

JULIO MARCO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 117561. June 11, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

JULIO MARCO was found by the trial court guilty of robbery in band. The Court of Appeals affirmed the decision in toto. We are now called upon to review his conviction.

On 5 March 1989 Estela Ilan and her four sons, Jimmy, Joseph, Jonathan and Pepito Jr., together with their neighbors Susana Salsaba and Joel Alex, were gathered in the terrace of the Ilan residence situated in Brgy. Pook, Sta. Rosa, Laguna. Pepito A. Ilan, husband of Estela, was watching television in the living room. Suddenly five (5) armed men barged in looking for Pepito. When Estela asked who they were the men pushed all of them into the house and locked the door. One of the strangers remained outside the house as look-out. Once inside, the men threatened the Ilans and their friends and frisked Pepito for any firearm. Thereafter one of the intruders struck Pepito on the face with a butt of a gun. Pepito fell on his knees as blood oozed from his right eye. Pepito tried to stand but another one hit him on the head. When Jimmy, the 12-year old son, shouted, “What are you doing to my father and mother?” one of the men kicked him on the upper right thigh. Meanwhile, the trespassers pushed Estela into the children’s bedroom as the rest ransacked the house. Then somebody knocked at the door. The men hurriedly left bringing with them their loot - stereo-cassette, a video rewinder, an alarm clock, some pieces of jewelry and a certain amount of cash. Pepito was immediately rushed to the hospital for treatment of his head injuries which, according to medical report, would heal in seven to ten days.

A week after the incident, the police summoned the Ilans to the police station - Pepito, Estela and Jimmy - to inform them that five (5) men were being detained therein for alleged involvement in a recent robbery. Upon being shown the pictures of the detainees, Jimmy immediately recognized Julio Marco, Barry Chavez and Romeo Caram as among those who staged the robbery at their residence. This was confirmed by Estela and Pepito.

Thereafter Julio Marco, Barry Chavez and Romeo Caram were charged with robbery in band.[1] Only Marco and Chavez were tried because Caram remained at large, while the two (2) others were never identified. Chavez thereafter jumped bail thus leaving Marco alone to stand trial.

Marco invoked alibi. He contended that on 5 March 1989 he was in San Pedro, Laguna, hauling rice for his employer, a certain Navoa. He recounted that after driving Navoa’s jeepney from seven-thirty that morning to noontime,[2] he took his lunch, cleaned the jeepney and drove it to Navoa’s residence. Due to fatigue, he could not recall the exact time they stopped hauling rice. But he asserted that he could not have left San Pedro because he went to sleep the moment he reached his quarters.

To corroborate Marco’s defense, Navoa testified that Marco had never been absent in the afternoon of any day during the entire period of his employment from February 1988 to 5 March 1989. He further testified that on that fateful evening he personally supervised Marco and the other workers in hauling rice. It was only much later after

6 March 1989 when Marco failed to report for work that Navoa learned of this case.

Mainly relying on the testimony of Jimmy, particularly on his positive identification of Marco, the trial court found petitioner guilty of the crime charged. The Court of Appeals affirmed his conviction.[3] His motion for reconsideration having been denied[4] he now comes to us on a petition for review.

Petitioner assails his conviction contending that his guilt was not proved beyond reasonable doubt. He insists that he was not sufficiently identified because only Jimmy Ilan positively pinpointed him. Marco strongly argues that the failure of the Ilan spouses to identify him raises a serious doubt as to his culpability. He premises his arguments on the fact that the crime scene was well-lighted which should have enabled everyone to see very clearly the faces of the malefactors. He postulates hence that “(a)ll these witnesses saw the faces of the robbers, why is it that only Jimmy Ilan can (sic) identify Julio Marco?” To bolster his arguments, he concludes that the false identification was improperly suggested by the police.

We sustain the conviction. It is well settled that the appellate court will not interfere with the conclusions of the trial court concerning the credibility of witnesses unless there are substantial facts and circumstances which the trial court overlooked, misunderstood or misapplied and which when considered would probably alter the outcome of the case.[5] The principle is not without good reason. Trial courts have vastly superior advantages in ascertaining the truth and in detecting falsehood as they have the opportunity to observe the manner and demeanor of witnesses while testifying.[6]

As correctly noted by the appellate court, the failure of the Ilan spouses to clearly identify Marco is explainable. Thus -

