

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMENCIANO VASQUEZ, ACCUSED-APPELLANT.

G.R. No. 105008. October 23, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from a conviction for robbery with homicide laid down by the Regional Trial Court in Danao City (Branch 25) in the case of “People v. Domenciano Vasquez” in 1992. The facts surrounding the death of Tortillano Suplaag are as follows:

The victim, Tortillano Suplaag, is a thirty-year old farmer who also dabbled in trading livestock. As in other market days, Tortillano was in the Lawaan Public Market in Danao City with his brother-in-law Julito Capuno on February 9, 1991. Julito related that Tortillano conversed with herein accused-appellant Domenciano Vasquez about a carabao offered for sale. Tortillano and accused-appellant agreed to meet on February 12, 1991 at Magtagobto, Danao City where Vasquez’ neighbor and the owner of the carabao, Andres Castro, would bring the animal.

Araceli Capuno Suplaag recounted that on February 12, 1991, her husband had P28,000.00 which was intended for the purchase of livestock and he wore his Seiko Diver’s watch when he left with Julito for Magtagobto early that morning. Before reaching Magtagobto, at about ten o’clock in the morning, Julito and Tortillano were surprised by five armed men. Julito recognized one of them by face and later identified him as herein accused-appellant Domenciano Vasquez. Julito also heard the latter, who was some six meters away, shout: “They are here. Do not run.” Immediately after this, Vasquez began shooting Tortillano. The victim was hit and tried to run away but once Vasquez opened fire, his four companions began shooting both Julito and Tortillano. Julito was shot in the thigh but managed to run for safety by taking the path off the road. He left Tortillano there not knowing if his brother-in-law escaped as well.[1]

Upon reaching his parents’ home in Danasan, Danao City, Julito was asked by his father, Cristuto Capuno, why he was bleeding. After Julito told them of the ambush, he was brought by his brothers and sisters to the Danao General Hospital for treatment.

Cristuto proceeded to Magtagobto to look for Tortillano. On his way there, he met some members of the CAFGU who were informed about the same incident and together they went to look for Tortillano. The latter’s bullet-ridden body was found near the creek, naked. His wallet and wrist watch were also missing. On their way back with Tortillano’s body, they met the victim’s wife.[2]

On April 29, 1991, Domenciano Vasquez was charged in an Information for the crime of Robbery with Homicide:

“That on or about February 12, 1991, at 10:00 o’clock in the morning more or less, at Magtagobto, Danao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Domenciano Vasquez with intent to gain and with intent to kill, did then and there willfully, unlawfully and feloniously shoot Tortillano Suplaag with the use of a firearm thereby inflicting upon him - gunshot wounds - which

caused his instantaneous death, and thereafter took from him money amounting to P28,000.00 and his wrist watch worth P3,500, or in the aggregate sum of P31,500.00.

CONTRARY TO LAW.”[3]

Domenciano Vasquez claims he has an alibi. Natividad Vasquez, his wife testified that on February 12, 1991, his uncle, Uldarico Vasquez, arrived at about eight o’clock in the morning informing them that his wife was taken ill. Uldarico recounted in open court that after eating breakfast, Natividad prepared their provisions to be taken to the farm. At about nine o’clock in the morning, Uldarico and Domenciano set out for the latter’s farm in Anislagan, taking with them a bolo and a pick mattock. They stayed there until half past four in the afternoon or five o’clock, with Uldarico helping Domenciano in weeding the farm. Uldarico also claimed that the accused-appellant never left the place and had lunch with him there at the farm. The following morning, accused-appellant accompanied his uncle to the latter’s farm in Mantija and stayed there for three days. In August 1991, accused-appellant learned about the warrant for his arrest from his uncle who also went with him when he surrendered first to the Barangay Captain of Mantija and then to the Vice-Mayor at Danao City.[4]

After trial on the merits, Domenciano Vasquez was convicted of the crime as charged in the lower court’s decision dated January 8, 1992. The dispositive portion of said decision reads:

“WHEREFORE, the Court finds the accused Domenciano Vasquez GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and said accused is hereby sentenced to suffer the penalty of imprisonment of Reclusion Perpetua with all the accessory penalties provided by law and is further ordered to indemnify the heirs of Tortillano Suplaag the sum of P50,000.00 and the further sum of P31,500.00 representing the amount taken from the deceased Tortillano Suplaag consisting of cash of P28,000.00 and the value of the wrist watch of P3,500.00 and to pay the costs.

