolfo M. Garcia asking for a letter of recommendation to Col. Guillermo Domondon for his reinstatement to the service. He presented to the court said letter of recommendation dated March 19, 1993, quoted herein as follows:

"Col. Guillermo Domondon

C, CI Division

Camp Crame, Q.C.

Dear Sir:

Please help bearer, Pat. Felimon Java in this reinstatement.

Regards,

Rudy"[5]

He brought the letter of recommendation to Col. Domondon but was informed by one Sgt. Rodriguez that the latter was out of town and that anyway, he already had a recommendation from Colonel Jaro, an aide of then Gen. Fidel Ramos. He didn't know about that Jaro recommendation but remembered that he had previously sought Col. Jaro to accompany him to see Col. Domondon when he was with the People's Patrol.

Pfc. Mario Almariego and Patrolman Jose Malasa corroborated his claim that he was at the office of Col. Garcia between 2:00 to 4:00 o'clock p.m. of March 19, 1988 for the purpose of securing a recommendation and that he lingered for some more time after getting the same.

Col. Rodolfo M. Garcia likewise confirmed the visit of the accused but also admitted that his office is swarmed with visitors everyday and he cannot memorize the names of people who see him.

He also said that the accused visited him again after he gave that note of recommendation asking for assistance to get employed. He remembered recommending him to a certain Sonny Pumarada who works at the Quezon City Hall.

After trial, accused was convicted of the offense charged, the dispositive portion of which read as follows:

"ACCORDINGLY, judgment is hereby rendered finding FELIMON JAVA Y MERCADO GUILTY beyond reasonable doubt as principal for the crime of Robbery with Homicide. Said Felimon Java is hereby sentenced to suffer a jail term of RECLUSION PERPETUA.

On the civil aspect said accused Felimon Java is hereby ordered to pay the spouses Pastor and Virginia Valdez the sum of P50,000.00 in relation to the robbery at bar, the sum of P50,000.00 as actual damages for the death of their son Michael Valdez, the sum of P100,000.00 as moral damages and another P100,000.00 as exemplary damages. No costs.

SO ORDERED."[6]

Going through the eight assignments of errors allegedly committed by the trial court we note that the thrust of the defense particularly in the first assignment of error, is centered on the want of positive identification of the perpetrator of the crime. The accused-appellant harped on the disparity in the cartographs of the supposed suspects, Exhibits "E" and "C," based on the descriptions given by the prosecution witnesses Salvador Cambaya and Virginia Valdez, respectively.

While conceding that the cartographs do not portray the same person, a comparison, however, of the descriptions given by said prosecution witnesses in their respective sworn statements previously quoted herein shows that except for the age range of the accused-appellant, all the details agree and point to one and the same person. Both descriptions speak of a person with a circular face, stocky physique and curly hair. Thus, it is not the witnesses' fault if the cartographs came up with slightly different drawings of the accused-appellant. The cartographer could have perceived their declarations along different lines. Nevertheless, the important factor is that both witnesses identified the accused-appellant in court when they came face to face with him and pinpointed to him respectively

as one of the robbers and the gunman.

While evidence as to the identity of the accused-appellant as the person who committed the crime should be carefully analyzed, the Court has consistently held that where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should be normally accepted.[7]

The witnesses in this case, particularly Mrs. Valdez, had a clear recollection of the identity of the assailant of her son. She categorically declared that she had a good look at him and could not forget his face, particularly his eyes. She was not the kind of person that would perjure herself just to get a man into trouble. She had no motive for filing the case against the accused-appellant other than to seek redress not so much for the loss of the earnings of their establishment but more so for the death of her son. In the face of her clear and positive testimony regarding the accused-appellant's role as the gunman of her son, as well as Cambaya's positive identification of the same person as the man who accosted him, there is no mistaking that accused-appellant is one of the perpetrators of the crime.

Accused-appellant next claims in his second and third assignments of errors, that the prosecution failed to establish the fact of robbery because only two witnesses testified to the same, namely: Cambaya, who declared that accused-appellant got his P20.00, and Pastor Valdez, whose testimony was not offered by the prosecution at the time he testified in court on November 14, 1989 and hence cannot be considered pursuant to Sections 34 and 35 of Rule 132 of the Revised Rules of Court.

