

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR COBRE, ACCUSED-APPELLANT, AGUSTIN ORTIZ (STATE WITNESS), PAPIAS JABA (AT LARGE), AND MARIO CARREON (AT LARGE).

G.R. No. 110834. December 13, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the Decision of the Regional Trial Court of Tanay, Rizal,[1] in which accused-appellant Oscar Cobre was convicted of the Special Complex Crime of Robbery with Homicide under Article 294, paragraph I of the Revised Penal Code. He was sentenced to suffer the penalty of reclusion perpetua with the accessory penalties provided for by law and to pay the heirs of the deceased Renato Leyva Biteranta in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency.[2]

The Information against appellant Oscar Cobre and the other accused, reads:

"That on or about and sometime on the first week of October, 1988 in the Municipality of Pililla, Province of Rizal, Philippines a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one Papias Jaba and Mario Carreon whose present whereabouts are still unknown and mutually helping and aiding with one another, with intent to gain and by means of force, violence and intimidation did then and there willfully, unlawfully and feloniously entered the farm of one Renato Biteranta y Leyva and once inside, take, steal and carry away the following items, to wit:

one (1) telescope P1,000.00

one (1) flashlight 500.00

one (1) cutter 150.00

one (1) battery 50.00

belonging to said Renato Biteranta y Leyva represented by one Daniel Biteranta, to the damage and prejudice of the said owner thereof in the total amount of P1,700.00; and that by reason and on the occasion of the said robbery, the above-named accused, together with their companions, with intent to kill and armed with gun, did then and there willfully, unlawfully and feloniously shoot said Renato Biteranta y Leyva on the vital part of his body, thereby inflicting upon him gunshot wounds which directly caused his death.

CONTRARY TO LAW."[3]

Accused Papias Jaba and Mario Carreon were not tried as they remained at large. Agustin Ortiz was later utilized by the prosecution as a state witness.

The evidence of the prosecution was given by witnesses RENATO GUZMAN,[4] DR. DESIDERIO MORALEDA,[5] and AGUSTIN ORTIZ.[6]

The prosecution established that on October 4, 1988, accused-appellant Oscar Cobre, Agustin Ortiz, Papias Jaba,

and Mario Carreon had an altercation with their employer Renato Biteranta. They were working in the orchard of Biteranta and wanted to leave the farm. They demanded payment of their wage for the entire month of October.[7] Biteranta refused to pay them since the month was not over.

Biteranta's refusal triggered the crime at bench. Jaba dashed towards Biteranta's house and he was followed by Biteranta. Before Biteranta could reach the steps of his house, Jaba stopped him with a kick. Jaba then armed himself with a .38 caliber pistol while Carreon and accused-appellant armed themselves with shotguns.[8]

Fearful for his life, Biteranta tried to run away but Jaba had poked his gun at him.[9] Jaba took Biteranta's wallet,[10] shot but missed him.[11] Accused-appellant then shot Biteranta with his shotgun.[12] Biteranta sprawled dead on the ground.

During the incident, Ortiz realized the presence of their co-worker Renato Guzman, a godson of Biteranta.[13] Ortiz pushed Guzman into the house. On orders of accused-appellant, Ortiz tied the hands of Guzman, his wife Melitona "Mely," and his three (3) year old son Ronnie.[14] Sensing danger to the life of Biteranta, Mely screamed "Huwag ninyong patayin ang ninong." [15] Guzman then heard three (3) gun shots.[16] He surmised that accused-appellant, Carreon, and Jaba shot their ninong Biteranta.

Somehow, Ortiz felt remorse in the killing of Biteranta. He tried to help Guzman escape but Jaba foiled his intent. "Ting,[17] ano ba yan," he shouted and simultaneously pointed his gun at Ortiz. Ortiz shivered and continued to guard the Guzman family.[18]

Before fleeing, accused-appellant and his cohorts saw to it that they would not be pursued. They punctured the tires of the jeep and let loose the horses of Biteranta. They fled with their guns and bags to Manila taking a passenger jeepney from Bugarin, Rizal to Divisoria.[19]

An hour later, Guzman's wife untied him. He found Biteranta's lifeless body near the doorstep. He immediately reported the killing to Joe Presto and Floro delos Reyes.