SO ORDERED.”[5]

Hence, this appeal. Vasquez argues that he should be acquitted because the trial court committed several errors in its decision. Accused-appellant contends, first, that since conspiracy was not alleged in the information, conspiracy cannot be appreciated and considered against him. Since the gunman who shot the victim was not identified there was a logical possibility that anyone in the group of five could have shot Tortillano, and because the acts of the alleged conspirators cannot be taken against accused-appellant, the latter should not have been convicted.

After an exhaustive and careful study of the evidence on record, we found nothing that serves to discredit the testimony of the prosecution’s eye-witness, Julito Capuno. His account was simple, clear and credible, specially because of his actual presence at the locus criminis. He himself was shot and was close enough to see their assailants. His testimony, not being flawed by vicious inconsistencies or improper motive is credible.

We concede that because of the prosecutor’s failure to allege conspiracy in the Information and to charge the four John Does who assisted accused-appellant, Vasquez cannot be held accountable for the acts of these unidentified men. However, there is sufficient proof that Vasquez shot Tortillano and led the other four in continuous gunfire against the two unarmed men. Julito testified:

Q Now, what happened after you heard Domenciano Vasquez (say `They are here. Do not run)?

A They fired shots immediately.

COURT TO WITNESS

Q Who fired the shots?

A Domenciano Vasquez.

Q To whom?

A To Tortillano Suplaag.

COURT:

Proceed.

CONT'D OF DIRECT BY FISCAL JOSE MANULAT:

Q Was Domenciano Vasquez alone when he shot Tortillano?

A They were many.

Q How many?

A Five (5).

Q Five including Domenciano?

A Yes, sir.

Q Do you know the other four?

A No, sir.

Q You said that Domenciano Vasquez fired first, who was hit by Domenciano Vasquez?

A Tortillano Suplaag.

Q How many times did Domenciano Vasquez fire?

A Many times.[6]

Even if no autopsy were conducted and no such report given in evidence to prove which bullet fatally wounded Tortillano, Vasquez' armed assault as the ostensible leader points to him as a principal perpetrator of the crime. It is therefore untrue that the gunman was not identified by Julito. It matters little that the eye-witness initially recognized accused-appellant only by face. Julito acted like any ordinary person in making inquiries to find the name that matched this face. Significantly, in open court, he unequivocally identified accused-appellant as their assailant.[7]

There is proof beyond reasonable doubt that accused-appellant fatally wounded the victim. Consequently, his liability for the victim's wrongful death is patent even without imputing the acts of the four John Does to him.

The second error attributed to the trial court pertains to accused-appellant's alibi. The Court agrees with the court a quo in this regard and concludes that his alibi is a fabrication primarily because of an eye-witness' positive identification of accused-appellant. In countless cases, we have declared that positive identification destroys the defense of alibi and renders it impotent.[8] Further, for alibi to merit serious consideration, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission.[9] Here, accused-appellant claims to have been in his farm at Anislagan when the assault transpired but failed to show that this farm is so far, he could not possibly have been in Magtagubto on the morning of February 12, 1991.

Accused-appellant also avers that the prosecution failed to establish the fact that the victim had P28,000.00 and a wrist watch in his possession. We agree that there is insufficient evidence of these claims. Araceli Suplaag's testimony that "he brought money with him because every time he left (their) house (she would) count the money"[10] and that she knew the amount to be P28,000.00 is not enough to prove that Tortillano really had that much on him. The same is true for Julito's claim that the victim had P28,000.00.[11]

More succinctly, there is not enough evidence on record to sustain a conviction for the complex crime of robbery

with homicide. It is necessary that the robbery itself be proved beyond reasonable doubt. Where there are no eyewitnesses to the alleged robbery, the latter cannot be presumed.[12] In the case before us, Julito Capuno ran away when they were being fired upon and learned of his brother-in-law's death later on. When Cristuto Capuno found the victim sprawled by the creek, the latter no longer had his clothes, money or watch. The prosecution did not present proof that accused-appellant divested Tortillano of his money and personal effects. Mere supposition to this effect does not meet the standard of proof beyond reasonable doubt required by law. Consequently, accused-appellant cannot be convicted of the crime of robbery with homicide where robbery was not proved.

