

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO JOSE @ DANNY, LIWAY-WAY CARPIO @ WAWAY, AND ABDUN SALAS, JR. @ JUNE, (AT LARGE), ACCUSED, RODOLFO CARLINGGA @ RUDY, ACC...

G.R. No. 107106. November 24, 1995

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Penalized to suffer the extreme penalty of death for the crime of robbery with homicide,[1] herein appellant Rodolfo Carlingga, alias "Rudy", the only member of the group of robbers who was arrested and brought to trial, pleads for his acquittal. His appeal is anchored on a lone assignment of error, i.e.:

"THE TRIAL COURT ERRED IN BELIEVING AURELIA DEL ROSARIO'S VERSION AS MORE RELIABLE AND CREDIBLE." [2]

The record discloses the following facts:

Fifteen minutes before 12:00 o'clock noon of September 22, 1981, Aurelia del Rosario, the dutiful housemaid of Manuel Nuñez and Fortunata Nuñez, was washing pants on the kitchen sink of her employer's house when she heard from the adjoining bodega of the store Mrs. Nuñez gasping for breath. Concerned, the maid was about to proceed to the store when she was halted by someone pointing an icepick at her back with an order to keep her mouth shut otherwise she will be killed. She turned around and faced the person who, apparently wanting to thwart any resistance, got some rags from the kitchen, covered her mouth with it and tied her hands behind. That person, Aurelia identified, was the appellant.

Appellant subsequently dragged her to the sala where she saw Liwayway Carpio, alias "Waway", the laundrywoman assigned every Sunday to wash the clothes of her employers, sitting on the sofa. Questioned by appellant if she knew either of them, Aurelia answered no. She was thereafter brought to and guarded at the bathroom. Two other men and the woman searched the house. Eight or nine minutes after, Aurelia was brought to her employers' bedroom, and queried where to find her employers' money and gun. After answering that she knew neither, Aurelia was brought to the room of her employers' son. Inside, two men held her by the shoulder while the other one pointed an icepick at her. Appellant was one of those who held her. Moments after, the appellant and his companions fled. Sensing that the robbers have left, Aurelia went to the store. Finding it closed, she proceeded to the store's bodega where she was greeted by the lifeless body of Mrs. Nuñez lying on the cemented floor with blood oozing from her mouth. Aurelia went out and cried for help from the neighbors. A local official and some policemen arrived to whom she narrated the event. One of those who responded was the assigned investigator, Police detective Marciano Roque. He arrived at the crime scene at around 12:00 o'clock noon to investigate. He noted that the lockers and cabinets inside the master's bedroom were forcibly opened and in disarray.

Notified of the fatal incident, Mr. Nuñez also arrived at around 2:00 o'clock in the afternoon from a visit to his in-laws. He was not able to reach his wife's remains in their house for it was already brought to the funeral parlor where he proceeded. Because of extreme personal grief, he did not view his wife's cold remains. He returned to their house. After checking their belongings, he discovered that about P15,000.00 in cash and some assorted jewelries with the aggregate value of P45,000.00 were missing.

Dr. Alberto M. Reyes, the doctor who conducted the autopsy examination on the cadaver, revealed that the body sustained twenty nine wounds, seventeen of which were located at the anterior chest wall and six at the anterior abdominal wall. The other wounds were found at the left arm, right forearm, left thigh and at the left side of the victim's face. Dr. Reyes observed that, judging from the sizes of the victim's wounds which ranged from 0.2 cm. to 0.8 cm., the wounds could have been caused by a sharp-pointed instrument akin to an icepick.

Appellant for his defense denies any participation in the crime. He asserts that he was at home at around 11:00 o'clock in the morning of September 22, 1981, tired from plying his route as tricycle driver. He took his lunch, rested for a while and took a bath. After half an hour, he resumed driving his tricycle. He insists that he never went to Caloocan City, although he admits that he is acquainted with a certain woman named "Liway", a vegetable peddler and a laundry woman whose residence was barely three arms length from his house.

Appellant's defense of alibi is inherently weak. Against positive identification by a witness, alibi cannot prevail. Aurelia's testimony on this material point is clear and unambiguous:

"Q:

You said you faced that person, were you able to recognize him?

