

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. ELMER FEGIDERO Y CORDOVA, ACCUSED-APPELLANT.

G.R. No. 113446. August 04, 2000

Ponente: PARDO, J.

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PARDO, J.:

Accused Elmer Fegidero y Cordova appeals from the decision[1] of the Regional Trial Court, Branch 49, Manila finding him guilty beyond reasonable doubt of robbery with homicide and sentencing him to reclusion perpetua and to pay the heirs of deceased Emilio Castro y Mallari the sum of P50,000.00 as indemnity, plus costs.

On March 25, 1993, Assistant City Prosecutor Sed A. Cabangon filed with the Regional Trial Court, Branch 49, Manila an information charging accused Elmer Fegidero y Cordova with robbery with homicide, committed as follows:

"That on or about March 21, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating together with one whose true name, real identity and present whereabouts are still unknown and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: by stabbing one EMILIO CASTRO Y MALLARI with fan knife several times on the different parts of his body at the same time forcibly taking away from him his shoulder bag containing the following, to wit:

Cash money amounting to

P5,000.00

Two fold ring worth

2,000.00

One Rolex watch

2,000.00

Five pcs., gold bracelet

10,000.00

Sunglass worth

500.00

And several important papers

or all valued at P 19,500.00 belonging to the said Emilio Castro y Mallari, to the damage and prejudice of the said owner in the amount of P19,500.00 Philippine Currency, that on the occasion of the said robbery and by reason thereof, the herein accused, in pursuance of their conspiracy, did then and there wilfully [sic], unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the said EMILIO CASTRO Y MALLARI, and as a result thereof, he sustained mortal stab wounds which were the direct and immediate cause of his death.

Contrary to law."[2]

No bail was recommended for his temporary liberty.[3]

Upon arraignment on April 16, 1993, accused Elmer Fegidero y Cordova pleaded not guilty.[4] Trial ensued.

At about 6:30 in the evening of March 21, 1993, Emilio Castro closed his watch and jewelry repair shop in Guadalupe Commercial Complex, Guadalupe, Makati and decided to go home to No. 1543, Sta. Maria, Pedro Gil, Paco, Manila. He put in a black bag the day's earnings amounting to five thousand (P5,000.00) pesos, and several pieces of jewelry he would repair at home. Emilio boarded a passenger jeepney bound for Taft Avenue, Manila.[5]

At around 7:00 in the evening, March 21, 1993, Eddie Mayani, a barangay councilor of San Vicente, Paco, Manila was talking to his friend Inio Cruz at his house when the passenger jeepney where Emilio was on board cruised along. From a distance of eight (8) meters they noticed a commotion inside the jeepney when it stopped by the gasoline station. Inio went out of the house and proceeded to the gasoline station to investigate.[6]

Inio did not return. Eddie followed him. At a distance of about four and one half (4½) meters, Eddie saw a man, wearing white t-shirt, alight from the jeepney. Though it was 7:00 in the evening, he saw the face of the man, later identified as accused Elmer Fegidero y Cordova, from the light coming from the gasoline station. Accused opened the bag he was holding and looked into its contents. Eddie also noticed another man, later identified as victim Emilio Castro y Mallari, holding on to the side of the passenger jeepney and being assisted by Inio.[7]

Eddie approached the pair to help. He noticed that the front and back of Emilio's body were covered with blood. When he inquired from Emilio what happened to him, the latter said that he was held-up, while at the same time shouting after the escaping Elmer, "Hoy, Hoy!" They brought Emilio to the Philippine General Hospital, Taft Avenue, Manila where he was declared dead on arrival.[8]

Meanwhile, Jose Peñaredondo and his group just finished playing basketball at a nearby court in San Vicente St., Pedro Gil, Paco, Manila. Jose saw accused Elmer alight from the passenger jeepney clutching the bag against his breast, followed by Emilio. Eddie shouted that there had been a hold-up and accused Elmer was the culprit.[9]

When accused Elmer heard the shouts of Eddie, he sprinted and escaped towards Road 14, still clutching the bag. Jose and his basketball playmates went after him. In the process, accused Elmer threw the bag at his pursuers. Jose and his group picked up the bag and saw the identification card of Emilio.[10] Other members of the community continued the pursuit and collared accused Elmer near Road 14. The crowd that gathered started mauling accused.[11]

