

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DENNIS LEGASPI Y CUSI, EMILIO FRANCO Y FADERAN, ACCUSED-APPELLANTS.

G.R. No. 117802. April 27, 2000

Ponente: BUENA, J.

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BUENA, J.:

For the robbery-slay of Police Officer Carlos Deveza and the physical injuries inflicted on Wilfredo Dazo, the Regional Trial Court of Pasay City, Branch 114 convicted accused-appellants Dennis Legaspi and Emilio Franco, in Criminal Case No. 92-2109, for the special complex crime of Robbery with Homicide.

Nursing principally the twin defenses of alibi and denial, accused-appellants now come before us to assail the trial court's decision[1], the decretal portion of which reads:

" Wherefore, the court finds accused Dennis Legaspi Y Cusi and Emilio Franco Y Faderan guilty beyond reasonable doubt as principals of the complex crime of robbery with homicide punishable under paragraph 1, Article 294, Revised Penal Code and imposes on both of them the mandatory penalty of reclusion perpetua along with its accessory penalties, to pay jointly and severally the following:

a) Heirs of Carlos Deveza:

1. The sum of P50,000.00 for (sic) reason of the death of the victim SP03 Carlos Deveza;
2. P21,719.40 for actual damages;
3. P300,000.00 by way of restitution of the unrecovered cash amount stolen;
4. P50,000.00 moral damages;

b) Wilfredo Dazo

1. P49,762.32 for actual damages;
2. P30,000 for moral damages.

Both to pay a fine of P20,000.00 each and to pay the proportionate share of the costs.

Let the property bond posted for the provisional liberty of accused Dennis Legaspi be cancelled, and a commitment order issue for the transfer of both accused to the Bureau of Correction, Muntinlupa, Metro Manila, Philippines.

SO ORDERED."

On 24 December 1992, appellants Legaspi and Franco were charged with robbery with homicide and serious physical injuries in an information[2] the accusatory portion of which reads:

" That on or about the 28th day of November, 1992, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating together and mutually helping one another, with intent to gain and by means of force and intimidation employed on the person of one SP03 Carlos Deveza Y Sanchez, did then and there divest and carry away from said victim his black shoulder bag containing the following items, to wit:

1. Cash amount of P300,000 more or less
2. Assorted checks
3. Assorted jewelry
4. Service firearm

Belonging to SP03 Carlos Deveza Y Sanchez with a total amount of P1.5 million, more or less, Philippine Currency to the damage and prejudice of said owner in the said total amount; that likewise on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the articles above-mentioned, herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously attack, assault and shoot with a gun they were then provided with at the vital parts of the body of the said SP03 Carlos Deveza Y Sanchez thereby causing upon said SPO3 Carlos Deveza Y Sanchez mortal wounds which caused his instantaneous death; and thereafter, herein accused, in pursuance of their conspiracy did then and there willfully, unlawfully and feloniously attack, assault and shoot at the cheek with a gun Wilfredo Dazo Y Morbos, thereby inflicting upon him serious physical injuries which required and will continue to require medical attendance for more than thirty (30) days.

Contrary to law.

Pasay City, Metro Manila

December 24, 1992."

Upon arraignment, Legaspi and Franco, assisted by their respective counsels, pleaded not guilty to the charge.

The trial court anchored the conviction of accused-appellants Legaspi and Franco on facts culled from the collective testimony of the witnesses presented by the prosecution, namely: Ramon Tulod, Wilfredo Dazo, Estella Tuplano Deveza, Dr. Ariel M. de Sagun and NBI Medico Legal Officer Dr. Valentin Bernal.

As early as five in the afternoon of 28 November 1992, Ramon Tulod, a store helper of the Devezas, was already waiting for the arrival of his Kuya Carlos (Carlos Deveza), in front of CDS Stall owned by the latter and located at the Cartimar Plaza Market, Pasay City. At 6:20 PM, SP03 Carlos Deveza, erstwhile member of the Philippine National Police, Western Police District and a new transferee at the Southern Police District Command at the time of his death, arrived at the Cartimar Plaza Market to fetch his wife, Estella Deveza, who was then closing the family chain of stalls for the day.

Upon arrival, Carlos parked his Toyota Tamaraw vehicle along Cartimar Avenue, specifically in front of CDS Stall. Immediately thereafter, Estella approached Carlos, who was still at the driver's seat, and handed him a black leather bag which contained P300,000.00 cash, pieces of jewelry and checks[3] while Ramon Tulod loaded the rotten vegetables, packed in eight white plastic bags and three "kaings", at the back of the Tamaraw. Benjamin de Leon, also a helper of the Devezas, stayed near a post in front of the store, facing the side of the vehicle.

As Estella left to make a phone call, Carlos alighted from the Tamaraw and stood on the left side of the vehicle (driver's side) with both arms resting on the vehicle's window.[4]

As an eyewitness to the crime, Ramon Tulod testified that while he was then loading the rotten vegetables at the back of the Tamaraw, with his Kuya Carlos in view, he saw Legaspi, donning white short pants, approach Deveza

from behind, coming from the front of the vehicle[5] and coming from the direction of Taft Avenue.[6] Thereafter, Tulod saw Legaspi position himself two and a half (2½) meters away from Deveza, level and poke a gun at Deveza's nape and eventually pull the trigger.[7] According to Tulod, Legaspi shot the victim with a gun wrapped in a piece of cloth or towel.