"A:

No, sir. I do not recognize him.

"Q:

You mean you do not know him personally?

"A:

I do not know him personally, but I can recognize him.

x x x x x x x x

"Q:

Will you please go down to the witness stand and point the person whom you said pointed an ice pick at your back and placed a rag in your mouth?

(Witness going down the witness stand and pointed to a person who gave his name as Rodolfo Carlingga" (sic). (TSN of June 13, 1983.)[3]

The positive and categorical assertion of the prosecution's eyewitness with respect to appellant's active participation in the crime outweighs his alibi. The settled rule is that for alibi to prosper, it is not enough to prove that the appellant was somewhere else when the crime was committed, but he must likewise demonstrate that he could not have been physically present at the place of the crime, or in its immediate vicinity, at the time of its commission.[4] We quote with approval, in this connection, the trial court's observation:

"Moreover, the place where the accused claimed to be present which is Pasig, Metro Manila, at the date and time of the commission of the crime in in (sic) question is not very far from the crime scene which is B.F.

Homes, Caloocan City, so as to preclude the presence of the accused at the latter place. On this particular point it has been ruled that to establish alibi, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place ([citing] *People v. Palomas*, 49 Phil. 601)."[5]

As a last recourse, appellant cites three instances in Aurelia's testimony where she apparently contradicted her Affidavit executed on October 29, 1981, upon which ground he maintains that the eyewitness's testimony is highly incredible and unreliable. A closer scrutiny, however, indicates that the assailed inconsistencies refer to the sequence of events as to when Aurelia heard the victim gasping for breath, to which room or rooms she was taken at the height of the crime, and as to when the assailants left their victim's abode. We note that these are minor inconsistencies which in our considered view enhance more Aurelia's credibility. The Court cannot lose sight of the fact that it was more than a month after the happening of the crime when she executed the Affidavit and more than two years later in 1983, when she was called to recount the dreadful incident. Evidently, she must have forgotten the exact and minute sequence or details of the incident in question. At any rate, the claimed inconsistencies are all inconsequential as appellant himself does not seriously dispute his identification. In fact, appellant does not profess that he was mistakenly or maliciously identified by the prosecution's eyewitness. The well entrenched rule is that the assessment of the credibility of witnesses is left largely to the trial court because of its opportunity, unavailable to the appellate court, to see the witnesses on the stand and determine by their conduct and demeanor whether they are testifying truthfully or simply lying.[6] The evaluation by the trial court on the credibility of the prosecution's eyewitness, absent any showing of arbitrariness, as in this case, is conclusive upon the Court.

The record, moreover, is bereft of any evidence that Aurelia was ill motivated to implicate the appellant, a total stranger to her. In the absence of ill-will, it is hardly credible that a witness would prevaricate and cause damnation to one who brought no harm or injury.[7] Besides, unlike appellant's defense, only her testimony has some corroborative support from the other witnesses. Aurelia's testimony, in brief, is worthy of full faith and credit.

In sum, after a meticulous review of the record we find appellant's identity and participation in the crime of robbery with homicide was convincingly proven beyond reasonable doubt. Noting, however, that Section 19, par. (1), Article III, of the 1987 Constitution proscribes the imposition of death penalty, his penalty should accordingly be reduced to reclusion perpetua. Although Rep. Act 7659, the law that reimposes the death penalty for heinous crimes, was subsequently enacted, the complex crime in this case was committed prior to its enactment; hence its inapplicability to appellant.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** except as regards the penalty of death therein imposed which is hereby reduced to reclusion perpetua.

SO ORDERED.

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

[1] Decision, RTC, Br. CXXI, Caloocan City.

[2] Brief for the Appellant, p. 1; rollo, p. 54.

[3] Decision, p. 9; rollo, p. 76.

[4] People v. Mallari, G.R. No. 104891, February 6, 1995.

[5] Decision, pp. 11-12; rollo, pp. 78-79.

[6] People v. Pija, et. al. G.R. No. 97285, June 16, 1995.

[7] People v. Villagrancia, 219 SCRA 212 (1993).

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