The police authorities arrived and interrogated Guzman. Upon ocular investigation, they discovered that a sheet of the wooden flooring of Biteranta's room was opened, wide enough to let one (1) person in.[20] They found that Biteranta's telescope, flashlight, and scissors used for pruning "dalanghita" were missing.

Lt. Colonel Desiderio A. Moraleda, Chief Medico-Legal Officer of the PC, Camp Crame, Quezon City certified that Biteranta sustained seven (7) gunshot wounds in his head and trunk. His death was caused by hemorrhagic shock as a result of shotgun wounds.[21] He inferred that only one (1) gun was used because of the pellets' points of entry.[22]

The defense had a different account of the incident. Accused-appellant denied having killed Biteranta. He testified that on that fateful day he saw the dead body of Biteranta at the doorstep of his house. He turned his back and saw Carreon who was also going to kill him.[23] He ran but was overpowered by Carreon who forced him to hold an empty gun[24] and to tie up spouses Guzman.[25]

The trial court on July 29, 1992 convicted accused-appellant of the crime of Robbery with Homicide and imposed the penalty mentioned earlier.

Hence, this appeal.

These are the assigned errors.

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT ERRED IN TOTALLY DISREGARDING THE EVIDENCE FOR THE DEFENSE DESPITE THE DISCREPANCY IN THE TESTIMONY OF PROSECUTION WITNESS GUZMAN AND STATE WITNESS ORTIZ.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Accused-appellant Cobre insists that the prosecution failed to establish that he was the one who shot Biteranta. He claims that it was impossible for Ortiz and Guzman to witness the killing of Biteranta since they were inside the latter's house when the shooting started. He suggests that it was Jaba who held the loaded .38 caliber pistol who shot Biteranta to death.

We reject the arguments of accused-appellant. State witness Ortiz categorically testified that from his vantage view he saw accused-appellant shoot Biteranta, thus:

"Q: Thereafter what happened?

A: Papias Jaba suddenly shot him followed by Oscar Cobre.

Q: What do you mean by following?

A: Followed with one gun shot. He also shot Renato Biteranta. Papias Jaba was not able to hit Renato Biteranta. It was Oscar Cobre who was able to shoot and hit Renato Biteranta.

Q: Will you tell us what kind of a gun Oscar Cobre was holding at that time? (sic)

A: Shotgun, sir.

Q: How many times did he fire his gun?

A: Only once, sir.

Q: Do you know if the shot that came from the gun being held by Oscar Cobre hit Renato Biteranta?

A: In the armpit.

Q: Why do you know?

A: I was near the door.

Q: How far were you?

A: Two to three meters, sir."[26]

The position of Ortiz near the door allowed him to see the shooting even if he was inside the victim's house. On the other hand, Guzman never claimed he saw who shot the victim. He was hog-tied inside the victim's house and could not have a view of the incident.

The attempt of accused-appellant to picture Jaba as the one who shot the victim cannot succeed. Jaba had a .38 caliber pistol. Dr. Desiderio Moraleda testified that the wounds suffered by the deceased were inflicted by a

shotgun, thus:

"Q: With regard to the picture, will you please examine the picture and tell in layman's language the significance? (sic)

A: Based on the examination of the body, it showed 7 shotgun wounds on the right side of chest and then . . . on the left side of the chest and this shotgun wound with vital organ like the heart and the lungs. (sic)

Q: Mr. witness, of these 7 wounds which were mortal?

A: All the shotgun wounds caused the death of the victim.

Q: Of these 7 shotgun wounds, in your opinion how many guns were used in inflicting the injuries? (sic)

A: There is only one shotgun used.

Q: What is your basis?

A: This is area of the point of entry."[27]

Moreover, accused-appellant will not be acquitted even if he established that it was Jaba who shot the victim. The evidence of the prosecution proved that all the accused, including the appellant, conspired to commit the crime at bench. Considering the circumstance of conspiracy, the act of one of the accused can be considered as the act of the others involved in the conspiracy.

