

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE SALAZAR, DEFENDANT, CARLITO SANCHEZ, DEFENDANT-APPELLANT.

G.R. No. 109943. September 20, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

At around 11:30 in the morning of March 27, 1991, Nestor Boticario was driving an Allied Bank armored van along Quirino Highway in Novaliches, Quezon City on the way to Shaw Boulevard. He had three (3) other persons with him. Seated beside him in front was Rodolfo Donasales, a security guard, while Romeo Emnacin, another security guard, and Rowena Lopez, a bank teller, were seated in the back.[1] While cruising along said thoroughfare, the armored van was suddenly blocked by a red Lancer. Several heavily armed men alighted from the said car, surrounded the armored van and fired a volley of shots into it. Boticario, Donasales and Emnacin were hit. Through the small window at the back, Emnacin saw appellant and Jose Salazar as among the men who fired at the armored van. Moments later, the passengers of the van were ordered to get down from the van. However, since Boticario and Donasales were both seriously wounded and Lopez was lying flat on the floor of the van, crying, only Emnacin went down from the van. As Emnacin descended, he was immediately hit with the butt of a gun and shot by Jose Salazar on his right shoulder. He later lost consciousness and was brought to the hospital where he recovered.[2]

Meanwhile, the assailants grabbed the bag of coins containing about P65,000.00 (should be P61,000.00 only) and the security guards' SPAS 12 service shotgun, valued at P12,000.00.[3]

All the three (3) security guards were brought to the Jose R. Reyes Memorial Medical Center where Nestor Boticario expired.[4] Donasales sustained a total of seven (7) wounds while Emnacin suffered three (3). Both were treated by Dr. Arthur V. Platon.[5] Lopez was able to escape unhurt.

While confined in said hospital for treatment of his injuries, Emnacin was questioned by police investigators.[6] Therein, he revealed the incidents that transpired on that fateful day and described the perpetrators of the crime,[7] to said authorities. Armed with the foregoing description and on reliable information that the accused were involved in several robbery/hold-up incidents in Metro Manila, P03 Henry de Leon and SPO3 Rommel Macatlang arrested Jose Salazar who in turn tagged Carlito Sanchez as one of his companions in the armored van robbery in question. These antecedents were revealed in the Joint Affidavit of Arrest[8] executed by police officers de Leon and Macatlang and which affidavit was subsequently identified and affirmed by P03 Henry de Leon on direct examination[9] as a witness for the prosecution. SPO3 Rommel Macatlang's presentation as witness was dispensed with when the defense admitted his testimony as merely corroborative of de Leon's.[10]

On May 28, 1991, Carlito Sanchez and Jose Salazar were indicted for robbery with homicide and physical injuries in an information which reads:

That on or about the 7th day of March, 1991, in Quezon City, Philippines, and within the jurisdiction of this

Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, willfully, unlawfully and feloniously and with intent to gain and by means of violence and intimidation against person, rob the Allied Bank armored car in the following manner, to wit: the above-named accused pursuant to their conspiracy, did then and there open fire at the Allied Bank armored car driven by Nestor Boticario with high powered firearms and as a result of which he suffered injuries which was the cause of his death and physical injuries to RODOLFO DONASALES and ROMEO EMNACIN y EGONIA, after which the accused thinking that all of them were already dead thereafter took and carted away the latter's SPAS 12 shotgun valued at P12,000.00 and P61,000.00 cash money from the armored car belonging to St. Thomas Security Agency and Allied Bank, respectively, to the damage and prejudice of the said offended parties in the amount of aforementioned and in such amount as may be awarded to them under the provisions of the Civil Code.

Contrary to law.[11]

Upon arraignment on June 20, 1991, both accused pleaded "not guilty" to the offense charged.[12]

On July 16, 1991, both accused filed a petition for bail[13] for their provisional liberty.

Thereafter, the trial court set the petition for hearing.

