

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO SUMALLO Y SAGADAL AND RUBEN DATU Y SUMALLO, ACCUSED. CESAR DATU Y SUMALLO, ACCUSED-APPELLANT.

G.R. No. 116737. May 24, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Eduardo Sumallo, Cesar Datu and Ruben Datu were charged with robbery in band with homicide in an information that read:

That on or about the 23rd day of January, 1991, at 1:30 o' clock early in the morning along the National Highway, at Sitio Ogbon, Barangay Cansangaya, Canavid, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused all armed with firearms (38 Caliber Revolver) and sharp bladed weapons respectively, conspiring, confederating together and mutually helping one another with intent of gain and by the use of force, threats, intimidation and violence upon persons, did then and there wilfully, unlawfully and feloniously held-up a passenger's jeepney named ROUREY JAY bound for Catbalogan, Samar, robbed, took and carried away with them Cash Money, Draft Check from the passengers, amounting to One Hundred Forty Nine Thousand Four Hundred Ninety Five (P149,495.00), Pesos, Philippine Currency, and on the occasion of said robbery, one of the accused shot the Jeepney Driver (Renato D. Adel) with the use of firearm, thereby sustaining gun shot wound causing the instantaneous death of said driver, to the damage and prejudice of the passengers and the heirs of the victim, respectively.

CONTRARY TO LAW.[1]

All three accused pleaded "not guilty" to the crime charged when arraigned.[2]

During the pendency of the trial, however, accused Ruben Datu escaped from confinement on January 23, 1994. Trial proceeded in due course against the accused, including Ruben Datu who was deemed to have waived his right to be present at the subsequent hearings, pursuant to Section 1(c) of Rule 115 of the 1985 Rules on Criminal Procedure.

The evidence for the prosecution established that at around one thirty in the morning of January 23, 1991, eyewitnesses Jesus Capon and Sandra Capon were aboard a Rourey Jay passenger jeepney bound for Catbalogan, Samar when they saw two (2) coconut trunks laid along the road just after the jeepney crossed the bridge of Can-avid near Cansangaya. Travelling at considerable speed, the jeepney ran over the coconut trunks, swerved to the left side of the road and then stopped. Just as the jeepney stopped, gunshots were fired and several men appeared. Eyewitnesses Jesus Capon and Sandra Capon identified three (3) of them as Eduardo Sumallo, Cesar Datu and Ruben Datu.

Sandra Capon testified that she was seated in front beside the driver; that after the gunshots rang, the jeepney ran over the coconut trunks and stopped, that just as the jeepney stopped, she felt driver Renato D. Adel fall upon her; that two men whom she later identified as Cesar Datu and Eduardo Sumallo approached her and demanded

money; and that she gave them an envelop containing cash in the amount of P20,000.00 and a demand draft in the amount of P123,000.00. After giving the envelop to Cesar Datu, she lost consciousness and woke up only at the Taft Emergency Hospital in Taft, Eastern Samar.[3]

Jesus Capon testified that as soon as the men approached the vehicle, one of them announced a hold-up. Accused Cesar Datu poked a gun at him while accused Eduardo Sumallo and Ruben Datu went inside the jeepney and collected money and some articles from the passengers. Still two others who he cannot identify went to the front seat of the jeepney. Jesus Capon gave Eduardo Sumallo and Ruben Datu his wallet containing P2,645.00. He categorically stated that he was able to identify the three accused because the light inside the jeep was clear and bright. When another jeepney approached with its headlights focused upon the held-up jeepney, the accused scampered away.[4]

As the driver Adel was wounded, the jeepney's conductor drove the vehicle until it reached Barangay Nato where Jesus and the other passengers transferred to another jeepney bound for Catbalogan. Renato Adel, the driver, was brought on the same day to a hospital in Tacloban City where he expired due to the wound he sustained.

