

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN TAÑOTE, SALVADOR DELA CRUZ, SALVADOR TORRENTE AND RODRIGO TAOC, ACCUSED. SALVADOR TORRENTE, ACCUSED-APPELLANT.

G.R. No. 109769. November 28, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Salvador Torrente, together with Juan Tañote, Salvador dela Cruz and Rodrigo Taoc were charged with the crime of robbery with homicide before the Regional Trial Court, Branch 52, Virac, Catanduanes, allegedly committed as follows:

"That on or about the 22nd day of August, 1987 at more or less 7:30 o'clock in the evening, at barangay Inalmasinan, municipality of Caramoran, province of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another for a common purpose, did then and there, willfully, unlawfully and feloniously by means of violence and intimidation forcibly enter the house and store of one Pastor Verano, Sr. and once inside, willfully, unlawfully and feloniously, with intent to gain and against the consent of said owner Pastor Verano, Sr., take, steal and carry away, Ten Thousand Pesos (P10,000.00), Philippine Currency to the damage and prejudice of his heirs in the said sum; that on the occasion of the robbery and for the purpose of enabling them to take, steal, and carry away the above mentioned amount, herein accused in pursuance of their conspiracy, did then and there, willfully, unlawfully and feloniously and with evident premeditation and taking advantage of their superior number and strength as a band, and with intent to kill, treacherously attack, assault, sho(o)t and use personal violence upon the persons of Pastor Verano, Sr. and Pastor Verano, Jr. who were fatally wounded which resulted to their instant death, and during the struggle Jesus Tapanan, a member of the said band was also killed.

That this offense is aggravated by nighttime, by a band, superior strength, dwelling and with the use of an unlicensed firearm.

ALL ACTS CONTRARY TO LAW."^[1]

Three of the accused, Juan Tañote, Salvador dela Cruz and Rodrigo Taoc, initially pleaded not guilty but, upon re-arraignment, pleaded guilty to the offense charged. Herein appellant Salvador Torrente was not apprehended and remained at large. Considering, however, the gravity of the offense, the trial court ordered the prosecution to present its evidence against the accused in custody.^[2]

On August 22, 1988, the trial court rendered judgment finding the aforesaid three accused guilty of robbery with homicide and disposing in this wise:

"In the light of all the foregoing, the Court finds all three accused JUAN TAÑOTE, SALVADOR DELA CRUZ and RODRIGO TAOC guilty beyond reasonable doubt of the crime of Robbery with Homicide, with

the aggravating circumstance of having used an unlicensed firearm, but with the mitigating circumstance of plea of guilty, for which they are each hereby sentenced to reclusion perpetua and to jointly and severally pay the heirs of the deceased father and son Pastor Verano, Sr., and Pastor Verano, Jr.

- (a) P15,000.00 as actual damages;
- (b) P60,000.00 for the death of the said deceased father and son; and
- (c) moral and exemplary damages in the total sum of P40,000.00.

Costs de o(f)icio."^[3]

Sometime in 1990, appellant was eventually arrested in Manila. Upon arraignment with the assistance of counsel, he pleaded not guilty.^[4] On November 27, 1990, after trial on the merits, judgment was rendered finding him guilty as charged, and with the following dispositive portion:

"ACCORDINGLY, judgment is hereby rendered finding accused Salvador Torrente guilty beyond reasonable doubt of Robbery with Homicide, defined and penalized under Article 294, paragraph 1 of the Revised Penal Code, and is hereby sentenced to reclusion perpetua.

In line with the Decision dated August 22, 1988, finding Torrente's co-accused Juan Tañote, Salvador dela Cruz and Rodrigo Taoc equally guilty of the same offense, he is also hereby adjudged jointly and severally liable with the aforementioned accused, to pay the heirs of the deceased Pastor Verano, Sr. and Pastor Verano, Jr., the sum of P15,000.00 as actual damages; P60,000.00 for the death of said victims; and moral and exemplary damages in the sum of P40,000.00.

Costs de oficio.

SO ORDERED."^[5]

Appellant is now before us, impugning his conviction and assailing the trial court for allegedly having erred:

1. In finding that appellant was one of the men who robbed and killed Pastor Verano, Sr. and Pastor Verano, Jr.;
2. In not giving credence to appellant's defense of alibi;
3. In holding that the accused fled after the commission of the offense; and
4. In not acquitting appellant on the ground of reasonable doubt.^[6]

The People's version of the factual antecedents of this case is presented in this Counter-Statement of Facts in the brief filed by the Solicitor General, with page references to the transcript of the stenographic notes taken at the trial of this case:

"About 7:00 o'clock in the evening of August 22, 1987, Pastor Verano, Sr. and his wife, Nery Verano, were preparing to take their dinner at their residence at Inalmasinan, Caramoran, Catanduanes. With them were Lilia Braga and Pastor Verano, Jr., both children of Verano, Sr. by his first marriage. Verano, Jr. came in order to get some money for his trip abroad (TSN, October 14, 1991, pp. 5-6).