Indeed, Section 34, Rule 132 of the Revised Rules of Court requires that for evidence to be considered, it should be formally offered and the purpose specified. This is necessary because a judge has to rest his findings of fact and his judgment only upon the evidence offered by the parties at the trial.[8]

Under the new procedure as spelled out in Section 35 of the said rule which became effective on July 1, 1989, the offer of the testimony of a witness must be made at the time the witness is called to testify. The previous practice was to offer the testimonial evidence at the end of the trial after all the witnesses had testified. With the innovation, the court is put on notice whether the witness to be presented is a material witness and should be heard, or a witness who would be testifying on irrelevant matter or on facts already testified to by other witnesses and should therefore, be stopped from testifying further.

In the case at bar, we note that Pastor Valdez was not one of the witnesses originally intended to be presented by the prosecution. He was merely called to the witness stand at the latter part of the presentation of the prosecution's evidence. There was no mention why his testimony was being presented. However, notwithstanding that his testimony was not formally offered, its presentation was not objected to either. Section 36 of the aforementioned Rule requires that an objection in the course of the oral examination of a witness should be made as soon as the grounds therefor shall become reasonably apparent. Since no objection to the admissibility of evidence was made in the court below, an objection raised for the first time on appeal will not be considered.[9]

Besides, even if the testimony of Pastor Valdez were not admitted, the robbery was established by the testimony of Cambaya who not only stated that his P20.00 was taken at the point of a gun but that accused-appellant's companion ransacked their office, found and fled away with some money. He was not sure only of the exact amount taken. At any rate, the amount stolen came to be known, when Mrs. Valdez who rushed to their office, after being informed of a commotion therein, testified to being informed by her son, Michael, that they have been robbed of P50,000.00. This statement is admissible as part of the *res gestae*, having been made immediately after a startling occurrence and before the declarant had time to concoct matters so that his utterance at that time was merely a reflex product of his immediate sensual impression. Said statement is admissible in evidence as one of

the exceptions to the hearsay rule on the ground of trustworthiness and necessity.

Zeroing in on Mrs. Valdez' identification of her son's assailant, subject of the fourth assignment of error, accused-appellant pointed out that at the time of the car chase, Mrs. Valdez was so tense, nervous and excited, continually hugging her son until the time that he was shot, so that her attention must have been focused on her son and not on the assailant. On top of that, Mrs. Valdez who was wearing eyeglasses admitted that she was crying at that time, so much so that the accused-appellant surmised that her glasses must have misted and blocked her vision.

Accused-appellant's conjectures have no basis in fact and collide with Mrs. Valdez' testimony that she had a good look at the assailant in the passenger jeep. Indeed some circumstances do not always produce the same effects as accused-appellant would want us to believe. Considering the relative positions of the passenger jeepney where the accused-appellant was riding in and the Toyota car driven by the victim with his mother as passenger, which were running side by side at high speed when the shooting occurred, we find it impossible for the assailant not to be seen and identified by Mrs. Valdez. A witness usually strive to remember the uncovered face of the assailant.[10] This, Mrs. Valdez must have done.

Accused-appellant's fifth and sixth assigned errors center on the alleged failure of the prosecution to prove that those who committed the robbery and those who killed the victim are one and the same persons as to establish the crime of robbery with homicide.

Not only are these arguments fallacious but have no leg to stand on. Prosecution witness Salvador Cambaya positively identified the accused-appellant as one of those who held him up as well as the establishment where he works. While Mrs. Valdez identified the same accused-appellant as the jeep passenger who shot and killed his son. Hence, the connection between the robbery and the homicide was sufficiently established.

True, the robbers in the case at bar had already fled with their loot when the shooting of the victim took place during his hot pursuit of the culprits. It is settled that where the deceased attacked and stopped the robbers when they had already come out of the store where the robbery was committed and got killed in the process, it cannot be denied that the act of killing was done in order to repel an aggression which, had it been effective, would have endangered the whole success of the robbery committed. It was done, in the final analysis, in order to defend the possession of the stolen property. It was therefore an act which tended to insure the successful termination of the robbery and secure to the robbers the possession and enjoyment of the goods taken.[11]

It has also been held that where the deceased followed the robbers after he had been robbed and by reason thereof, he was fired upon by one of the robbers, the crime is robbery with homicide.[12]

The same is true even if the murder was perpetrated at a place different from that of the robbery and after an appreciable interval of time.[13]