Fatally wounded, Deveza fell on the pavement, his head positioned toward the rear portion of the vehicle and toward Leveriza Street. Shocked by what he saw, Tulod froze and stood motionless[8] for three seconds. The gunman then picked up Deveza's black shoulder bag[9] and casually walked away from the scene of the crime toward Leveriza Street.

After regaining lost composure, Tulod ran toward Apartment No. 3, located 100 meters away from the scene of the crime, to inform the victim's brother, Junie Deveza, of the shooting incident. While scampering toward Leveriza Street, Tulod heard two (2) more gunshots.

On the same day, Tulod gave a sworn written statement[10] to the police regarding the incident.

At the trial, prosecution witness Wilfredo Dazo, a tricycle driver, recounted that at the time of the commission of the crime, he was waiting for passengers at the corner of Cartimar Avenue and Leveriza Street, about ten (10) meters away from Deveza's vehicle, specifically on the second post of the dormitory.

While conversing with other tricycle drivers, Dazo suddenly heard a gunshot prompting him to dart his eyes toward the direction of the gunfire where he saw Deveza stooping and about to fall[11] on the ground. Dazo further testified that when he initially saw Legaspi and Franco, the accused-appellants were at a distance of less than a meter from the Tamaraw. After the shooting, Legaspi and Franco walked away, one after the other[12] from the scene of the crime, toward Leveriza Street and in the direction where Dazo was, as if nothing happened.[13]

Pitying the victim,[14] Dazo hid behind a post for three to four seconds[15] and waited in ambush for Legaspi and Franco. In so doing, Dazo intended to seize and stop Legaspi who was then holding a gun, but in the process mistakenly grabbed the unarmed Franco[16] by the waist. Thereafter, Dazo and Franco wrestled for about thirty seconds[17] causing Dazo to fall on his knees and allowing Legaspi to take an aim and shoot at Dazo twice.

At the height of the struggle between Dazo and Franco, two shots were fired by Legaspi. After hearing the first gunfire, Dazo, thinking he was shot, looked back and saw Legaspi aiming at him a .38 caliber pistol.[18] As a result, Dazo lost hold of Franco causing the latter to extricate and escape. Legaspi then fired the second shot, which bullet hit Dazo on the right jaw. Realizing he was hit, Dazo spun and shouted, "May tama ako!". Upon seeing the injured Dazo, the other tricycle drivers rushed him to the Manila Sanitarium Hospital for surgical operation.

During Dazo's confinement, accused-appellants were brought for identification to the Manila Sanitarium Hospital where Dazo was asked by the police if the two suspects were the same persons who shot him.[19] Responding to the query, Dazo identified and pointed at Legaspi and Franco as the assailants who shot him.

Furthermore, Dazo, after being discharged from the hospital, proceeded with his wife to the upper floor of the police headquarters where he again identified accused-appellants in a line-up of five[20] as the perpetrators of the crime.

Similarly during trial, Dazo positively identified accused-appellants as the two persons whom he saw walking briskly from the place where Deveza was fatally shot. Dazo clarified that Franco was the person whom he wrestled with and Legaspi was the gunman who shot him. Scncă m

Likewise, the prosecution presented Dr. Valentin Bernales, NBI Medico-Legal Officer who conducted an autopsy report[21] on the body of Carlos Deveza. At the witness stand, Dr. Bernales testified that Deveza suffered among others, a gunshot entrance wound at the nape and an exit gunshot wound at the cheek area. The post-mortem findings also revealed that Deveza's cause of death was gunshot wound.

According to Dr. Bernales, the projectile or trajectory of the bullet, which could have been fired from a .38 caliber or 9 mm. gun, was "directly forward, slightly upward and laterally to the left." Additionally, Dr. Bernales opined that Deveza was shot at close range because of the presence of tattooing or powder burns; the assailant could be more or less three (3) feet away from the victim.

As the last witness for the prosecution, Dr. Ariel de Sagun, one of the physicians who conducted surgical operation on Wilfredo Dazo, declared on the stand that Dazo was admitted at the emergency room of the Manila Sanitarium Hospital at 7:10 PM of 28 August 1992. Dr. de Sagun testified that Dazo suffered two wounds, "one on the right side below the angle of the jaw and one on the left side".

According to Dr. de Sagun, the wounds are "fatal wounds" caused by a "high velocity missile" – a bullet.[22] Further, Dr. de Sagun declared that based on the trajectory and the nature of the wounds, Dazo could have been stooping at the time of the shooting, and the gunman could have been taller than Dazo.[23]

In opposition, the defense interposed alibi and denial to substantiate accused-appellants' claim of innocence. Testifying on his behalf, accused-appellant Legaspi claimed that at the time of the commission of the crime, he was at his father's house located at No. 9 Camia St., Pasay City, to attend the birthday party of his godson and nephew—Lou Anthony Legaspi. Upon his arrival however at said address around 6:10 PM, he discovered that only his father, Victor Legaspi, was present in the house, as his nephews were accompanied by his mother, Leoncia Legaspi, to the carnival at Star City, Philcote. Subsequently, Dennis prepared and ate a sandwich; then, he watched television. At 6:45 PM,[24] Leoncia, together with the group who went to Philcote, arrived at the house after which they all had dinner. Thereafter, Dennis again watched television at the sala but eventually fell into slumber until 11:30 PM when Leoncia awakened him to inquire whether he would still be going home to Roberts Street. Before Dennis left, Victor gave his son One hundred pesos.[25]

While on his way home, Dennis met Johnny Adoptante, a childhood friend, at the corner of Vizcarra and Protacio Streets but the two did not talk anymore. Dennis arrived home at Roberts Street around one o' clock in the morning of 29 November 1992 and slept.