"That same evening, at a house adjoining the compound of the Veranos, Miguel Solero, a farmer, was preparing to bring some splitted rattan to Verano, Sr., who regularly bought his (Solero's) rattan. About 7:00 o'clock P.M., Solero reached the residence of the Veranos where they had a store, but was prevented from entering the gate by Rodrigo Taoc, who poked a gun at him (Solero) and told him not to shout. Appellant stood beside Taoc, holding a flashlight. Solero recognized appellant for he had stayed with Solero at his hut in Maycamagong, Maraubos for a week, sometime in July, 1987 while gathering rattan. Nearby, Juan Tañote,

Salvador dela Cruz, and Jesus Tapanan stood by the main door of the Veranos' store. When Tañote, dela Cruz and Tapanan began pushing the front door of the store, Taoc and appellant left Solero who went towards the house of Dioscoro -Clavano nearby, and told Clavano and his companion, Domingo Burac, that the Veranos were being robbed (TSN, August 30, 1991, pp. 35-41, 45--46, 50-55).

"Alarmed by the barking of dogs and the commotion outside, Verano, Sr. opened the kitchen door, went to their adjoining store and got a flashlight. Thereafter, he went to the sala and opened the main door of the house. He heard somebody say, 'hold-up.' The same was also heard by Nery Verano and Verano, Jr. who stood (up) from the dining table at the kitchen and proceeded towards the door to the sala. They saw Verano, Sr. being held by Jesus Tapanan and Salvador dela Cruz. Before Nery Verano and Verano, Jr. were able to enter the sala to assist Verano, Sr., they were stopped by Juan Tañote who entered the house through the kitchen door, and threatened them with a gun. Then, a shot was heard coming from the sala. Seeing that his father was bleeding, Verano, Jr. struggled with Juan Tañote, enabling Nery Verano to run back to the kitchen. Then two gunshots were heard coming from where Verano, Jr. was, and Nery Verano saw Verano, Jr., slum(p) to the floor. Before Nery Verano could hide in the kitchen, appellant came through the door and poked a gun at her (TSN, October 14, 1991, pp. 7-11, 2-23; Exh. 'F,' p. 184 of Record).

"Jesus Tapanan, who was severely wounded during the fray, was brought outside the house by Juan Tañote and Salvador de la Cruz. Thereat, Tapanan subsequently died. After that, Juan Tañote returned to the kitchen where Verano, Jr.'s fallen body was and fired at it. After appellant and his companions had fled, Nery Verano saw that her husband and stepson were dead. She also found that the sales for the day in the sum of P500.00, which was kept in a locker at the store, and the P10,000.00 for Verano, Jr.'s trip, were gone (Exh. 'E-3,' p. 188 of Record: TSN, October 14, 1991, pp. 11-13, 18-23).

"In the morning of the following day, August 23, 1987, Francisco Padayao, a farmer of Inalmasinan, was at his hut by the river in Maraubos, Iraya, splitting rattan. With him were his common-law wife, Conchita Padayao, Junior Torrente and his wife, Jovita, and Juan Torrente. At around 5:30 a.m., Rodrigo Taoc arrived at Francisco Padayao's hut. About twenty minutes after, appellant, Salvador dela Cruz and Juan Tañote also arrived at Francisco Padayao's hut. Appellant asked for some food from Francisco Padayao and the latter gave him some. While appellant's group was eating by the edge of the river, Francisco Padayao observed that Salvador de la Cruz' hand was dripping with blood. Padayao also saw that appellant had two guns, one was a long firearm while the shorter one was tucked on his left waist. After eating, Padayao overheard appellant and Juan Tañote say that their trip was unlucky. Appellant said, 'never mind, if our trip is (sic) unlucky, we got two and we lost one,' while gesturing by running his forefinger across his neck from right to left. Thereafter, about 7:30 A.M., the group prepared to leave. Before leaving, appellant told Padayao not to tell anyone that they had passed by (TSN, August 30, 1991, pp. 5-12).

"Padayao's group went back to Inalmasinan on August 24, 1987 and learned that Verano, Sr. and Verano, Jr. were killed two days earlier. At 6:30 o'clock that evening, Francisco Padayao went to the wake of the Veranos and told Nery Verano about the four (4) men who passed by his hut in Maraubos (TSN, August 30, 1991, pp. 30-a, 30).

