PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJANDRO CAMPOS Y ARMADO, RENATO DE LA CRUZ Y BORAC, ACCUSED.

G.R. No. 111535. July 19, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Caloocan City, Branch 124, convicting Alejandro Campos y Armado and Renato dela Cruz y Borac of robbery with homicide with frustrated homicide[2], and sentencing each of them to reclusion perpetua and to indemnify jointly and severally Felipa Jacobe in the amount of P30,000.00 for burial expenses of Mercelina Alfaro Jacobe, the amount of P60,000.00 for hospital expenses of Felicidad Alfaro, and the amount of P10,000.00 representing the amount stolen from the victims, and to pay the costs.

On August 18, 1989, Assistant City Fiscal Bartolome G. Viola, Jr. filed with the Regional Trial Court, Caloocan City, an information charging Alejandro Campos y Armado and Renato dela Cruz y Borac with robbery with homicide, committed as follows:

> "That on or about the 17th day of August 1989, in Kalookan City, Metro-Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain and by means of force, violence and intimidation employed on the person of one MERCELINA ALFARO DE JACOBE, did then and there, willfully, unlawfully and feloniously take, rob and carry away cash money amounting to P10,000.00 belonging to said complainant, to the damage and prejudice of the latter in the aforestated amount of P10,000.00; that on the occasion of the said robbery and for the purpose of enabling them to take, rob and carry away the said amount of P10,000.00, the herein accused in pursuance of their conspiracy did then and there willfully, unlawfully and feloniously with intent to kill the victim, attack and stab on the different vital parts of the body, thereby inflicting upon said MERCELINA ALFARO DE JACOBE, serious physical injuries, which directly caused her death; and also with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with a bladed instrument on the vital parts of the body one FELICIDAD ALFARO y CRUZ, thus, performing all the acts of execution which would have produced the crime of Homicide as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of the herein accused, that is due to the timely, able and efficient medical attendance rendered the victim at the Quezon City General Hospital, which prevented the victim's death.
>
> "CONTRARY TO LAW."[3]

On August 29, 1989, at the arraignment, both accused pleaded not guilty.[4]

Felicidad Alfaro and Mercelina Alfaro Jacobe resided inside Maxim's Mini Mart at Cefel's Park Subdivision, Tala, Novaliches, Caloocan City. Beside the mini mart was Cefel's General Merchandise, a hardware store owned by Felipa Jacobe, the mother-in-law of Mercelina Alfaro Jacobe.

On August 16, 1989, at around 10:00 in the evening, Felicidad and Mercelina prepared to sleep. Their bedroom and the kitchen were located inside the mini mart. Felicidad turned off all lights in the store except the kitchen light. Mercelina laid on the bed with her two-year old son, Christopher, while Felicidad laid on the floor beside them.

At around midnight, Felicidad roused from her sleep and stood up. Suddenly, someone stabbed her on her left arm. She started to shout as her assailant continued to stab her. She was hit on her abdomen, left arm, and left side. She fell to the floor in a sitting position and she looked at the person who stabbed her. She recognized accused Alejandro Campos, who worked at the neighboring gravel and sand area and frequented their store to buy gas. She also noticed accused Renato dela Cruz standing near the door of the room. She knew accused dela Cruz because they used to work together in the Cefel's General Merchandise Store, a hardware store adjacent to the mini-mart.

Suddenly, accused Campos moved towards Mercelina and started stabbing her. Mercelina, still lying on the bed, woke up and shouted for help. Accused Campos kept stabbing her.

Thereafter, the two accused left hurriedly, exiting through the storeroom of the minimart.

At around midnight of August 17, 1989, Barangay Captain Federico Hallig was inside the Barangay Hall at Malaria, Tala, Caloocan City together with Barangay Tanods Romulo Meglares, Jesus Sienda, Marcos Manalo and Maximo Baylon. Suddenly, they saw a man running outside the barangay hall with blood on his chest and on his short pants. The man was holding a kitchen knife about eleven inches long. After questioning the man, who identified himself as Alejandro Campos, the barangay officials brought him to the police station.

Meanwhile, Felicidad, though wounded, managed to call for help from her mother-in-law, Felipa Jacobe, who resided beside the store. Felicidad was brought to Tala Hospital but was later transferred to Quezon City General Hospital. Mercelina was taken to Tala Hospital. She was pronounced dead on arrival.

Dr. Amancio Angustia of the Quezon City General Hospital found that Felicidad Alfaro had several stab wounds on the chest and a fractured left arm.[5] Two teams of surgeons immediately operated on Felicidad, thereby saving her life.

Dr. Dario Gajardo of the medico-legal unit of the Philippine Constabulary Crime Laboratory conducted an autopsy on the body of Mercelina Alfaro Jacobo.[6] He found eight stab wounds on different parts of the body of the deceased. He also found internal injuries in the heart, right lung, liver, stomach and the diaphragm. The cause of death was cardio-respiratory arrest due to shock and hemorrhage secondary to multiple stab wounds.