To bolster his defense of alibi and denial, Dennis Legaspi presented Victor Legaspi and Leoncia Legaspi, his father and mother respectively, who corroborated Dennis' testimony. Likewise, the defense presented Johnny Adoptante who testified that around six in the evening of 28 November 1992, at the corner of Protacio and Vizcarra Streets, Pasay City, he met and talked with accused Dennis Legaspi, who at that time was on his way to No. 9 Camia Street, Pasay City. Adoptante and Legaspi engaged in a conversation which lasted for fifteen minutes after which the latter proceeded to No. 9 Camia Street. At 11:30 PM, Adoptante again saw Legaspi as the latter was on his way home to Roberts Street. Sdaad

Similarly, accused-appellant Emilio Franco raised the twin defenses of alibi and denial. According to Franco, at 3:45 PM of 28 November 1992, he went to 116 Roberts Street, Pasay City to visit his sister Elsa Franco Mislang, fetch water and play "Pusoy Dos", a local card game.[26] At 4 PM, Emilio Franco, Elsa Franco Mislang and Jose Villarin III played "Pusoy dos" until past 9 PM, after which Emilio went to sleep and woke up only the following morning of 29 November 1992.

Furthermore, the defense presented the testimonies of the following witnesses to corroborate the version of

accused-appellant Emilio Franco: Epifanio Sarmienta, a boarder of the Francos at 116 Roberts Street; Jose Villarin III, nephew of Emilio; and Elsa Franco Mislang, sister of Emilio.

Around 11:30 AM of November 29, 1992, policemen—acting on an informer's tip that persons involved in the Deveza robbery-slay ran inside the Franco Compound at Roberts Street—went to said place, gathered eleven (11) male residents of the compound and invited them to the Pasay City Police Headquarters for verification. Among those invited to the police station were Dennis and Emilio. Upon arrival thereat, the eleven males were made to stand in a police line-up and photographed after which they were released, except for accused-appellants Legaspi and Franco who were asked to stay until 7 PM.

On 30 November 1992, around 2:00-3:00 PM, policemen returned to the Franco compound to invite Dennis Legaspi and Emilio Franco to the police headquarters for further questioning. At the police station, one Bernard Bulos pointed at Legaspi and Franco as the perpetrators of the crime.

On 01 December 1992, NBI Forensic Chemist Aida Vilorio Magsipoc conducted paraffin test on accused-appellants to determine powder burns and presence of nitrates. The tests yielded negative results for both Franco and Legaspi, as borne by Chemistry Report No. C-92-857 and Chemistry Report No. C-92-858, respectively.

On 05 May 1994, the RTC of Pasay City, Branch 114, in appreciating the presence of conspiracy between Legaspi and Franco, convicted accused-appellants of the special complex crime of robbery with homicide. *SupÓrema*

In the instant appeal, accused-appellant Legaspi impugns the trial court's guilty verdict on the following grounds:

I

The court gravely erred in not considering the violation of accused's constitutional rights;

II

The court gravely erred in convicting the accused-appellants for a crime not proven convincingly and conclusively by the evidence presented;

III

The court gravely erred in finding that the guilt of the accused-appellants was proven beyond reasonable doubt when the testimonies of witnesses thereof, human nature and common knowledge of facts do not logically support such finding;

IV

The court erred in adopting the uncorroborated identification of the two state witnesses testifying on two different facts over the corroborated testimonies for the accused-appellants;

V

The court manifested bias when it based its decision on facts not presented during the trial over which accused was not given the opportunity to confront or explain."

As to accused-appellant Franco, the following errors were ascribed to the trial court:

"1. The trial court erred in holding that the prosecution was able to establish by clear and positive evidence the identity of the appellant Emilio Franco as one of the assailants despite the fact that such finding was based only on doubtful or unreliable testimony of the one prosecution witness;

"2. The trial court erred in disregarding the defense of alibi of appellant Emilio Franco by simply jumping to the conclusion that it is the weakest kind of defense without even seriously evaluating its merits and without

considering the absence of any controvertible evidence from the prosecution and without considering further the failure of the prosecution to establish the identity of said appellant by clear and positive evidence that he is one of the assailants;

"3. The trial court erred in not holding that the prosecution failed to establish the guilt of appellant Emilio Franco beyond reasonable doubt and, therefore, for not acquitting said appellant of the crime charged;

"4. The trial court erred in disregarding other evidence of appellant Emilio Franco such as his good moral character which has not been controverted by the prosecution and which is material in cases of robbery with homicide and for overlooking the fact that no physical evidence or the effects of robbery were found in his possession."