"The bodies of Verano, Sr. and Verano, Jr. were autopsied by Dr. Santelices. In his medico-legal report dated August 26, 1987, he found that Verano, Sr. died of 'C-R arrest, exsanguinating hemorrhage gunshot and stabbed (sic) wounds, chest' (Exh. 'A' and 'A-2', p. 30 of Record), while Verano, Jr.'s death was due to 'C-R arrest, exsanguinating hemorrhage, gunshot wound, head' (Exh. 'B' and 'B-2', p. 32 of Record). (TSN, August 30, 1991, pp. 2-3; TSN, October 14, 1991, pp. 28-29)."[7]

On his part, appellant interposed the defense of alibi and mistaken identity. He claims that he could not have been one of the perpetrators because on August 22, 1987, when the alleged incident took place, he was in the forest of Maraubos gathering rattan, together with his wife and daughter and several other persons, namely, Francisco Padayao and his common-law wife, Conchita; Jose Torrente, Jr. and his wife, Jovita; Juan Torrente and his wife,

Vilma; and Pio Torrente and his wife, Shirley. They stayed in that place from August 13, 1987 until August 25, 1987.

On August 25, 1987, appellant went home to Coripdas, San Miguel, Catanduanes. On August 27, 1987, he and his wife went to Mulanay, Quezon after receiving a telegram, informing them of the death of his father-in-law. Appellant stayed in Quezon for five months and thereafter went to Manila where he worked in a construction firm.

Appellant further testified that sometime in June, 1991, Mrs. Verano went to the Provincial Jail and, upon seeing him, commented that "he seems not to be the person." This fact was corroborated by the testimony of the jail guard, Leo Tatel.

A thorough review of the records convinces us that a judgment of conviction is in order.

The assigned errors hinge on the issue of credibility. The Court cannot detach this case from the settled rule that when the issue of credibility of witnesses is involved, the appellate court will generally not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked which, if considered, might affect the result of the case.[8]

We have carefully scrutinized the evidence of record to ferret out any possible bases for misperception or oversight on the part of the court below but we have found none. Indeed, there is no reason to doubt the identification of appellant by the prosecution witness. Contrary to his claim, the identification was positive and unmistakable.

Mrs. Nery Verano, the wife of one of the victims, gave this testimony:

"Q And you said you went towards the kitchen, where you able to reach the kitchen?

A No, sir.

Q Why were you not able to reach the kitchen?

A I did not reach the kitchen, because another man with a gun entered.

COURT

Q Where did that man enter?

A That man passed thru the kitchen door.

PROSECUTOR

Q By the way, was your kitchen lighted?

A Yes, sir.

Q What kind of lamp or light?

A Pressure lamp (Petromax).

Q And when you met that man with a gun as you were going to the door of your kitchen, what happened?

A That man poked his gun at me.

Q And then, what did you do?

A I went to the place where we cooked.

Q Could you recognize that man who poked that gun at you while you were going to the kitchen door?

A Yes, sir.

Q Will you please look around and tell us if that man is present in court?

A (Witness pointing to accused Salvador Torrente)."[9]

The relationship of this witness with the victim does not discredit her testimony. On the contrary, the fact that the principal witness is the victim's wife even lends more credence to her testimony as her natural interest in securing the conviction of the guilty would deter her from implicating persons other than the culprits for, otherwise, the latter would thereby gain immunity.[10]

Appellant would also like to make capital of the alleged inconsistency between the description of the assailant given by the victim's wife in her sworn statement and his actual physical features. He claims that the witness described the assailant as one with curly hair and of regular build, whereas appellant stands 5 feet and 1 inch tall and has straight hair. The supposed inconsistency is more apparent than real.

A person who measures a little above 5 feet is customarily considered as being of a normal and average height for a Filipino. The slight change in hairstyle, which could actually be varied as often as one desires, is of negligible effect when viewed against the positive identification of herein appellant as one of the malefactors who committed the crime, obviously by reason of his facial features and appearance which are indisputably the most common and ordinarily reliable means of ascertaining identity.

Appellant was also identified by the other prosecution witness, Miguel Solero, who declared that:

"PROSECUTOR

Q You said you were poked with a gun while you were in the gate of the house of Pastor Verano, did you see the person who poked his gun at you?

A Yes, sir.

Q Who poked a gun at you?

A Rodrigo Taoc.

Q When you were poked with a gun, was there any person around?

A Yes, sir.

Q Who were they?