Dr. Angel Cordero, Chief Inspector and Medico-Legal Officer of the PNP Crime Laboratory Services of Regional Office No. 8, Tacloban City, testified that he conducted an autopsy of the body of Renato D. Adel, the driver of the jeepney and confirmed the findings he made in his Medico-Legal Necropsy Report.[5] His findings revealed the following:

Fairly nourished, fairly developed male cadaver in rigor mortis with postmortem lividity on the dependent portions of the body. Lips and nail beds are cyanotic. Conjunctivae are pale.

HEAD

Gunshot wound point of entry, parieto and posterior portion of the left portion of the head, measuring 0.8 x 0.8 x 6cms., AML., directed inwards, penetrating into the skull cavity, coursing further to the right, where the slug was lodge at the right cerebral hemisphere.

Contusion collar, at the point of entry, measuring 0.2 cms. Laterally and inferiorly, and 0.1 mm., medially and superiorly.

No other findings in the unaffected area.

REMARKS

Cause of death is shock and hemorrhage due to gunshot wound of the head, posterior left, lacerating the brain substance.

He further testified that he recovered a slug from a .38 caliber gun from the body of the victim (Exhibit "B"). He theorized that the assailant shot the victim from a considerable distance, in a standing position and behind the victim.[6]

Sylvia Adel, widow of driver Renato Adel, testified only as to the fact of death of her husband because she had no personal knowledge of the incident that led to his fatal shooting. She dwelt on the actual expenses spent by the family for the hospitalization, wake and burial of her husband.[7]

Accused Cesar Datu denied the charge against him and averred that at about one thirty in the morning of January 23, 1991, he was in the house of his uncle, Marcelo Sumallo, at Barangay Cansangaya, Canavid, Eastern Samar, drinking tuba with his co-accused, cousin Eduardo Sumallo and brother Ruben Datu and two (2) other friends from Tacloban City, namely, Nelson Hinakay and Almario Soledad.[8] They started drinking at about eight in the evening of January 22, 1992 and ended about two in the morning of the following day. He claimed that all of

them slept in his uncle's house. When he woke up at nine that same morning, he went up to the mountain to gather firewood. There, he was arrested by police officer Romeo Chicano who informed him that he was a suspect in a robbery hold-up committed in the early hours of January 23, 1991. On cross-examination, he asserted that a certain Florencio Murallos was present in his uncle's house that night drinking with his uncle. He likewise admitted that his uncle's house is no more than a kilometer away from the scene of the crime which could be traversed by a 25-30-minute walk.[9]

Florencio Murallos corroborated in part Cesar Datu's testimony when he claimed that at about eight in the evening of January 22, 1991, he was at the house of Marcelo Sumallo drinking tuba with the latter and one Rogelio Legua until four the following morning. At about one thirty in the morning of January 23, 1991 when he went inside the house, he saw Eduardo Sumallo and Cesar Datu sleeping in the kitchen.[10]

Eduardo Sumallo did not testify. In his counter-affidavit dated February 5, 1991, he admitted to the robbery and his fatal shooting of the driver, Renato Adel.[11]

Ruben Datu, as aforestated, escaped from confinement on January 23, 1994.

After trial, the court a quo convicted the accused of robbery with homicide and not robbery in band with homicide as only one of the accused was proven to be armed with a gun at the time of the robbery. The decretal portion of the decision dated May 30, 1994 read:

Accordingly, the three accused herein acting in conspiracy this court do hereby sentence the three accused herein, Eduardo Sumallo, Cesar Datu and Ruben Datu, each to suffer the penalty of Reclusion Perpetua and since every person criminally liable is also civilly liable (Art. 100, RPC), to indemnify pro-rata Jesus Capon P2,145.00; to Sandra Capon, P143,000.00 (representing the P123,000.00 demand check, and P20,000.00 cash), and to the heirs of Renato Adel the amount of P50,000.00 for the death of said Renato Adel, and P12,762.00 representing the hospital expenses and other expenses in connection with the death of Renato Adel, without subsidiary imprisonment in case of insolvency to pay the aforementioned indemnities and to pay the costs, joint and solidarity.