After the prosecution presented its evidence, the court a quo granted the petition for bail and required the accused to post their respective bonds in the amount of P50,000.00 each.[14]

On October 11, 1991, Carlito Sanchez posted his personal bail bond in the amount so stated.[15] On November 26, 1991, Jose Salazar did the same.[16] Consequently, both were ordered released from custody.

When it was the defense's time to present its evidence, only accused Carlito Sanchez was presented as witness. In his testimony, he maintained his innocence and denied any participation in the alleged robbery/hold-up of March 27, 1991. He claimed to be a mere lowly fish vendor.[17]

On February 3, 1993, the Regional Trial Court of Quezon City, Branch 104,[18] rendered judgment convicting Jose Salazar and Carlito Sanchez. The fallo reads as follows:

WHEREFORE, Judgment is hereby rendered finding accused JOSE SALAZAR y GALLEGO and CARLITO SANCHEZ y URGANAY as (sic) guilty beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE AND PHYSICAL INJURIES as charged in the information; and are hereby sentenced to suffer the penalty of RECLUSION PERPETUA; to indemnify the heirs of the deceased, Nestor Boticario, the sum of P50,000.00; to pay the sum of P61,000.00, the amount taken away by both accused during the hold-up; to pay the amount of P12,000.00 the value of the shotgun likewise taken away; without subsidiary imprisonment in case of insolvency; plus all the accessory penalties provided for by law and to pay the costs.

SO ORDERED.[19]

On the same date, the trial court issued twin orders for cancellation of the accused's bail bonds. The first order reads:

The bail bond posted by accused Carlito Sanchez for his provisional liberty under Commonwealth Insurance Company is hereby cancelled and the said accused is ordered turned over to the custody of the police authorities.

The trial attorney is hereby ordered to investigate the whereabouts of the accused Jose Salazar to determine the rumors that he is already dead.

In the meantime, pending result of the whereabouts of the accused Jose Salazar, let warrant of arrest be issued for

his apprehension and confiscation of his bail bond.

SO ORDERED.[20]

The second one reads:

The bail bond posted by accused Jose Salazar y Gallego under Commonwealth Insurance Company JRC (12) No. 0050 is ordered confiscated in favor of the government.

SO ORDERED.[21]

On February 5, 1993, only accused Carlito Sanchez filed a notice of appeal.[22] Accused Jose Salazar remained at large.

In his brief, appellant Carlito Sanchez ascribes to the court a quo the following errors, viz:

I

THE TRIAL COURT ERRED IN FINDING THAT THE 'POSITIVE IDENTIFICATION MADE BY ROMEO EMNACIN IS MORE WORTHY OF BELIEF THAN THE ACCUSED'S SPECULATIONS WHICH THUS DESERVES CREDENCE.'

II

THE TRIAL COURT ERRED IN HOLDING THAT 'JURISPRUDENCE SHOW US THAT THE DENIAL BY THE ACCUSED CANNOT PREVAIL IN THE FACE OF THE POSITIVE IDENTIFICATION MADE BY (THE) PROSECUTION WITNESS.'[23]

Appellant questions the identification made by Romeo Emnacin by citing the following circumstances which supposedly rendered his and his co-accused's identification untenable. It is contended that:

1. Romeo Emnacin did not have an opportunity to look through the small window of the armored van because of the suddenness of the attack. His natural reaction would have been to hide or lie on the floor to avoid being hit;
2. The seriousness of Emnacin's wounds rendered him incapable of observing his surroundings, much more identify faces around him;
3. Emnacin gave inconsistent descriptions of the accused; and
4. The identification made by Emnacin was irregular since it was only made in a room with the accused in handcuffs while accompanied by a police officer and not in a police line?up.

These contentions are specious.

What must have escaped appellant's mind when he made the foregoing arguments was the fact that Romeo Emnacin is a trained security guard. As such, he is trained to be always alert and observant of his surroundings and the people around him. He must, at all times, be prepared for any eventuality. Contrary to appellant's claim that a person's natural reaction when confronted with an incident such as the one in question is to hide, duck and lie flat on the floor, common human experience tells us that when extraordinary circumstances take place, what is natural is for persons to remember most of the important details of the occurrence. In *People v. Dolor*,[24] we held that the most natural reaction for victims of criminal violence is to strive to see the looks and faces of their assailants and observe the manner in which the crime is committed. Most often, the face of the assailant and his body movements create a lasting impression on the victim's mind and cannot thus be easily erased from memory.