Frederico Lukban was in the vicinity of Road 14, Fabie Estate, Sta. Ana, Manila at around 7:00 in the same evening when he saw accused Elmer being mauled by about twenty (20) people. He approached the crowd and asked why they were mauling Elmer. They responded that he was a hold-upper. Frederico pacified the crowd and took custody of accused.[12]

Eligio Regis, barangay chairman, barangay 788, zone 86, Sta. Ana, Manila was at his house by the river bank when he heard shouts "Harang, Hold-upper. " From a distance of one hundred (100) meters, he saw accused Elmer running towards Road 14, being pursued by a number of people. On his way out to investigate, he met Frederico Lukban who by that time already took custody of accused. They brought the accused to the barangay outpost where Frederico frisked him for weapon. A bloodied seven and one-half (7½) inches long balisong was found inside the left pocket of the pants of accused.[13] Frederico confiscated it and turned it over to Emma, the barangay secretary. When Frederico inquired from accused about the bloodied knife found inside his pants' pocket, accused did not respond.[14]

Emma called up Police Station No. 6, Western Police District Command, Manila and reported that accused was detained at the barangay outpost. She made an entry about the incident in the barangay blotter. Afterwards, policemen from Police Station No. 6 arrived and took custody of accused and the balisong.

At about 7:40 in the evening, same day, a security guard of Philippine General Hospital called up the homicide section of the Western Police District Command, Manila and reported that a victim of robbery was brought to that institution but was declared dead on arrival. A team of policemen from the homicide division led by SPO3 Rosendo de los Santos went to the hospital to investigate.

At the hospital, SPO3 de los Santos talked to the victim's daughter Rosario who told him that accused had been apprehended by the barangay tanod and brought to Police Station No. 6, Sta. Ana, Manila. At the police station, they found accused locked up in a cell, semi-conscious due to the injuries he suffered when a mob mauled him. Afterwards, they went to the scene of the crime and saw blotches of blood in the middle of Pedro Gil, Manila.[15]

In the course of the investigation SPO3 de los Santos recovered two (2) fan knives, a 7½-inch knife turned over by a barangay tanod and a 9-inch knife turned over by the security guard of the Philippine General Hospital.[16]

On March 21, 1993, P/Chief Inspector Florante Baltazar, Chief Medico-Legal Officer, PNP Crime Laboratory, Manila autopsied the cadaver of Emilio Castro y Mallari. He sustained twelve (12) stab wounds in different parts of the body, six (6) of which were fatal, with four (4) hitting the heart of the victim. Judging from the size and number of wounds inflicted on the victim, he was attacked by more than one (1) person.[17] The cause of death was multiple stab wounds on different parts of the body.[18]

Accused Elmer Fegidero y Cordova denied the charge against him. Late in the afternoon of March 21, 1993, while he was busy with the household chores at No. 966 H. Santos St., Makati City an acquaintance by the name of "Bok-bok" Morales arrived, with another person only identified as "Boy."

Bok-bok and Boy invited Elmer to a drinking spree in Taft Avenue, Manila which accused accepted. They left the house and boarded a passenger jeepney bound for Taft Avenue.

While the jeepney was cruising along Pedro Gil, Manila one of the passengers, an old man, signaled the driver to stop as he was going down. The passenger jeepney stopped in front of a gasoline station, at the corner of Brgy. San Vicente, Paco, Manila.

When the old man was about to stand up from his seat, Bok-bok grabbed the old man's bag and threw it to Elmer, whom he (Bok-bok) instructed to run (Takbo!). The old man put up a fight causing a commotion inside the

passenger jeepney. The passengers began to alight one by one, including accused Elmer. All the while, Elmer was not conscious that he was holding the bag of the old man.

Upon alighting from the jeep, Elmer heard a woman's voice shouting "Snatcher! Snatcher!" Then several male persons began to pursue him. It was only then that he realized that he was holding the bag of the old man. Out of fear that he might be mistaken as the snatcher, he threw the bag at his pursuers and ran away.[19]

Elmer's path was blocked by one of the bystanders in the area causing him to stumble and fall. He was mauled by approximately twenty five (25) persons, hitting him on the head, at the back and right hand. The mauling stopped when a woman shouted "Tama na yan, maawa kayo!"[20]

Thereafter, Elmer was apprehended by barangay tanods and surrendered to Precinct 6, Sta. Ana, Manila. At around 11:45 in the evening, SPO1 Donato Tan brought him to the Ospital ng Maynila. Dr. Donatella Valeña checked his injuries. Due to the physical beatings he suffered, he would be incapacitated for seven (7) to fifteen (15) days. He left the hospital without being given any medical treatment.[21]

On March 23, 1993, Elmer was transferred to the Homicide Division, Western Police District Command Headquarters, United Nations Avenue, Manila where he was maltreated and forced to admit his guilt without the assistance of counsel.