Since the three accused herein signed each an agreement to abide by the same rules imposed upon convicted prisoners as shown on pages 337, 338 and 339 of the records, each of the accused herein shall be entitled to full time credit during their preventive imprisonment which agreements were signed all on September 16, 1991.

SO ORDERED.[12]

In their appeal which was timely interposed on June 17, 1994, appellants raised the following errors, viz:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

THE LOWER COURT GRAVELY ERRED IN CONSIDERING IN ITS JUDGMENT OF CONVICTION AN ALLEGED EXTRA-JUDICIAL CONFESSION OF ONE ACCUSED AND AN ALLEGED RECOVERED GUN FROM THE OTHER ACCUSED BOTH OF WHICH ARE NOT AT ALL IN EVIDENCE.

III

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS EDUARDO

SUMALLO AND CESAR DATU GUILTY OF ROBBERY WITH HOMICIDE DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE THAT WOULD WARRANT A CONVICTION BEYOND REASONABLE DOUBT.[13]

Meanwhile, on May 29, 1995, this Court resolved to dismiss the appeal of Ruben Sumallo in view of the latter's escape from confinement while in the custody of the Sub-Provincial Jail of Dolores, Eastern Samar. This resolution became final and executory on July 5, 1995.

On July 1, 1996, appellant Eduardo Sumallo in his letter of even date, moved to withdraw his appeal.[14] After ascertaining the voluntariness of the execution of said motion, this Court resolved to grant appellant Eduardo Sumallo's motion to withdraw his appeal in a resolution dated November 11, 1996. This resolution became final and executory on November 21, 1996.

In view of the foregoing, this decision will only concern appellant Cesar Datu.

In assailing the questioned judgment of conviction, appellant asseverates that the trial court erred in affording favorable consideration to the prosecution's evidence particularly that of his positive identification as one of the malefactors, pointing out some material inconsistencies in the testimonies of eyewitnesses Jesus Capon and Sandra Capon.

We do not agree.

Jesus Capon, himself a victim of the robbery hold-up, positively identified appellant Cesar Datu as the one who poked a gun at him. In his testimony, he declared

Q You said that a person poked a gun at you and saw other went inside the jeep, did you see their faces?

A Because the light in the jeep was clear and bright I saw their faces.

Q You said you saw the faces of these people that you are talking about, can you identify them again if you see them again?

A Yes, sir.

xxx.

COURT:

If that persons whom you saw during that holdup are within the environs of the court, can you point to them?

A

Yes, sir.

COURT:

Proceed.

Q Could you please look around the court now if those people are around in court?

A That guy with a mole in his face with a black polo shirt.

Q What is your name?

A Cesar Datu.

Q How about the other that you pointed out?

A That fellow who is wearing a white shirt.

Q What is your name?

A Ruben Datu.

ATTY. TAN:

I would like to manifest for the record that witness Mr. Capon pointed to two people in court who answered the name of Cesar Datu and Ruben Datu

COURT

How about that fellow wearing a red shirt?

A He was the No. 3 that I saw.[15]

He was able to establish the identity of the third accused when he declared that:

Q

You mentioned that five persons made the holdup, two were inside the jeep, one poked a gun at you and the other two were in front of the jeep likewise collecting money. From among the 3 inside the jeep you mentioned that Cesar Datu was the one poking a gun at you, how about the other two, were they also inside the jeep?

A The other two is present in court.

Q You mean this two other accused now aside from Cesar Datu were also inside that jeep?

A Yes, they were collecting money.

Q You mean Eduardo Sumallo and Ruben Datu?

A The other two was the one who collected from the passengers And all the passengers were lying downward.

Q I would like to be clarified if Eduardo Sumallo and Ruben Datu were the ones collecting money inside the jeep while Cesar Datu was poking a gun at you?