In sum, the Court is tasked to resolve the following principal issues: 1) Was the special complex crime of robbery with homicide duly established by the evidence presented by the prosecution? 2) Was the prosecution's evidence sufficient to establish the guilt of Legaspi and Franco beyond reasonable doubt and convict accused-appellants of the crime charged? 3) Was conspiracy attendant in the commission of the crime? 4) Was there a violation of accused-appellant's constitutional rights so as to justify a verdict of acquittal?

In the instant case, the trial court, invoking conspiracy, convicted accused-appellants as principals in the special complex crime of robbery with homicide. Thus, regardless of the acts individually performed by accused-appellants and applying the basic principle in conspiracy that the "act of one is the act of all", the trial court found Legaspi and Franco guilty as co-conspirators; in effect, their criminal liability are one and the same.

We are not in full agreement with the trial court's findings and conclusions.

Thus, while we affirm the conviction of accused-appellant Legaspi on the ground that the prosecution clearly established his guilt beyond reasonable doubt, this Court is not equally persuaded to adopt the same guilty verdict as to accused-appellant Franco for failure of the prosecution to prove his culpability with moral certainty.

First, accused-appellant Legaspi faults the lower court for convicting him of a crime not proven convincingly and conclusively by the evidence presented by the prosecution.

On the contrary, an exhaustive perusal of the evidence would indubitably lead to a conclusion of guilt on the part of accused-appellant Legaspi. The records are replete with evidence that necessarily points to Legaspi as the perpetrator of the robbery-slay of Carlos Deveza and the shooting of Wilfredo Dazo. The prosecution's evidence singles out accused-appellant Legaspi as the willing author of the crime.

In light of the positive identification by prosecution witnesses Tulod and Dazo, accused-appellant Legaspi's twin defenses of alibi and denial must necessarily fail. Certainly, alibi is one of the weakest defenses an accused can invoke, and the courts have always looked upon it with caution, if not suspicion, not only because it is inherently unreliable but likewise because it is rather easy to fabricate.[27] To prosper, alibi must strictly meet the requirements of time and place.[28] Thus, we have consistently ruled that it does not suffice to prove that the accused was somewhere else at the time of the commission of the crime. Similarly, jurisprudence dictates that the element of physical impossibility be clearly shown; The accused must clearly establish that he was so far away that it was not possible for him to have been physically present at the locus criminis or its immediate vicinity at the time of the commission of the crime.

To our mind, the defense failed to discharge this burden especially in view of the positive identification of accused-appellant Legaspi by credible prosecution witnesses Tulod and Dazo. Positive identification where categorical and consistent and without any showing of ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence are negative

and self-serving evidence undeserving of weight in law.[29]

Notably, accused-appellant Legaspi relied on the testimony of his parents, Victor and Leoncia and that of his childhood mate Johnny Adoptante, to strengthen his inherently weak defense of alibi. In our jurisdiction, where an accused's alibi is established only by himself and his relatives, his denial of culpability does not deserve any consideration in the face of affirmative testimonies of credible prosecution witnesses.[30]

In the same vein, accused-appellant Legaspi failed to substantiate the element of physical impossibility inasmuch as the records reveal that the distance between Camia Street, where Legaspi claims he was at the time of the commission of the crime, and Cartimar Plaza, where the robbery-slay transpired, is barely six to seven kilometers away from each other.[31] Moreover, on direct examination, accused-appellant Legaspi declared that there exists a shortcut between the two points – M. Santos Street – and that a person riding a motorcycle could reach Cartimar Plaza from Roberts Street within fifteen (15) minutes, without a traffic jam.[32] Clearly, such short distance and negligible time negate Legaspi's claim of alibi and destroys any attempt to prove the element of physical impossibility.

Beyond this, the defense of alibi is practically worthless in the face of positive identification.

Cognizant of this principle, the defense assails the credibility of prosecution witnesses Tulod and Dazo and posits further that their testimonies, human nature and common knowledge of facts do not logically support the trial court's finding of guilt. Specifically, the defense casts doubt on the testimony of witness Tulod who, despite being stunned for three seconds, could still narrate the details of the robbery-slay. Finely imbedded in our jurisdiction is the rule that where there is no evidence, and nothing to indicate that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimony is entitled to full faith and credit.[33] Also, it would be unnatural for the relatives of the victim—like Estella Deveza, widow of Carlos—to commit an injustice by taking the witness stand and impute the crime to innocent persons and not to those who were actually responsible therefor.[34]

Moreover, appellant maintains that no grappling match occurred between Dazo and one of the assailants. The defense even goes further by stressing that natural human behavior negates Dazo's testimony of risking his life against two armed and relatively taller men considering that Dazo is a family man. Appellant then concludes that Dazo is a perjured witness.

These arguments are flimsy. This Court, in a long line of cases, categorically ruled that a witness to a crime usually strives to remember the uncovered face of the assailant.[35] The most natural reaction of victims of criminal violence during its perpetration would be to strive to see the looks and faces of their assailants,[36] and to estimate what could be their next move either as an instinctive reaction or as a measure to help fend against any further attack.

While it is true that people faced with danger usually become passive and submissive, it is equally true that there are some people who are emboldened in sudden or impulsive reaction to a frightening experience.[37]

Thus, on cross-examination,[38] Wilfredo Dazo testified:

" Q: And when you decided to wait for the two suspects, you knew all along that your life was in danger, knowing that you'll have a fight with them. I suppose you know self-defense or marshal (sic) arts?

A: I don't know anything about self-defense. I am relying on myself, sir.