On August 17, 1989, Felicidad, still in her hospital bed, asked her father, Ramon Alfaro, to look for a bag containing money, amounting to ten thousand (P10,000.00) pesos, from the store. Ramon Alfaro went to the store and found the bag on the floor, empty.[7]

That afternoon, policemen brought accused dela Cruz and accused Campos to Felicidad. Felicidad identified accused Campos and accused dela Cruz as the persons who entered the room in the early morning of August 17, 1989 and stabbed her and her sister.

Accused Alejandro Campos denied any participation in the stabbing incident. He testified that at that time, he was at home in Malaria, Ilang-Ilang Street, Tala, Caloocan City.

Upon further questioning, accused Alejandro Campos admitted that he went to the mini-mart on the evening of August 16, 1989, at the call of accused Renato dela Cruz. Accused Campos claimed that he stayed outside the store when accused dela Cruz entered the minimart. Moments later, accused Campos heard shouts of women

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inside and saw accused dela Cruz emerge from the store. Accused dela Cruz entrusted a knife into the hands of accused Campos and told him to keep it. Accused Campos walked away from the store, holding the knife. He failed to notice that the knife was bloodied. Later, barangay officials intercepted him and brought him to police headquarters for questioning.

Accused Renato dela Cruz, driver and caretaker of the hardware store owned by Felipa Jacobe, denied any involvement in the crime. He alleged that Alejandro Campos implicated him in this serious crime because the latter was envious that he was receiving a higher salary than the other employees of Felipa Jacobe.[8] He claimed that at around 9:00 in the evening of August 16, 1989, he was at his residence, 40 meters away from the minimart, on the night in question.[9] He played several games of Russian poker or pusoy with his friends until 11:00 in the evening when his wife told him to go to sleep. At around 1:00 in the morning, his wife woke him up because somebody was calling him outside their house. When accused dela Cruz opened the door, he saw several policemen who told him that Mrs. Felipa Jacobe wanted to see him. He went with the policemen but later realized that he was being taken to the police station. There, the policemen informed him that something happened to Mercelina and Felicidad Alfaro. Accused dela Cruz stated that he knew nothing about the incident. Later, policemen took him to the hospital where Felicidad Alfaro was lying unconscious. Accused dela Cruz saw Patrolman Antonio Paras attempting to talk to Felicidad. Later, accused dela Cruz and the policemen left the hospital. Accused dela Cruz did not see Felicidad point to him as one of the suspects. It was only Pat. Antonio Paras who told him that Felicidad identified him as one of the suspects.

On October 24, 1990, the trial court rendered a decision, the dispositive portion of which states:

> "WHEREFORE, in view of the foregoing, this Court finds the accused Alejandro Campos y Armado and Renato dela Cruz y Borac guilty beyond reasonable doubt of Robbery with Homicide with Frustrated Homicide as charged and hereby sentences each accused to suffer imprisonment of RECLUSION PERPETUA. Both accused are also directed to indemnify jointly and severally Felipa Jacobe the amount of P30,000.00 for shouldering the burial and miscellaneous expenses of Mercelina Alfaro Jacobe, the amount of P60,000.00 for shouldering the hospitalization, operation and the purchase of medicine in the treatment of Felicidad Alfaro and to jointly and severally indemnify the heirs of Mercelina Alfaro Jacobe the amount of P10,000.00 which was stolen from Mercelina Alfaro. Both accused are also directed to pay the costs.
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> "Both of the accused shall be entitled to be credited with the full period of their preventive imprisonment pursuant to Art. 29 of the Revised Penal Code provided the requirements listed therein have been complied with.
>
> "SO ORDERED.
>
> "Promulgated in open court on this 24th day of October 1990 at Kalookan City, Metro Manila.
>
> "(sgd.) RENE VICTORIANO
> "Judge"[10]

Only accused Renato dela Cruz appealed the decision to the Supreme Court.[11]

Accused-appellant Renato dela Cruz contended that the trial court erred in convicting him because his participation in the crime was not clearly established. The prosecution witness failed to see anyone taking the contents of the bag containing the store earnings. The prosecution also failed to prove conspiracy between the two accused in the stabbing incident.

In order to be convicted of robbery with homicide, four (4) elements are necessary: (a) the taking of personal property with the use of violence or intimidation against the person; (b) the property taken belongs to another; (c)

the taking is characterized by intent to gain or animus lucrandi; and, (d) on the occasion of the robbery or by reason thereof the crime of homicide was committed.[12]

We find insufficient evidence to show that accused-appellant dela Cruz was guilty of the first three elements of robbery with homicide. In robbery with homicide cases, the robbery itself must be proved as conclusively as any other essential element of the crime.[13] Robbery is the taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things.[14] In this case, all that the witness Felicidad saw that night was the stabbing of her sister, not the taking of personal property. The taking cannot be assumed from the actions of accused-appellant as seen by Felicidad. She saw him at the doorway and then noticed him running out the store after the stabbing occurred. Felicidad claimed that the bag purportedly containing money was recovered empty the next day. However, it was undisputed that various persons had entered the store of the victims after the incident, including investigators and onlookers. The bag was not conclusively shown to contain money nor was the money ever recovered. Further, there was no substantial link from the loss of the contents of the bag to the accused, for the money was never seen in the possession of the accused.