In a last ditch to absolve himself, accused-appellant avers that Ortiz' testimony could have been exaggerated out of gratitude to the prosecution for utilizing him as a state witness. The argument is no more than a guesswork and deserves scant attention. We have verified Ortiz' Sinumpaang Salaysay[28] and unwavering testimony taken one (1) year and eight (8) months thereafter, or on August 8, 1990 and they jibed on material points - that they took Biteranta's .38 caliber pistol and two (2) "de-sabog" guns from his room on October 3, 1988; that Jaba took Biteranta's wallet and shot him but missed; that accused-appellant pulled the trigger of his shotgun and hit Biteranta; that they also took away Biteranta's telescope, flashlight, cutter, battery, and some medicines; and that they deflated the tires of the jeep and unleashed the horses to make sure their escape. In fact, he was remorseful during the slaying. "Pasensya ka na Kuya at Ate hindi ko akalain na papatayin nila si Kuya."[29] "Gusto ho akong kalagan noon," Guzman recounted.[30]

The only defense then of accused-appellant is denial. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime.[31] His attempt to pass the blame to Jaba who allegedly shot the victim with a .38 caliber pistol cannot succeed. His story is uncorroborated and is contradicted by state witness Ortiz.

Well-settled is the rule that when homicide is committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide, although they did not actually take part in the homicide.[32] The exception to the rule is when it is clearly shown that they endeavored to prevent the unlawful killing. The exception does not apply to accused-appellant.

There is thus no doubt that accused-appellant has committed the crime of Robbery with Homicide. He was correctly sentenced to suffer the penalty of reclusion perpetua.[33]

IN VIEW WHEREOF, the appealed Decision dated July 29, 1992 is AFFIRMED in toto. Costs against accused-appellant.

SO ORDERED.

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

[1] Judge Arturo A. Marave, Presiding, Branch 80.

[2] RTC Decision, p. 5; Rollo, p. 16.

[3] Original Records, p. 1.

[4] Thirty-seven (37) years old, farmer, married, and a resident of Sitio Bugarin, Pililla, Rizal. T.S.N. June 14, 1989, pp. 2-3.

[5] He is assigned as Chief Medico-Legal, PC-INP, Camp Crame, Quezon City. He conducted the autopsy of the cadaver of Renato Biteranta on October 8, 1988. T.S.N. February 26, 1990, pp. 1-2.

[6] Accused turned state witness. He is twenty-seven (27) years old, single, student, and a resident of Pacita Complex, San Pedro, Laguna. T.S.N. August 8, 1990, p. 2.

[7] T.S.N. June 14, 1989, p. 22.

[8] Id., p. 15.

[9] Id., p. 9.

[10] T.S.N. August 8, 1990, p. 5.

[11] T.S.N. June 14, 1989, p. 22.

[12] Ibid.

[13] As a trusted worker and godson, Guzman and his family are permitted to live in Biteranta's house. Id., p. 15.

[14] Sinumpaang Salaysay dated October 5, 1988.

[15] T.S.N. June 14, 1989, p. 28.

[16] Id., p. 13.

[17] Referring to Agustin Ortiz.

[18] Id., p. 28.

[19] T.S.N. August 8, 1990, p. 12.

[20] Sinumpaang Salaysay, op cit.

[21] Medico-Legal Report No. M-2440-88, Original Records, p. 102.

[22] T.S.N. February 26, 1990, p. 4.

[23] T.S.N. October 15, 1990, p. 3.

[24] Id., p. 6.

[25] Id., p. 8.

[26] T.S.N. August 8, 1990, pp. 5-6.

[27] T.S.N. February 26, 1990, p. 4.

[28] Exhibit "H."

[29] Referring to Renato Biteranta, Exhibit "B."

[30] T.S.N. June 21, 1989, p. 28.

[31] People vs. Macagaling, G.R. Nos. 109131-33, October 3, 1994.

[32] People vs. Calegan, G.R. No. 93846, June 30, 1994.

[33] Supra.

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