Q: And that was the reason why you let your other three companions just go away?

A: Yes, sir.

Q: According to you, Mr. Witness you have a family?

A: Yes, sir.

Q: With two kids?

A: Yes, sir.

Q: And of course, you love them?

A: Naturally, sir.

Q: And of course you don't want to evade yourself?

A: It did not occur to my mind, sir. I only want to extend help at that precise moment.

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Q: Now according to you Mr. Witness, you waited for the two suspects at the second post of Cartimar Avenue?

A: Yes, sir.

Q: By the way, what is your intention in waiting for them?

A: I waited for the two because of the incident that happened. I pitied Carlos Deveza and wanted to avenge.
(As answered by the witness: "Gusto kong iganti si Deveza.")

Q: So, in short, your intention was to make "higanti" and not to make "huli" of the two?

A: Yes, sir, what I had in mind at the moment was to take hold of them. When I did, they resisted and we wrestled.

Q: So, you were expecting a fight that time?

A: Yes, sir, I was very sure of that." (Emphasis ours)

During trial, Wilfredo Dazo positively identified Dennis Legaspi as the person who shot him and as one of two men whom Dazo saw walk away from where Carlos Deveza was shot, viz:

" Q: When was the point of time when you said you heard the second shot?

A: That was when I was already shot and I was already dizzy and I fell down.

Q: And who shot you?

Note: Witness pointed at Legaspi."

In the course of trial, Dazo demonstrated how Legaspi shot him "by raising his both arms with one pointed finger to the level of his shoulder."

Of paramount importance to the conviction of accused-appellant Legaspi is the testimony of Ramon Tulod who witnessed Deveza's killing, narrated the details surrounding the robbery-slay, and positively identified during trial the assailant of his Kuya Carlos, to wit:

"Court: A while ago, you said that the man who approached Carlos Deveza from his back leveled/ poked the gun at him. To what portion did the man leveled/poked (sic) the gun at Carlos Deveza? Please demonstrate to us.

Note: Witness demonstrating by poking his right hand right at the nape of Fiscal Mario I. Chua.

Q: And what happened when this man poked the gun at the nape of Carlos Deveza?

Court: Before that Fiscal. When this man leveled his gun at the nape of Carlos Deveza, where were you?

A: I was behind the vehicle, your honor.

Q: You said that the man who approached Carlos Deveza leveled or poked the gun at him. What did the man do with the gun?

A: He pulled the trigger.

Q: Thereafter, that was the time you heard the shot?

A: Yes, sir.

Q: What happened to Carlos Deveza after the trigger of the gun was pulled by that man?

A: He fell, sir.

Q: Where did he fall?

A: Somewhere on the rear portion of the vehicle with his head towards Leveriza street.

X X X X X X X X

Q: That man who approached your Kuya Carlos Deveza and poked/ leveled a gun at his nape and later on pulled the trigger of the gun, the gun wrapped with something like a piece of cloth or towel, if you will see him again will you be able to recognize him?

A: Yes, sir.

Q: Will you please look around the courtroom and see if he is present. If he is around, please finger him out.

A: Yes, sir, he is present.

Q: Please point to him.

A: There he is.

Note: Witness pointed to a man who, when asked, answered by the name of Dennis Legaspi Y Cusi.

Q: Do you know this person whom you pointed to before the incident?

A: No, sir.

Q: So the first time you saw him was on that incident which you are now testifying?

A: Yes, sir."

Tulod's testimony, as to the fatal shooting of Deveza, was corroborated by the post-mortem findings and testimony of NBI Medico-Legal Officer Dr. Valentin Bernales, who declared on the stand that Deveza's cause of death was gunshot wound and that Deveza was shot at the nape at close range because of the presence of tattooing or powder burns on the victim's body. Dr. Bernales further testified that the assailant could be more or less three (3) feet away from Deveza when the gunman fired the fatal shot.

In a train of decisions, we have categorically enunciated the rule that to sustain a conviction for the crime of robbery with homicide, it is imperative that the robbery itself be proven as conclusively as any other essential element of a crime,[39] inasmuch as robbery with homicide is primarily an offense against property.[40]

Hence, as to the element of robbery, witness Ramon Tulod recounted at the stand[41] that Dennis Legaspi was the culprit who single-handedly took Deveza's black shoulder bag, viz:

Q: After you saw Carlos Deveza fell down (sic) on the ground, what did you notice if any?

A: The bag was taken sir.

Q: By whom?

A: The gunman sir.

Q: From whom was the bag taken?

A: From Carlos sir.

Q: Will you describe the bag that you said that (sic) the gunman took after Carlos Deveza fell on the ground?

A: It is a black shoulder bag, sir.

Q: That gunman who according to you shoot (sic) and thereafter took after Carlos Deveza fell on the ground?

A: It is (sic) a black shoulder bag, sir.

Q: That gunman who according to you shoot and thereafter took the shoulder bag of Carlos Deveza, what was he wearing if you remember?

A: He was wearing shorts, sir.

Q: What color?

A: White sir."