This is exactly what happened to Romeo Emnacin. Fearful for his life, he became more observant of his surroundings. Moreover, he had a second chance to take a good look of their assailants when he went down of the armored van and came face to face with them. When questioned why he was able to positively identify the assailants, Emnacin categorically declared:

COURT: Mr. Witness, these two persons, these two accused charged before this Court with a very serious offense and possible penalty is life imprisonment, the most important evidence is identification. How sure are you that these are the people who participated in the robbery and killing of your companion?

A:

Yes, Sir.

Q:

Why? Why are you so sure?

A:

I could not forget their faces.

Q:

What is so particular about their faces?

A:

I could not forget their faces, Your Honor. If ever I saw them, I can identify them.[25]

The wounds sustained by Emnacin during the volley of shots were not serious enough to render him incapacitated to identify the assailants. When he alighted from the van, he was still lucid and conscious. He had sufficient strength to open the doors of the van and face his assailants belligerently, thus, prompting them to hit him with the butt of a firearm and shoot him again. This was the only time he lost consciousness, but after sufficient opportunity to see and identify his assailants. Obviously, the shocking experience left an indelible imprint in his mind, enabling him to positively identify the perpetrators after the incident.

Next, appellant contends that Romeo Emnacin gave inconsistent descriptions of the accused in his affidavit[26] and in his testimony before the court. It is alleged that Emnacin described Jose Salazar as 5'6 to 5'7 in height, 30 years of age, with curly hair and "kayumanggi" in complexion in his affidavit but later described him as tall with curly hair and white in complexion in his testimony.[27] On the other hand, Carlito Sanchez was described as 5'5" to 5'6" in height, rounded in body, and "kayumanggi" with straight hair in Emnacin's affidavit but was never described as having a mole on his face.

The alleged discrepancies in the description of the accused in Emnacin's affidavit and testimony refer only to minor details and do not affect the credibility of his testimony. Emnacin's alleged inconsistent description of Salazar as being fair in his testimony and being "kayumanggi" in his affidavit is more apparent than real. Skin tone and skin color is a matter of shades. What may appear dark to one may not appear so to another. Conversely, what may be light and fair to one may not be so to another. Moreover, Emnacin's failure to state that Sanchez has a mole on his face does not render his description incredible as the same is not so distinctive as to capture one's attention and memory. Obviously, these explainable inconsistencies, if inconsistencies we consider them to be, do not detract from the accuracy of the description provided by Emnacin to the authorities as the latter were able to apprehend the accused on the basis of Emnacin's description.

Finally, there is nothing irregular with respect to the way the identification was made by Emnacin.

There is no law requiring a police line-up as essential to a proper identification.[28] Identification can be made in a room in a police station even if it were not in a police line-up as long as the required proprieties are observed, as in the case at bench. Here, as above-stated, Emnacin described the perpetrators of the crime to the police authorities when the latter questioned him about the incident while he was still in the hospital.[29] Based on the said description, they invited the accused to the police station for questioning. Later, they were positively identified by Emnacin as the culprits.

Appellant's defense rests on denial. Necessarily, his defense crumbles in the face of his positive identification by one of the victims. As we have repeatedly and consistently ruled in a number of cases, when presented with the positive identification of the accused by one of the victims who had no reason to lie nor falsely testify against him and the accused's bare denial of the crime charged, which is inherently weak, the former must prevail.[30]

One final note. Accused-appellant was charged with, and convicted of "Robbery with Homicide and Physical Injuries." However, no such crime exists. The term "homicide" under Article 294, paragraph I of the Revised Penal Code is used in its generic sense, that is, it embraces not only the act which results in death but also other acts producing anything short of death, and is so designated regardless of the number of "homicide" and/or "physical injuries" committed.[31] Consequently, the crime committed must simply and correctly be designated as "Robbery with Homicide."