A Juan Tañote, Salvador dela Cruz, Jesus Tapanan and Salvador Torrente.

PROSECUTOR

Q Where was Salvador Torrente at that time?

A He was beside a man who is poking the gun at me.

Q How about Juan Tañote, Salvador Dela Cruz and Jesus Tapanan, where were they?

A They were in front of the main door of the store.

Q How far were they from you?

A More than two (2) arms length.

Q When you said it was Rodrigo Taoc who poked the gun at you, and beside him (was) Salvador Torrente, how far (was) Salvador Torrente from you?

A (Witness demonstrating a distance of three [3] feet).

Q If this Salvador Torrente which you said is in court, can you point to him?

A Yes, sir.

Q Please point to him?

A (Witness pointing to the accused)."[11]

Miguel Solero could not have been mistaken. He already knew appellant even prior to the time of the incident, since appellant had even stayed in his hut in Maycamagong for one week while gathering rattan.[12]

The contention of appellant that the behavior of Miguel Solero in not telling anybody about the incident is not in accord with the common experience and observation of mankind, hence it seriously impairs his credibility, is decidedly bereft of merit. Pertinent portions of his testimony reveal that he actually told Domingo Burac and Dioscoro Clavano about what happened. Thus, he testified as follows:

"COURT

Q What did you do after Rodrigo Taoc and Salvador Torrente left you?

A I ran.

Q Where did you go?

A I went to the house of Dioscoro Clavano.

Q How far was that from the store of the Verano.

A It is the house next to our house.

Q Why did you go there instead (of) your own house?

A Because that is the place where I saw people drinking.

Q Proceed.

PROSECUTOR

Q And what did you do when you reached the Clavano's house.

A I told them that there were robbers in the house of Pastor Verano.

Q And then, after that, what did you do?

A I went home."[13]

x x x

"ATENCIA

Q When you were in the house of Clavano when you said you heard the first shot, did it not occur to you to mention to any person there that the shot could have come from the direc-tion of the house of Verano?

A Yes, sir.

Q And yet, you did not make any comment on that to the people who are drinking in the house of Dioscoro Clavano?

A Yes, sir, I even told them that Pastor Verano is being held up.

COURT

Q What was told them was that the store of Pastor Verano was being robbed, not Pastor Verano, himself?

A Yes, sir.

ATENCIA

Q To whom did you say that, name the person?

A Domingo Burac and Dioscoro Clavano.

Q There were only two of them, drinking?

A Yes, sir.

Q They were drinking gin?

A Tuba, sir.

Q What did Burac and Clavano say when you told them that the store of Verano is about to be robbed?

A They did not go out, because they were also afraid, since they heard the shot.

Q Did they tell you that they were afraid, because of the shot they heard?

A That is what I observed from them, because they were not even able to go out of the place when they heard the gunshot."^[14]

The credibility of Miguel Solero and Nery Verano is further enhanced by the fact that these eyewitnesses had no ill feelings against appellant. When the witness does not appear to be biased against the accused, his or her assertions as to the identity of the malefactor should be given full faith and credence.^[15] On the other hand, the ill motives imputed by herein appellant to the other prosecution witnesses, that is, Francisco Padayao and his common-law wife, Conchita, even if true is inconsequential considering that their testimonies are merely corroborative.

It is also worth noting at this point that Rodrigo Taoc, a co-accused of herein appellant executed an affidavit before the Philippine Constabulary wherein he categorically named appellant as one of the perpetrators of the crime charged.^[16] Evidently, in the face of these established facts, appellant's defense of alibi cannot succeed. It is well settled that alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime.^[17]

Furthermore, appellant failed to show that it was physically impossible for him to be at the Verano residence at the time the crime was perpetrated. It is elementary that for alibi to be believed, credible and tangible proof of physical impossibility for the accused to be at the scene of the crime is indispensable. In its absence, the defense of alibi cannot be sustained.^[18] Alibi is admittedly and consistently considered the weakest defense an accused can concoct. In order to prosper, 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.^[19]

Finally, appellant's flight is a clear and positive indication of his guilt. His claim that he left Catanduanes solely for the purpose of attending the burial of his father-in-law, is not worthy of belief. He stayed away from Catanduanes for three years until his arrest in 1990. Despite the fact, that he is a farmer, instead of going back to Catanduanes he went to Manila to work as a construction worker. In addition, he left Catanduanes immediately after the arrest of his co-accused.

It is a well-entrenched doctrine that an accused's flight from the scene of the crime and his act of hiding himself until he was arrested are circumstances highly indicative of his guilt, for, as has long been wisely said, the wicked flee even when no man pursueth but the righteous are as bold as a lion.[20] We cannot perceive how appellant can be exempted from that verity.