This finding that the accused may not be convicted of the charge of robbery with homicide does not, however, save the day for him. Despite lack of adequate proof that he committed robbery and notwithstanding the fact that the information against him was one for robbery with homicide, he can still be convicted of simple homicide under Article 249 of the Revised Penal Code which he perpetrated when he, along with four others, fired at the victims and killed Tortillano in the process. *People v. Nimo*[13] clarified it thus:

“It is well-settled that in order to sustain a conviction for robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of the crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide.” [Emphasis supplied].

The treachery which attended the commission of the homicide as shown by the suddenness of the armed attack on the unsuspecting pair and their resulting inability to put up a defense,[14] however, must be appreciated as a mere generic aggravating circumstance, there being no allegation to that effect in the information. Abuse of superior strength, on the other hand, cannot be considered as an independent aggravating circumstance when treachery is present since the former is deemed to have been absorbed in the latter.[15] Since the homicide was attended by one generic aggravating circumstance, the imposable penalty should be the maximum period of reclusion temporal.[16]

There being no proof that the accused has been convicted of any of the crimes enumerated in Section 2 of the Indeterminate Sentence Law so as to disqualify him from the beneficial effects of the said law, Vasquez should suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as minimum period to twenty (20) years of reclusion temporal maximum as maximum period. Conformably with recent jurisprudence, he shall indemnify the heirs of the deceased Tortillano in the amount of fifty thousand (P50,000.00) pesos.

WHEREFORE, accused-appellant Domenciano Vasquez is hereby declared GUILTY of the crime of homicide under Article 249 of the Revised Penal Code. He shall suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as the minimum period to twenty (20) years of reclusion temporal maximum as the maximum period, and shall INDEMNIFY the heirs of Tortillano Suplaag in the amount of fifty thousand (P50,000.00) pesos. Costs against accused-appellant.

SO ORDERED.

Melo, Francisco, and Panganiban, JJ., concur.

Narvasa, C.J., (Chairman), on leave.

[1] TSN, October 15, 1991.

[2] TSN, October 12, 1991.

- [3] Filed by City Prosecutor Casiano C. Vailoces. Criminal Case No. 862. Rollo, p. 5.
- [4] TSN, November 5, 1991; November 6, 1991, pp. 6-10.
- [5] Penned by Judge Jose P. Soberano, Jr. Rollo, pp. 12-21.
- [6] TSN, October 15, 1991, pp. 6-7.
- [7] *People v. Feliciano*, 256 SCRA 706, May 15, 1996.
- [8] *People v. Fabrigas*, 261 SCRA 436, September 5, 1996. *People v. Alshaika*, 261 SCRA 637, September 11, 1996.
- [9] *People v. Daquipil*, 240 SCRA 314, January 20, 1995; *People v. Morin*, 241 SCRA 709, February 24, 1995.
- [10] TSN, October 16, 1991, p. 14.
- [11] Julito's testimony reads:
- Q How do you know that he was bringing money with an amount 28,000.00 pesos?
A Because he bought carabao.
- COURT TO WITNESS:
- Q You mean to say that carabao whom you intend to buy from Andres Castro was 28,000?
A No, your honor.
- Q Why did he take that amount?
A Maybe he brought that amount of 28,000 on the way to buy a live stock?"
- TSN, October 15, 1991, pp. 16-17.
- [12] *People v. Parel* 261 SCRA 720, September 16, 1996.
- [13] 227 SCRA 69 (1993) citing *People v. Pacala*, 58 SCRA 370 (1974).
- [14] *People v. Tuson*, 261 SCRA 711 (1996); *People v. Nazareno*, 260 SCRA 256 (1996).
- [15] *People v. de Leon*, 248 SCRA 609 (1995); *People v. Francisco*, 249 SCRA 526 (1995); *People v. Panganiban*, 241 SCRA 91 (1995).
- [16] Article 249 in relation to Article 64 (1), Revised Penal Code.

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