Verily, the evidence adduced and presented by the prosecution established all the elements of the special complex crime of robbery with homicide. For in the crime of robbery with homicide, the homicide may precede the robbery or may occur after the robbery, as what is essential is that there is a direct relation, an intimate connection between the robbery and the killing.[42] This special complex crime is primarily a crime against property and not against persons, homicide being a mere incident of the robbery with the latter being the main purpose and object of the criminal.[43] In the instant case, the records show that the fatal shooting of Carlos Deveza, while it preceded the robbery, was for the purpose of removing an opposition to the robbery or suppressing evidence thereof.

In this specie of offense, the phrase "by reason" covers homicide committed before or after the taking of personal property of another, as long as the motive of the offender (in killing a person before the robbery) is to deprive the victim of his personal property which is sought to be accomplished by eliminating an obstacle or opposition, or to do away with a witness or to defend the possession of stolen property.[44]

Obviously, the killing of Carlos Deveza and the shooting of Wilfredo Dazo were perpetrated by reason of or on the occasion of the robbery. Thus, the physical injuries sustained by Dazo are deemed absorbed in the crime of robbery with homicide.[45] Taken in its entirety, the overt acts of accused-appellant Legaspi prove that the lone motive for the killing of Deveza and the shooting of Dazo was for the purpose of consummating and ensuring the success of the robbery.

In the final analysis, the shooting of Dazo was done in order to defend the possession of the stolen property.[46] It was therefore an act which tended to insure the successful termination of the robbery and secure to the robber the possession and enjoyment of the goods taken.[47] Accused-appellant's argument that the element of "taking" was

not proved is thus unavailing in the face of Tulod's testimony.

Additionally, accused-appellant Legaspi remonstrates that "considering that the crime charged was robbery, motive on the part of the accused is absent, as they have no means of knowing that Deveza was carrying money, if so, whether it was worth killing for." [48]

We do not agree. Motive in the present case is immaterial because of the presence of eyewitnesses who rendered clear, straightforward and convincing testimonies of the commission of the crime sufficient to satisfy the quantum of evidence required to overturn Legaspi's constitutional right to be presumed innocent. Likewise, it is axiomatic that motive is not an element of robbery with homicide or frustrated homicide. [49]

Accused-appellant Legaspi further avers that "it is ridiculously illogical for a PMA'er and a college undergraduate to perpetrate a crime three blocks away from their residence, in the manner it was allegedly executed, on a Saturday yet, at seven o' clock in the evening, without fleeing."

Again, we are not persuaded. Well-settled is the rule that non-flight is not, per se, an indication of innocence. There is no law or dictum holding that non-flight of an accused is conclusive proof of innocence. [50] For this Court is not blind to the cunning ways of a wolf, which after a kill, may feign innocence and choose not to flee; the crafty wolf may instead hide and lie in ambush under sheep's skin – ready to jump and gorge on its next unsuspecting prey.

Similarly, the defense cites the negative results of the paraffin test on accused-appellants to support their claim of innocence and justify their bid for acquittal. Time and again, we have held that an NBI Chemist's finding that the paraffin test on the person of the appellant is negative, is not conclusive to show that appellant has not fired a gun. It is possible to fire a gun and yet be negative for the presence of nitrates, as when firing while wearing gloves or by washing the hands afterwards. [51] In the present case, witness Ramon Tulod testified that Legaspi, in shooting Deveza, covered the gun with a piece of cloth or towel. *Sâ djad*

In fine, this (Diphenylamine or Paraffin) test has proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. [52]

Incidentally, the defense harps on the alleged violation by the law enforcers of the constitutional rights of the accused-appellants. As to the arrest of accused-appellants on 29 November 1992, we hold that neither their constitutional rights under Article III of the Constitution nor their statutory rights under Republic Act 7438 were transgressed inasmuch as Legaspi and Franco were not yet singled out as the perpetrators of the crime. The police merely invited for questioning the eleven male residents of the compound including Legaspi and Franco. In addition, when accused-appellant Legaspi was asked a single question at the police station regarding his whereabouts on the evening of 28 November 1992, no custodial investigation occurred inasmuch as the query was merely part of the "general exploratory stage".

At such definite stage, neither accused-appellants nor the other nine (9) male residents of the Franco compound were singled out or pinpointed as the perpetrators of the crime. The police authorities have not yet focused on any of the eleven (11) men as a particular suspect in the robbery-slay of Carlos Deveza. In fact, Legaspi and Franco were released on the evening of the same day, albeit, a little later than the release of the other nine (9) male residents of the compound.

In contrast, as to the "initial questioning" of Emilio Franco conducted on 30 November 1992 by Chief Inspector Ding Santos, this Court is of the view that the law enforcers and police authorities could have committed a violation of Franco's rights considering that said questioning was not put into writing nor was counsel present during the course thereof as required by law. Worthy to note is that in said stage, accused-appellants may have

already been considered by the police as the suspects in the robbery-slay; the police authorities could have already pinpointed Legaspi and Franco as the authors of the crime. Thus at that precise point, accused-appellants were very well entitled to the rights accorded by both fundamental and statutory laws to persons suspected of having committed a crime.

A close scrutiny of the records would however show that the trial court's judgment of conviction is not based on evidence extracted, produced or elicited during the "initial questioning" conducted by Chief Inspector Santos on Emilio Franco on the evening of 30 November 1992. Clearly, the trial court's guilty verdict on accused-appellant Legaspi is based on the positive identification and testimonies of the prosecution witnesses.