It is understandable that Pepito Ilan did not initially identify Julio Marco. He was down on the floor and apparently remained there after he was pistol-whipped by Romeo Caram. Estela Ilan, on the other hand, was accosted by Barry Chavez who pointed a gun at her and brought her to a room in the house. It is unlikely that in that state, she could have the time to look closely at the other participants to the offense.[7]

But even if we dispense with the testimonies of Pepito and Estela, we cannot ignore Jimmy’s testimony which remains intrinsically credible absent any showing that it was improperly or maliciously motivated. During the trial, Jimmy positively and unequivocally identified Marco as one of those who robbed them on the night of 5 March 1989; that it was Marco who guarded them while his other companions ransacked their house and hauled away their valuables; and, that Marco even kicked him. Jimmy never waived during the direct and cross-examinations. His coherent recollection of the incident showed truthfulness and sincerity. Jimmy candidly testified on cross-examination -

Q: Mr. Witness, is (sic) that your first time to experience a robbery?

A: Yes, sir.

Q: How do (sic) you feel when you experience (sic) such kind of incident, four (4) men with drawn guns pushing all of you inside a room?

A: I was surprised, sir.

Q: Of course, you are (sic) very afraid when you realize (sic) that said incident was a hold-up and all of them have guns and ready to go (sic) to kill all of you?

A: No, I am only afraid, sir.

Q: And because you were afraid you don't (sic) want to look at their faces because you might recognize them and (they) might kill you, is that correct?

A: I was looking at their faces, sir.[8]

As aptly observed by the appellate court, Jimmy Ilan had ample opportunity to see the face of Marco because it was he who guarded Jimmy and his brothers while the rest ransacked the house. His recollection of Marco was further strengthened when the latter kicked him on his right upper hip. At the police headquarters Jimmy readily recognized Marco. His immediate reaction was to box and kick the accused while uttering the words “I told (sic) you, next time I will see you again I will kill you because you hurt my father and mother.” Such is a natural reaction of a person who harbors intense anger against somebody who had wronged him. It is not expected that a witness would prevaricate and cause the criminal conviction of one who did not bring him any harm or injury.[9]

The court likewise proffered questions to Jimmy in this wise -

Q: Do you believe in God?

A: Yes, your honor.

Q: Do you know that God hates false testimony and liars?

A: Yes, ma'am.

Q: That if you said (sic) false testimony against another you are accountable to God, that punishment will be rendered against you?

A: Yes, ma'am.

Q: That vindication comes from the Lord in case you sent (sic) someone to jail by virtue of a false testimony?

A: Yes, ma'am.

Q: Now, you are sure that accused Barry Chavez and Romeo Caram were the ones you saw entered (sic) your house on that particular date?

A: Yes, ma'am.

Q: Without any doubt?

A: Yes, ma'am.

Q: And if you look before God you can look at Him to (sic) face and you will not feel any guilt about that testimony of yours?

A: Yes, ma'am.

Q: Why?

A: Because they were the ones who ransacked our house, ma'am.[10]

We have repeatedly held that the testimony of minors of tender age will suffice to convict a person accused of a crime so long as it is credible.[11] Jimmy, then 12-years old, delivered a straightforward, unshaken and convincing narrative. Indeed, the testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have fully understood the character and nature of an oath, their testimony should be given full credence.[12]

We cannot absolve Marco just because two (2) out of three witnesses failed to identify him positively. In determining the value or credibility of evidence, witnesses are to be weighed, not numbered.[13] It is common to reach a conclusion of guilt on the basis of the testimony of a single witness so long as such testimony was found to be clear and convincing by the trial court.[14]

Neither can we sustain appellant's allegation that the identification of the accused was contrived by the police. This assertion cannot be given credence without corresponding proof. As we have consistently held, law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary.[15]

Appellant's resort to the much-abused defense of alibi cannot prevail over the positive identification made by

Jimmy Ilan, a credible and untarnished witness. At the risk of being redundant, it is oft-repeated that the defense of alibi is worthless in the face of positive identification.[16] Moreover, for alibi to prosper, two essential requisites must be satisfied, namely, the physical presence of the accused elsewhere at the time of the commission of the crime, and the physical impossibility for him to be at the crime scene or its immediate vicinity.[17] Accused proved neither.