Edna Monares, Elmer's sister visited him at the Western Police District Command Headquarters. She noticed that he had wounds all over his body and his shirt was bloodied. He told her that he was with Bok-bok Morales when it happened.

At the time the crime took place, accused Elmer was jobless because the workers in the company where he was working went on strike. His family was in Pilar, Sorsogon. From time to time, he would ask for financial help from his sister Edna.[22]

On August 27, 1993, the trial court rendered a decision finding accused Elmer Fegidero y Cordova guilty of robbery with homicide, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the Accused guilty, as principal, of the special complex crime of Robbery with Homicide defined in and penalized by Article 294, paragraph 1 of the Revised Penal Code and hereby imposes on said Accused the penalty of RECLUSION PERPETUA with all the accessory penalties provided for by the Revised Penal Code and hereby condemns him to pay the amount of P50,000.00 to the heirs of the deceased, by way of indemnity. Upon the finality of this Decision, the Branch Clerk of Court of this Court is hereby ordered to turn over the bag, Exhibit "E" and its contents, Exhibit "E-2" to the heirs of the deceased.

"The period during which the Accused was detained in the City Jail of Manila during the pendency of this case shall be credited to him in full provided that he agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail of Manila. With costs against the Accused.

"SO ORDERED.

"Manila, Philippines, August 27, 1993."[23]

The decision was promulgated on August 31, 1993.[24]

On September 13, 1995, accused Elmer Fegidero y Cordova filed a notice of appeal to the Supreme Court.[25]

In this appeal, accused-appellant Elmer Fegidero y Cordova claimed that the court a quo erred in holding that the circumstantial evidence presented by the prosecution sufficiently established his guilt. He said that the acts and

statements of the victim immediately after the stabbing incident are not part of *res gestae* and must not be admitted as evidence against him. Contrary to the finding of the trial court, he pretended that he did not conspire with Bok-bok Morales to commit the crime.

Since nobody saw the actual taking of the bag and the stabbing of the victim, in arriving at a judgment of conviction the trial court relied on circumstantial evidence. Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[26] Circumstantial evidence suffices to convict if the following elements are present:

"(a) There is more than one circumstance;

"(b) The facts from which the inferences are derived are proven; and

"(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt." [27]

"A judgment of conviction based on circumstantial evidence can be sustained only when the circumstances proved form an unbroken chain which leads to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the culprit. The circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilt." [28]

In the instant case, accused appellant claims that the third element is wanting.

We do not agree. The combination of all circumstantial evidence presented by the prosecution clearly and convincingly established the participation of accused in the robbery and death of the victim Emilio Castro y Mallari. The chain of events pointed to accused as the culprit. More than one person identified accused Elmer as the one who alighted from the passenger jeepney clutching the bag of the victim. The manner that he held on to the bag of the victim belied his claim that he had no intention of taking it. As demonstrated by Jose Peñaredondo, when accused alighted from the jeepney, he was clutching the bag with his left arm, the bag was over his breast and his right hand was on the handle,[29] as if protecting the loot against anyone who would take it away from him.

Assuming arguendo that it was Bok-bok Morales who had the intention of robbing the victim and that accused was just an unsuspecting companion, why then did he try to escape from the vehicle carrying the bag of the victim? Instead of running away with the loot, the normal reaction of a person who has come into possession of a thing which he knew to be stolen is to return it to the owner if he had no intent to gain. This showed that he had knowledge about the plan to commit the robbery, he was part of the conspiracy and he did nothing to stop it.

"A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of such agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest." [30]

Accused-appellant claimed that he had no participation in the killing of victim Emilio Castro y Mallari. When accused-appellant was frisked by barangay councilor Frederico Lukban, a 7½ balisong was found inside his pants' left pocket, covered with blood. When asked to explain why he had it in his possession, accused just kept silent and did not explain.