Thus, accused may not be held liable for robbery.

Regarding the stabbing involving Felicidad and Mercelina, the testimony of one of the victims, namely, Felicidad, who survived the stabbing, becomes crucial.

Felicidad categorically stated that accused Campos stabbed her and her sister. "The most natural reaction of victims of violence is to strive to look at the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed."[15] Even as she fell to the floor, Felicidad endeavored to see the identity of her assailant. She saw accused Campos as he stabbed her at close range and watched as he moved on to stab her sister.

However, accused-appellant dela Cruz alleged that the prosecution witness failed to establish his actual participation in the stabbing of Felicidad and Mercelina, as well as his overt acts that tended to show his conspiracy with accused Campos. We agree.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[16] Direct proof is not essential to prove conspiracy; however, the evidence to prove the same must be positive and convincing.[17] Similar to the physical act constituting the crime itself, the conspiracy must be proven beyond reasonable doubt.[18] It must be founded on facts, not on mere surmises or conjectures.[19]

In this case, there was no clear indication of the existence of conspiracy. First, eyewitness' identification of accused-appellant at the scene of the crime was not clear. Although the witness was familiar with the accused-appellant, the lack of lighting in the store at the time left doubt as to her proper identification of accused-appellant, who was several meters away from her. Second, Felicidad merely stated that she saw him standing by the door of the store.[20] Mere presence at the scene of the crime is insufficient to prove conspiracy.[21] A conspirator must perform an overt act in furtherance of the plan to commit a felony; mere presence at the scene of the incident, knowledge of the plan or acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator.[22] Mere presence, knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose.[23]

Undoubtedly, accused-appellant did not stab Felicidad and Mercelina. Considering the scant evidence showing

conspiracy and accused-appellant's involvement in the stabbing incident, accused-appellant can not be convicted of the crime charged. It is axiomatic that the accused is accorded in his favor the disputable presumption of innocence.[24] Unless the guilt of the accused is proven beyond reasonable doubt, the constitutional presumption of innocence applies.[25]

WHEREFORE, the Court REVERSES the decision of the Regional Trial Court, Caloocan City, Branch 124, convicting accused-appellant Renato dela Cruz y Borac of robbery with homicide. Accused-appellant Renato dela Cruz is hereby ACQUITTED on reasonable doubt and is ordered released immediately from confinement unless he is held for another case.

Costs de oficio.

The Director, Bureau of Corrections, shall implement this decision and report to the Court the action taken hereon within ten (10) days from notice hereof.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Criminal Case No. C-33416, Decision dated October 24, 1990. Judge Rene Victoriano, presiding.

[2] This is an error. The correct nomenclature of the crime is the special complex crime of robbery with homicide. The crime of robbery with homicide remains fundamentally the same regardless of the number of persons killed in connection with the robbery. (Ramon C. Aquino, The Revised Penal Code, Vol. III, 1988 edition, p. 111 et seq.)

[3] Information, Regional Trial Court Record, p. 2.

[4] Certificate of Arraignment, Regional Trial Court Record, p. 5.

[5] Certificate of Treatment/Confinement, Exh. "D", Folder of Exhibits, p. 7.

[6] Medico-Legal Report dated September 3, 1989, Exh. "H", Folder of Exhibits, p. 9.

[7] TSN, March 13, 1990, p. 17.

[8] TSN, May 16, 1990, p. 19.

[9] Ibid., p. 23.

[10] Rollo, p. 31.

[11] Notice of Appeal filed on November 2, 1990, Rollo, p. 32.

[12] People v. Milliam, 324 SCRA 155 (2000).

[13] People v. Leonor, 364 Phil. 766, 779 (1999).

[14] Article 293, Revised Penal Code; People v. Leonor, supra, at pp. 779- 780.

[15] People v. Pedroso, G.R. No. 125128, July 19, 2000.

[16] People v. Patalin, 311 SCRA 186, 208 (1999).

[17] People v. Ragundiaz, 334 SCRA 193 (2000).

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[18] People v. Legaspi, 331 SCRA 95 (2000).

[19] People v. Mucam, 335 SCRA 552 (2000).

[20] TSN, March 13, 1990, pp. 57-58.

[21] People v. Absalon, G.R. No. 137750, January 25, 2001; People v. Bolivar, 317 SCRA 577, 592 (1999); People v. Desoy, 312 SCRA 432, 445 (1999).

[22] Salvatierra v. Court of Appeals, 333 SCRA 524 (2000).

[23] People v. Rafael, G.R. No. 123176, October 13, 2000.

[24] People v. Uy, G.R. No. 129019, August 16, 2000.

[25] People v. Quilaton, 324 SCRA 670 (2000).

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