A Yes, sir.[16]

In the same breath, Sandra Capon, another victim, testified that:

Q You mentioned that two (2) persons approached you, would you be able to recognize them if you see them in court?

A Yes, sir.

Q Please point to them.

A

(Witness pointing to a person who is wearing a white polo and responded to a name Cesar Datu and also to a person who is wearing a white T-shirt, who answered to the name of Eduardo Sumallo).

Q When you gave the envelope which contain cash and check, to whom did you give that envelope?

A To Cesar Datu.[17]

Evidently, both witnesses gave positive, straightforward and unequivocal account of what transpired that early morning. Their testimony with respect to the identity of the accused was clear and categorical and remained steadfast despite grueling cross-examination.

Having been positively identified as one of malefactors, appellant's defense of alibi is practically rendered inutile and worthless. Alibi, to be considered credible, must be convincing as to forfeit any doubt that the accused could not have been physically present at the scene of the crime at the time of commission.[18] In this case, appellant himself admitted that his uncle Marcelo's house is no more than a kilometer away from the place of the incident and could easily be negotiated by a couple of minutes walk. By stating so, he failed to prove by a convincing account that it was not physically impossible for him to be at the scene at that crucial time.

It is likewise contended by the appellant that it was unnatural and inconsistent with human nature (a) for witness Jesus Capon to remain in his seat and not drop to the floor of the vehicle as soon as he heard gunfire as what the other passengers did and (b) for Sandra Capon to lose consciousness not after she heard gunshots but only after she handed the envelop containing the cash and the demand draft to the malefactors.

It is a well-entrenched rule that different people react differently when confronted with a startling and frightening experience. Indeed, there is no standard form of human behavioral response to crimes and other strange occurrences.[19] In fact, it has been noted in many crimes of violence that the most natural reaction of victims during its perpetration is to strive to see the faces and the appearance of the assailants,[20] to observe the manner the crime was committed and to approximate what could be the assailant's next move either as an instinctive reaction or as a measure to help fend against any further attack.[21] Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time.[22] Consequently, eyewitnesses Jesus Capon and Sandra Capon's reaction to the crime cannot be considered unnatural and inconsistent with human nature.

In alluding to the alleged "uncertainties" and "doubts" of Jesus Capon in his testimony on the identities of the perpetrators of the crime, the appellant argues:

At some points in his testimony Jesus Capon showed vacillation, particularly on the identities of the persons who allegedly perpetrated the crime. He stated that before the incident, he had not seen accused-appellants Cesar Datu and Eduardo Sumallo and the other accused Ruben Datu (p. 4, cross-examination, TSN, March 10, 1992). The first time he identified accused-appellants and the other accused from the time of the incident, was when he pointed to him in court (p. 3, Ibid). Then again he stated that he did not recognize the five (5) persons who made the hold-up (p. 9, Ibid). He further stated that he cannot remember when was the first time he saw the three accused, but says it is only now and yet again stated "this is his second time to see them" (p. 10, *ibid*)[23]

Dismissing the above unfounded assertion, the People's brief pointedly adverts to appellant's misrepresentation of Jesus Capon's testimony. We quote with favor the Solicitor General:

To prove their point, appellants conveniently "lifted out" from the testimony of Jesus Capon during cross-examination in order to show the alleged inconsistency in his statement that the first time he identified appellants and the other accused from the time of the incident was when he pointed to them in court (p. 3, *supra*) while claiming on the other hand that he did not recognize the five (5) persons who held them up (p. 9, *supra*), but still further claimed that "this is his second time to see them" (p. 10, *supra*).

If only appellants were candid enough and quoted the whole text of the pertinent testimonies, the truth is that there is no inconsistency whatsoever by the above statements of the witness if taken in its whole context.

On cross-examination, Jesus Capon stated:

Q

You pointed to the court in your direct testimony the three (3) accused and you even pointed one with a mole on his face and who gave their names as Cesar Datu, Eduardo Sumallo and Ruben Datu, my question is, this was the first time you identified these persons from the time of the incident until now?