Marco tried to convince us that he was elsewhere when the alleged crime happened. But his account is fraught with material inconsistencies and doubtful assertions. He initially admitted that he stopped hauling rice at noontime. Later, he changed his account to nighttime at about eight to nine o'clock.[18] At another instance, he said he was too tired to remember the approximate time they stopped hauling rice.[19] On cross-examination, Marco displayed obvious evasiveness and utter reluctance to answer questions propounded by the prosecution. The gist of his testimony is reproduced in seriatim:

Julio Marco has been a driver for ten (10) years. At first, he denied having traveled the stretch from Calamba to San Pedro, Laguna. Later, he admitted having passed by the area enroute to Batangas but cannot recall the date or year he last traversed it. Despite his familiarity with the place, he denied knowledge about San Pedro's distance from Sta. Rosa nor the time it would take in negotiating both towns. He cannot recall the number of trips they made on 5 March 1989. After hauling rice, he had dinner with Navoa's workers. However, he was not familiar with his co-workers' names except their aliases. He slept at his quarters near Navoa's residence but cannot remember the exact time he woke up.[20]

Marco's amazing lapses in memory when it comes to things he ought to know instills disbelief. His propensity to give "I don't know" or "I don't remember" answers erodes the credibility of his account. These uncertainties and contradictions weaken the probative value of his testimony.

The corroborative testimony of Navoa cannot be of any value either to the defense. His averment that Marco was never absent in the afternoon of any day is unnatural and extremely doubtful. Such claim is preposterous because Navoa acknowledged that he was not keeping an attendance record of his employees. Specifically, on 5 March 1989 Navoa admitted that he sometimes had to leave the warehouse to attend to other matters. Thus, it was not impossible for Marco to avoid Navoa's supervision and proceed elsewhere.

Finally, assuming arguendo that Marco indeed hauled rice for Navoa that same night, the record does not show that it was well-nigh impossible for him to negotiate the short distance from San Pedro to Sta. Rosa, Laguna. These adjacent towns are only twelve (12) kilometers apart and can be traveled at ease within a short period. As such, Marco's physical presence at the scene of the crime is not a physical impossibility; hence, his alibi is worthless.

WHEREFORE, the Decision of the Court of Appeals which affirmed in toto the Decision of the Regional Trial Court of San Pedro, Laguna, finding accused JULIO MARCO guilty of robbery in band and imposing upon him an indeterminate prison term of four (4) years and two (2) months of prison correccional to eight (8) years and one (1) day of prison mayor as maximum, to indemnify private complainants P58,000.00 as the value of the personal properties taken, and, to pay the costs, is AFFIRMED, with costs against petitioner.

SO ORDERED.

Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.
Padilla, (Chairman), J., on leave.

[1] Docketed as Crim. Case No. 5560-B.

- [2] Upon questioning of the trial court, Marco changed his testimony from “noontime” to “nighttime” (TSN, 21 November 1989, p. 8).
- [3] Decision penned by Mme. Justice Salome A. Montoya, concurred in by Justices Ricardo J. Francisco (now a Member of this Court) and Ramon A. Barcelona; Rollo, pp. 18-26.
- [4] Rollo, p. 31.
- [5] *People v. Balajadja*, G.R. No. 96988, 2 August 1993, 225 SCRA 22; *People v. Pelayo*, G.R. No. 103233, 3 August 1993, 225 SCRA 65.
- [6] *People v. Magaluna*, G.R. No. 66755, 23 January 1992, 205 SCRA 266.
- [7] CA Decision, p. 5; Rollo, p. 22.
- [8] TSN, 13 November 1989, p. 35.
- [9] *People v. Ponce*, G.R. No. 111541, 17 December 1996, p. 10, citing *People v. Jose*, G.R. No. 107106, 24 November 1995, 250 SCRA 319.
- [10] TSN, 13 November 1989, pp. 37-38.
- [11] *People v. Rodico*, G.R. No. 107101, 16 October 1995, 249 SCRA 309.
- [12] *People v. Vitor*, G.R. No. 113690, 27 June 1995, 245 SCRA 392.
- [13] *People v. Lorenzo*, G. R. No. 110107, 26 January 1995, 240 SCRA 624.
- [14] *People v. De Roxas*, G.R. No. 106783, 15 February 1995, 241 SCRA 369.
- [15] *People v. Morico*, G.R. No. 92660, 14 July 1995, 246 SCRA 214.
- [16] *People v. Bracamonte*, G.R. No. 95939, 17 June 1996, 257 SCRA 380.
- [17] *People v. Dayson*, G.R. No. 106234, 2 March 1995, 242 SCRA 124; *People v. Abarri*, G.R. No. 90185, 1 March 1995, 242 SCRA 39.
- [18] TSN, 21 November 1989, pp. 8-9.
- [19] TSN, 21 November 1991, p. 19.
- [20] TSN, 21 November 1991, pp. 17-21.

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