The penalty prescribed for the special complex crime of robbery with homicide is reclusion perpetua to death.[21] Considering, however, that at the time of the commission of the offense the imposition of the death penalty was proscribed,[22] the trial court was correct in meting out only the penalty of reclusion perpetua notwithstanding the aggravating circumstances attending the commission of the crime.[23]

However, consonant with our present jurisprudential policy, the death indemnity to be awarded to the heirs of each of the victims should be increased from P30,000.00 to P50,000.00, or the total sum of P100,000.00. Considering that the judgment against Juan Tañote, Salvador dela Cruz and Rodrigo Taoc, the other convicted felons, had become final and executory as of February 28, 1991,[24] they are solidarily liable with Salvador Torrente only up to the amount awarded and for which they have been held liable in the said decision. Any amount in excess of said prior award is the sole liability of appellant Salvador Torrente.[25]

WHEREFORE, the appealed decision is hereby AFFIRMED, with the modification that the civil indemnity for the death of each of the victims is increased to P50,000.00, or the total sum of P100,000.00 for both. Accused-appellant Salvador Torrente shall be jointly and severally liable with his three co-accused for P60,000.00 of said amount, and for the remaining P40,000.00 he shall be exclusively liable.

SO ORDERED.

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

[1] Original Record, 61-62.

[2] Ibid., 143.

[3] Ibid., 155; per Judge Silvestre S. Felix.

[4] Ibid., 163.

[5] Ibid., 238; penned by Acting Presiding Judge Eduardo Israel Tanguanco.

[6] Appellant's Brief, 1-2; Rollo, 43-44.

[7] Brief for the Appellee, 5-10; Rollo, 92-102.

[8] People vs. Puloc, et al., G.R. No. 92631, September 30, 1991, 202 SCRA 179; People vs. Lagario, et al., G.R. No. 92000, July 5, 1993, 224 SCRA 351; People vs. Balanag, et al., G.R. No. 103225, September 15, 1994.

[9] TSN, October 14, 1991, 10-11.

[10] People vs. Alcantara, et al., L-26867, June 30, 1970, 33 SCRA 812; People vs. Radomes, G.R. No. 68421,

March 20, 1986, 141 SCRA 548; *People vs. Villalobos, et al.*, G.R. No. 71526, May 27, 1992, 209 SCRA 304.

[11] TSN, August 30, 1991, 36-37.

[12] *Ibid.*, *id.*, 38-39.

[13] *Ibid.*, *id.*, 41.

[14] *Ibid.*, *id.*, 54-55.

[15] *People vs. Alcantara, et al.*, *supra*; *People vs. Santito, Jr., et al.*, G.R. No. 91628, August 22, 1991, 201 SCRA 87; *People vs. Bolado, et al.*, G.R. No. 105375, September 28, 1993, 226 SCRA 800.

[16] Original Record. 18.

[17] *People vs. Garcia, et al.*, L-26105, February 18, 1986, 141 SCRA 336; *People vs. Clores*, G.R. No. 82362, April 26, 1990, 184 SCRA 638; *People vs. Java*, G.R. No. 104611, November 10, 1993, 227 SCRA 668.

[18] *People vs. Sambangan*, L-44412, November 25, 1983, 125 SCRA 726; *People vs. Pielago, et al.*, L-42256, December 19, 1985, 140 SCRA 418; *People vs. Angeles*, G.R. Nos. 104285-86, May 21, 1993, 222 SCRA 451.

[19] *People vs. Perante, Jr., et al.*, G.R. Nos. 63709-10, July 16, 1986, 143 SCRA 56; *People vs. Santillan*, G.R. No. 68331, January 29, 1988, 157 SCRA 534; *People vs. Cinco, et al.*, G.R. No. 79497, February 27, 1991, 194 SCRA 535.

[20] *U.S. vs. Sarikala*, 37 Phil. 486 (1918); *People vs. Castor*, G.R. No. 93664, December 11, 1992, 216 SCRA 410; *People vs. Iran*, G.R. No. 88915, December 14, 1992, 216 SCRA 575.

[21] Art. 294, par. (1), Revised Penal Code.

[22] Sec. 19, Art. III, 1987 Constitution.

[23] *People vs. Servillon*, G.R. No. 92154, September 12, 1994; *People vs. Balanag, et al.*, *supra*.

[24] Original Record, 158.

[25] *People vs. Lee, et al.*, G.R. No. 66848, December 20, 1991, 204 SCRA 900.

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