Contrary to the contention of accused-appellant, the trial court did not err in considering the statement "Hoy! Hoy!" uttered by victim Emilio immediately after the robbery as part of *res gestae*, hence admissible against him. Taking into account the context when this was uttered and the time it was uttered, it very well pointed to accused as the one responsible for the crime. One of the prosecution witnesses, Eddie Mayani, testified that when he inquired from victim Emilio what happened to him, the latter said that he was held-up, while at the same time shouting after the escaping Elmer, "Hoy, Hoy! " This statement did cast "important light" upon the issue by identifying accused as the victim's attacker. This was uttered immediately after the startling occurrence and without an opportunity on the part of the victim to come up with a lie.

"*Res gestae*" means literally the "things or things happened" and therefore, to be admissible as exception to hearsay rule, words spoken, thoughts expressed, and gestures made, must all be so closely connected to the occurrence or event in both time and substance as to be a part of the happening."^[31] It refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.^[32] Also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.^[33]

With this chain of events, there is no logical conclusion except that accused Elmer Fegidero y Cordova was responsible for the robbery and death of victim Emilio Castro y Mallari.

Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer the penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.^[34] Considering, however, that at the time the crime was committed death penalty was proscribed under the 1987 Constitution, the death penalty can not be imposed herein. The trial court did not err when it meted out on accused Elmer Fegidero y Cordova the penalty of reclusion perpetua. We affirm the award of fifty thousand (P50,000.00) pesos, as death indemnity. Pursuant to the provision of Article 2219(1), in relation to Article 2206 of the Civil Code, an award of moral damages in the amount of fifty thousand (P50,000.00) pesos is reasonable.^[35]

WHEREFORE, the Court AFFIRMS the appealed decision of the Regional Trial Court, Branch 49, Manila in Criminal Case No. 93-118514 finding accused Elmer Fegidero y Cordova guilty beyond reasonable doubt of robbery with homicide, defined and penalized under Article 294 of the Revised Penal Code, and sentencing him to reclusion perpetua, and to pay the heirs of Emilio Castro y Mallari, the amount of fifty thousand (P50,000.00) pesos as death indemnity, and fifty thousand (P50,000.00) pesos as moral damages.

With costs.

SO ORDERED.

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

[1] In Criminal Case No. 93-118514, Decision, Judge Romeo J. Callejo, presiding, Rollo, pp. 14-58.

[2] Regional Trial Court Record, pp. 1-2.

[3] Rollo, p. 6.

- [4] Regional Trial Court Record, p. 12.
- [5] RTC Decision, Rollo, pp. 14-58.
- [6] Ibid., p. 17.
- [7] Ibid.
- [8] Ibid.
- [9] TSN, May 21, 1993, pp. 20-22.
- [10] Ibid., pp. 19-25.
- [11] RTC Decision, supra, second paragraph, p. 5.
- [12] TSN, May 26, 1993, pp. 24-25.
- [13] Ibid., p. 26.
- [14] Ibid., pp. 30-31.
- [15] Ibid., pp. 4-7.
- [16] Ibid., pp. 8-10.
- [17] TSN, May 21, 1993, pp. 15-16.
- [18] Regional Trial Court Record, p. 49.
- [19] TSN, July 14, 1993, pp. 44-50.
- [20] Ibid., p. 20.
- [21] Ibid., pp. 6-7.
- [22] Ibid., p. 32.
- [23] Regional Trial Court Decision, Judge Romeo J. Callejo, Rollo, pp. 14-58, at p. 58.
- [24] Regional Trial Court Record, p. 109.
- [25] Rollo, pp. 59-60.
- [26] People vs. Botona, 304 SCRA 712, 728-729 (1999)
- [27] Rule 133, Section 4, Revised Rules on Evidence.
- [28] People vs. Botona, supra, Note 26, at p. 729.
- [29] TSN, May 21, 1993, p. 35.
- [30] People vs. Francisco, G.R. No. 118573-74, May 31, 2000.
- [31] Black's Law Dictionary, Abridged fifth Edition, p. 678.
- [32] People vs. Manhuyod. Jr., 290 SCRA 257, 271-272 (1998)
- [33] Rule 130, Section 42, Revised Rules on Evidence.
- [34] Article 294 (1), Revised Penal Code.

[35] People vs. Cotas, G.R. No. 132043, May 31, 2000; People vs. Francisco, G.R. Nos. 118573-74, May 31, 2000; People vs. Sanchez, 308 SCRA 264, 287 (1999)

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