As to the accused-appellant's defense of alibi, subject of the seventh and eighth assignments of errors, accused-appellant contends that the same is supported by the testimony of no less than Colonel Rodolfo M. Garcia, Station Commander, QCPS, now Central Police District, who would have not sacrificed his name and integrity by testifying in his favor if it were not true that he was in the colonel's office at the time of the commission of the offense. While it may be true that accused-appellant indeed sought Col. Garcia's recommendation for reinstatement to the service on the date in question as borne out by the letter of recommendation itself, which is dated March 19, 1988, such fact does not conclusively prove that accused-appellant was at the colonel's office on said date and time as that of the commission of the offense charged. There was no logbook which recorded his visit nor the date and time thereof; nor was the letter of

recommendation recorded as having been issued by the colonel's office on said date. Hence, there is no independent proof showing that Col. Garcia issued said letter on March 19, 1988. The good Col. Garcia even admitted that he could not remember the other people who visited him on the said day or on any day for that matter. Likewise, the trial judge noted that accused-appellant presented this defense only long after the case has gone to trial and more importantly, he noticed that the testimony of accused-appellant himself provided the clue that indicated that his defense predicated on alibi has been merely contrived. Said the Judge in his decision:

"1. The centerpiece of the defense theory is the note of recommendation of Col. Rodolfo Garcia for Felimon Java dated March 19, 1988. On the date the accused by his own testimony, was still a tricycle driver as he joined the Quezon City People's Patrol only on July 1988 upon the recommendation of Col. Garcia.

"The testimony of Col. Garcia is that he recommended the accused to Mr. Pumarada of the Quezon City People's Patrol after that March 19, 1988 visit made by Java to him. But according to Java, when he went to the office of Col. Domondon to present the note of recommendation issued by Col. Garcia, a sergeant Rodriguez there told him that the Garcia note is unnecessary already because he already has the Jaro Letter attached to Java's record. Consequently, the Col. Jaro note must have preceded the Col. Garcia note- which is what the defense wanted to convey. Yet, in the latter part of Java's narration in court he stated that he was already with the People's Patrol when Col. Jaro accompanied him to Col. Domondon. Inasmuch as (the) Col. Jaro note came ahead of (the) Col. Garcia note and by the time the Col. Jaro note was given the accused was already in the Quezon City People's Patrol, then the Col. Garcia note could not have been issued on March 19, 1988 when Java was still a tricycle driver." [14]

Thus, notwithstanding the stature of accused-appellant's witnesses, their testimonies may be disregarded in the light of the other defense evidence at hand. Testimony to be believed must not only proceed from a credible witness but must be credible in itself and be able to stand the test of scrutiny along with the other testimonies. Thus, the accused-appellant's invocation of alibi is unavailing not only by reason of its inherent weakness but also because of the circumstances pointing to its contrived nature and his positive identification by the prosecution witnesses as one of the persons who participated in the robbery and shot the victim.

In recapitulation, not even one of the eight arguments of accused-appellant in support of his appeal proved its worth as an error. Not a tinge of doubt was created on the guilt of the accused-appellant. On the other hand, the prosecution evidence showed that the positive identification made of him by no less than two prosecution witnesses was direct, clear and positive.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** in toto being in accordance with law and the established facts of the case.

SO ORDERED.

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

[1] Rollo, pp. 59-60.

[2] Records, p. 263.

[3] Ibid., p. 248.

[4] Rollo, p. 3.

[5] Records, p. 262.

[6] Rollo, pp. 32-33.

[7] People v. Alvarez, G.R. No. 70446, 169 SCRA 730 (1989) citing People v. Bernat, G.R. No. 55176, 120 SCRA 918 (1983) and People v. Zapanta, 45 O.G. 1312)

[8] People v. Pecardal, G.R. No. 71381 (1986).

[9] Asombra v. Dorado, 36 Phil. 883.

[10] People vs. Cruz, G.R. No. L-37173, 133 SCRA 426 (1984) and People v. Alvarez, supra.

[11] People v. Gardon, 104 Phil. 371; People v. Salamuddin No. 1,52 Phil. 670.

[12] People v. Moises, 104 Phil. 1054.

[13] People v. Estabillo, 11 Phil. 150.

[14] Rollo, p. 30.

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