A Yes because that [sic] were the faces I saw during that incident.

Q But you have seen these three (3) persons several times already from January 25, 1991 up to the present?

A When I executed my affidavit they did not allow me to see them.

Q

But it is not a fact that, that was the first time you came to court in connection with this case?

A This is my second time to see them after the incident.

(p. 3, supra)

Therefore, the witness declared in all candor when he said that from the time of the incident, it was his first time to identify the appellants in open court since he did not meet and identify them when he executed his affidavit. However, from the time of incident when he met appellants during the robbery and when he identified them in open court, the witness was correct in saying that it was the second time to see them.

And when the witness allegedly stated that he did not recognize the five (5) persons who held them up, the same should likewise be read in its whole context because what he said was that he did not recognize the five (5) persons when he was investigated during the preliminary investigation for the simple reason that they were not presented to him for identification. What he said was that he could identify them if ever he would see them (pp. 9-10, supra).[24]

In robbery with homicide cases, the prosecution need only prove three elements: (a) the taking of personal property is perpetrated by means of violence or intimidation against a 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, here used in its generic sense, is committed.[25]

Here, the evidence for the prosecution indubitably shows that the accused, at gunpoint, took with them money, demand draft and other articles belonging to Jesus Capon and Sandra Capon and that Renato Adel, driver of the held-up passenger jeepney, was shot and killed on occasion of the robbery. The crime was witnessed by Jesus Capon and Sandra Capon who positively identified the accused as the persons who robbed them and killed Renato Adel.

Appellant's assertion that the trial court relied on the alleged extrajudicial confession of Eduardo Sumallo which was not offered in evidence nor marked as an exhibit and the non-presentation or identification of the gun recovered from him, to convict the accused is baseless. It is crystal clear from the evidence on record that the extrajudicial confession was not made the basis for the conviction of the accused. Neither was it necessary for the

prosecution to present the gun to prove that the crime of robbery with homicide was committed as it was sufficiently established that a gun was used to shoot driver Renato Adel and that a slug from a .38 caliber gun was recovered from his body.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** in toto. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Pardo, and Ynares-Santiago, JJ., concur.

[1] Records, p. 1.

[2] Id., at 128.

[3] TSN, January 20, 1993, pp. 2-5.

[4] TSN, March 10, 1992, Volume I, pp. 2-7.

[5] Exhibit "A."

[6] TSN, July 27, 1993, pp. 1-6.

[7] TSN, June 17, 1992, pp. 2-6.

[8] These persons were likewise arrested and detained but were later released due to insufficiency of evidence.

[9] TSN, February 18, 1994, pp. 1-10.

[10] TSN, March 2, 1994, pp. 2-8.

[11] Records, p. 98.

[12] Id., at 235-236.

[13] Rollo, p. 73.

[14] Id., at 158.

[15] TSN, March 10, 1992, pp. 4-5.

[16] Id., at 6-7.

[17] TSN, January 20, 1993, p. 4.

[18] *People v. Andal*, 279 SCRA 474 (1997); *People v. Sorrel*, 278 SCRA 369 (1997); *People v. Daquipil*, 240 SCRA 314 (1995).

[19] *People v. Bajar*, 281 SCRA 262 (1997); *People v. Naredo*, 276 SCRA 489 (1997); *People v. Navales*, 266 SCRA 569 (1997).

[20] *People v. Teehankee*, 249 SCRA 54 (1995); *People v. Salazar*, 248 SCRA 460 (1995).

[21] *People v. Avillano*, 269 SCRA 553 (1997).

[22] See *People vs. Verzosa*, G.R. No. 118944, August 20, 1998.

[23] Rollo, p. 84.

[24] Id., at 146-149.

[25] People v. Sorrel, *supra*; People v. Salazar, 277 SCRA 67 (1997); People v. Guiamil, 277 SCRA 658 (1997).

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