Equally important is that upon entering a plea of not guilty, accused-appellants Legaspi and Franco validly waived their right to raise this infirmity and assail the legality of the arrest. Again, we take this occasion to rule that any objection involving a warrant of arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived.[53]

Hence, any irregularity attendant to his arrest, if any, was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of not guilty and participating in the trial.[54]

Nonetheless, we do not countenance the infringement of accused-appellant's rights under the hands of the police. As law enforcers, it is their bounden duty to respect these constitutional safeguards and render strict compliance with the mandate of the basic law of the land.

For never could it be overemphasized that the rights enshrined in the Bill of Rights are the very mechanisms by which the delicate balance between governmental power and individual liberties is maintained. Thus, it does not bode well for society when our law enforcers defy the fundamental law of the land in ignoring these rights designed to ensure the very equilibrium of our democracy.[55]

To be sure, these fundamental rights accorded to each citizen, by no less than the fundamental law itself, are the very ligaments that bind every civilized society. These rights are borne not by the whims of convenience but by the stressful need to insulate any urbane society from the clutches of barbarism, chaos and lawlessness.

For without the Bill of Rights, man is stripped of his humanity and society becomes a putrid dump of lost lives.

Second, as to Emilio Franco's liability, we hold that the trial court erred in convicting accused-appellant Franco of this special complex crime for failure of the prosecution to prove by clear and convincing evidence his guilt beyond reasonable doubt.

Well-enshrined is the rule that findings of fact and conclusions of trial courts are accorded great weight and generally not to be disturbed on appeal. Absent any showing of a fact or circumstance which the trial court failed to appreciate and which would change the result if it were considered, the factual findings as laid down by the trial court remain binding upon the Supreme Court.[56] Stated differently, where certain facts of substance and value are overlooked, which if considered would affect the result of the case, then such finding is not conclusive to us, as in this present appeal.[57]

In the case before us, the trial court based Franco's conviction on the theory that conspiracy attended the commission of the crime. To put it differently, the trial court concluded that Legaspi and Franco, animated by a joint purpose, acted in unison and conspired in perpetrating the robbery-slay of Carlos Deveza. As such, regardless of the individual participation of Legaspi and Franco, the act of one conspirator is deemed, by legal fiction, the act of the other.

At this point, it is well to stress that although direct proof is not essential to prove conspiracy, as it may be

inferred from the acts of the accused before, during and after the commission of the crime suggesting concerted action and unity of purpose among them, it must however be shown that it exists as clearly as the commission of the offense.[58] Conspiracy must be established by positive and conclusive evidence and it cannot be based on mere conjectures but must be established as a fact.[59]

Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.[60] For this purpose overt acts of the accused may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.[61]

In the case at bench, Franco's actual participation in the commission of the special complex crime of robbery with homicide, as well as his overt acts that tend to show his conspiracy with Legaspi, were not clearly established by the prosecution. The records are bereft of any finding that Franco acted in unison with Legaspi in killing Carlos Deveza and thereafter taking away the black shoulder bag subject of the robbery.

Aside from the testimony of Wilfredo Dazo that he saw Legaspi and Franco walking away from the scene of the crime, no other compelling evidence was ever presented by the prosecution sufficient to warrant the conviction of accused-appellant Franco. The prosecution's evidence as to the participation of Franco is limited to the testimony given by Wilfredo Dazo on the witness stand, to wit:[62]

" Q: So what did you notice about these two (2) persons to whom your attention was focused?

A: After the shot, I saw the two men walk toward Leveriza street.

Q: These two men whom you saw walking towards Leveriza, coming from where Carlos Deveza was then, can you recognize these two persons?

A: Yes, sir.

Q: Please point at them, if they are present inside the courtroom?

A: There they are, sir.

Note: Witness pointed to a man who, when asked, answered by the name of Emilio Franco Y Faderan and again pointed to a man who when asked, answered by the name of Dennis Legaspi Y Cusi."

As borne by the records, Dazo testified that he never saw at anytime during the incident that Franco held the gun or the black shoulder bag subject of the offense.[63] Surprisingly, prosecution witness Ramon Tulod, who was practically only a few meters away from the scene of the crime, failed to mention about Franco's criminal participation, even the latter's mere presence at the scene of the crime. Notably, the only acts attributable to Franco were his walking away from the crime scene and his wrestling with Wilfredo Dazo.

To our mind, however, these acts taken as a whole, do not suffice to prove conspiracy in the present case. Neither do these acts render Franco liable for the special complex crime of robbery with homicide. Jurisprudence dictates that mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy at the time of its commission.[64] Without evidence—clear and convincing at that—as to how an accused participated in the perpetration of the crime, conspiracy cannot be appreciated against him.[65]

At the most, the prosecution, realizing the weakness of its evidence against accused-appellant Franco, merely relied and pegged the latter's criminal liability on its sweeping theory of conspiracy, which to us, was not attendant in the commission of the crime.

The rule is firmly entrenched that a judgment of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense.[66] The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defense could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.[67]

Verily, it is the role of the prosecution to prove the guilt of the appellant beyond reasonable doubt in order to overcome the constitutional presumption of innocence.[68]

Even if it be argued that the defense is weak, the fact is that the prosecution is even weaker and so must fail by its own impotence.[69] For conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged. Short of these constitutional mandate and statutory safeguard – that a person is presumed innocent until the contrary is proved – the Court is then left without discretion and is duty bound to render a judgment of acquittal.