WHEREFORE, save only with respect to the correct designation of the crime charged and committed as "Robbery with Homicide", the judgment appealed from is hereby **AFFIRMED** in toto.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] TSN, August 26, 1991, pp. 10-13, 15.

[2] *Id.*, at 17-19.

[3] *Id.*, at 22-29.

[4] TSN, January 28, 1992, pp. 3, 6.

[5] TSN, August 5, 1992, pp. 3, 6, 9.

[6] TSN, August 26, 1991, p. 35.

[7] *Id.*, at 47-51.

[8] Exhibit "B", the pertinent portions of which reads:

JOINT AFFIDAVIT OF ARREST

WE, the undersigned, both of legal ages, married, presently assigned with the Special Investigation Group, PNP Criminal Investigation Service Command, Camp Crame, Quezon City after having been duly sworn to in accordance with law hereby depose and solemnly state the following to wit:

THAT we are members of Team 4, SIG PNP CISC, based in Camp Crame, Quezon City;

THAT on or about 1400H 17 May 91, based on a very reliable information, we arrested near his residence located

at Fortune 4, Karuhatan, Valenzuela, Bulacan JOSE SALAZAR Y GALLEG0 alias JOE SAMARENO, 31 years old, native of Dalakit, Sitio Baybay, Catarman, Northern Samar for his alleged involvement in the series of robbery/hold-up within Metro Manila. Right after his arrest, he pinpointed and named several of his companions in the said armored car robbery/hold-up group and during the follow-up operation conducted on the following morning, we again arrested a certain CARLITO SANCHES @ LITO, 33 years old, married, residing at San Vicente, Camarine 2, Caloocan City who was then standing in front of their residence;

THAT during the investigation/ interrogation, both readily admitted having participated in the Pilipinas Bank armored car robbery/hold-up in Baclaran, Metro Manila on April 1990 carting thereat the amount of P1.5 million pesos and in the St. Thomas Security Agency armored car robbery/hold-up divesting said agency of about P61,000.00 belonging to the Allied Bank Novaliches Branch. Said incident took place on 27 March 1991 near the Holy Cross St., Quirino Highway, Novaliches, Metro Manila wherein one Security Guard in the name of NESTOR BOTICARIO DETAILED, WITH THE St. Thomas Security Agency was killed while one RENATO R. ROSAL, with postal address at No. 73 Dau St., 6th Avenue, Caloocan City, one of the holduppers was likewise killed due to the resistance offered by the security/escorts. During said incident, the 12 Gauge Shotgun SPAS 12, owned by St. Thomas Security Agency and issued to S/G ROMEO EMNACIN, has been carted away by said holduppers; Two (2) Security Guards were seriously wounded in the shootout;

xxx

[9] TSN, October 9, 1991, pp. 3-8.

[10] Id., at 8-9; Original Records, p. 51.

[11] Original Records, pp. 1-2.

[12] Id., at 28-29.

[13] Id., at 32-33.

[14] Id., at 51-A.

[15] Id., at 56.

[16] Id., at 70.

[17] TSN, November 23, 1992, pp. 3-4.

[18] Presided by Judge Maximiano C. Asuncion.

[19] See Note 11, supra., p. 147.

[20] Id., at 148.

[21] Id., at 149.

[22] Id., at 152.

[23] Appellant' Brief, p. 3; Rollo, p. 39.

[24] 231 SCRA 414 [1994], citing people Sartagoda, 221 SCRA 251 [1993].

[25] TSN, August 26, 1991, p. 56.

[26] Exhibit "C".

[27] TSN, August 26, 1991, p. 57.

[28] *People v. Padua*, 215 SCRA 260 [1990].

[29] See Notes 6 and 7, *supra*.

[30] *People v. Cobre*, 239 SCRA 150 [1994]; *People v. Miranda*, 235 SCRA 202 [1994]; *People v. Pascual*, 208 SCRA 393 [1992].

[31] *People v. Servillon*, 236 SCRA 385 [1994].

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