WHEREFORE, in view of the foregoing disquisitions, the decision of the trial court finding appellant Dennis Legaspi guilty of the special complex crime of robbery with homicide is hereby **AFFIRMED** with the **MODIFICATION** that the fine of P20,000 is **DELETED**. Costs against appellant Legaspi.

As to appellant Emilio Franco, the judgment of conviction is **REVERSED** and **SET ASIDE** and appellant Franco is hereby **ACQUITTED** on grounds of reasonable doubt.

Accordingly, the Director of Prisons is ordered to immediately release appellant Emilio Franco from confinement in the National Penitentiary unless he is lawfully held on some other charges.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 116-132.

[2] Rollo, pp. 1-2.

[3] TSN, February 5, 1993, p.7.

[4] TSN, March 5, 1993, p.16.

[5] "sa harap" per TSN, March 2, 1993, p.8.

[6] TSN, March 2, 1993, p.8.

[7] "May pumutok sa likod ni Kuya."; TSN, March 2, 1993, pp. 9-10.

[8] "Nawalan ng malay"; TSN, March 2, 1993, p.19.

[9] TSN, March 12, 1993, p. 23.

[10] Exhibit J, Folder of Exhibits, p. 16.

[11] TSN, March 23, 1993, p. 26.

[12] TSN, March 23, 1993, p.33.

[13] TSN, March 30, 1993, p.28.

[14] TSN, March 20, 1993, p.25.

[15] TSN, March 23, 1993, p. 35.

[16] TSN, March 12, 1993, p. 7.

[17] TSN, March 30, 1993, p. 28.

[18] TSN, March 12, 1993, p. 29.

[19] TSN, March 12, 1993, pp.32-33.

- [20] TSN, March 30, 1993, p. 15.
- [21] Autopsy Report No. N-92-3275; Exhibit H, Folder of Exhibits, p.13.
- [22] TSN, March 19, 1993, p.17.
- [23] TSN, March 19, 1993, p. 19.
- [24] TSN, June 2, 1993, p.5.
- [25] TSN, June 11, 1993, p. 5.
- [26] TSN, November 18, 1993, p.5.
- [27] People vs. Azugue, 268 SCRA 711.
- [28] People vs. Piandiong, 268 SCRA 555.
- [29] People vs. Javier, 269 SCRA 181.
- [30] People vs. Castillo, 273 SCRA 22.
- [31] TSN, May 27, 1993, p. 13.
- [32] TSN, June 17, 1993, p.25.
- [33] People vs. Laurente, 255 SCRA 543; People vs. Rostata, 218 SCRA 657; People vs. Quejada, 223 SCRA 77.
- [34] People vs. Pareja, 265 SCRA 429.
- [35] People vs. Jara, 227 SCRA 669 ; People vs. Cruz, 133 SCRA 426; People vs. Alvarez, 169 SCRA 730.
- [36] People vs. Avillano, 269 SCRA 553.
- [37] People vs. Pareja, 265 SCRA 429.
- [38] TSN, March 30, 1993, pp. 32-33.
- [39] People vs. Laurente, 255 SCRA 543.
- [40] People vs. Parel, 261 SCRA 720.
- [41] TSN, March 5, 1993 pp.5-6.
- [42] People vs. Pacapac, 248 SCRA 77.
- [43] People vs. Navales, 266 SCRA 569.
- [44] Luis B. Reyes, The Revised Penal Code, Book II, 14th ed., Revised 1998, p. 630.
- [45] People vs. Tagolimot, 282 SCRA 231; People vs. Feliciano, 256 SCRA 706; People vs. Fernandez, 275 SCRA 49.
- [46] People vs. Java, 227 SCRA 668.
- [47] People vs. Gardon, 104 Phil. 371; People vs. Salamuddin No. 1, 52 Phil. 670.
- [48] Rollo, p. 103.
- [49] People vs. Teodoro, 280 SCRA 384.
- [50] People vs. Pareja, 265 SCRA 429.
- [51] People vs. Pasillao, 215 SCRA 163.
- [52] People vs. Mendoza, 174 SCRA 432.
- [53] People vs. Codilla, 224 SCRA 104.
- [54] Ibid.
- [55] People vs. Laurente, 255 SCRA 543.
- [56] People vs. Valles, 267 SCRA 103.
- [57] People vs. Bagus, 277 SCRA 157.
- [58] Fernandez vs. National Labor Relations Commission, 281 SCRA 423.
- [59] People vs. Berroya, 283 SCRA 111.
- [60] People vs. Andal, 279 SCRA 474.
- [61] People vs. Berroya, 283 SCRA 111.
- [62] TSN, March 12, 1993, p.23.
- [63] TSN, March 12, 1993.

[64] People vs. Taacal, 178 SCRA 56.

[65] People vs. Ragon, 282 SCRA 90.

[66] People vs. Furugganan, January 28, 1991; People vs. De Dios, 187 SCRA 228, 247.

[67] People vs. Dramayo, 42 SCRA 59 as cited in People vs. Mendoza, 174 SCRA 432.

[68] People vs. Salguero, 198 SCRA 357.

[69] People vs. Hizon, 180 SCRA 364 as cited in People vs. Salguero, 198 SCRA 357.

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