

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE PIANDIONG Y CALDA, JESUS MORALLOS Y CALDA, ARCHIE BULAN Y AMPULAN, AND TWO (2) JOHN DOES, ACCUSED. DANTE PIANDIONG Y CAL...

G.R. No. 118140. February 19, 1997

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PER CURIAM:

The wheels of tragic fate began to turn at around 10 o' clock on the evening of February 21, 1994, when Percival Catindig, PO1 Gerry Perez, Leonisa S. Bacay, and Rowena Reyboneria boarded a passenger jeepney on their way home. After the vehicle had travelled less than a kilometer, another group of five persons, boarded the same jeepney and not long after announced a hold-up, and thereupon divested the passengers of their valuables, and shot and killed PO1 Gerry Perez.

For the crime of robbery with homicide, the herein accused-appellants and two unidentified John Does were charged in an Information reading as follows:

That on or about the 21st day of February, 1994 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent of gain and by means of force, threats and intimidation employed upon the persons of PERCIVAL CATINDIG Y LACBO and PO1 GERRY PEREZ Y SUBING SUBING, did then and there wilfully, unlawfully and feloniously take, rob and carry cash money in the amount of P200.00 belonging to the former and one (1) .38 caliber revolver marked "ARMASCOR" with SN P15111 worth P8,000.00 belonging to the latter, to the damage and prejudice of the victims in the aforementioned amount of; that on the occasion of the said Robbery and for the purpose of enabling them to take, rob and carry away the said articles, the herein accused in pursuance to their conspiracy, did then and there wilfully, unlawfully and feloniously attack and shoot PO1 Gerry Perez hitting the latter on his chest, thereby inflicting upon the latter serious physical injuries which injuries directly caused his death.

(p. 65, Rollo.)

After due trial, the court a quo on November 7, 1994, rendered a decision disposing:

WHEREFORE, in view of the foregoing considerations, the Court finds accused DANTE PIANDIONG Y CALDA, JESUS MORALLOS Y CALDA and ARCHIE BULAN Y AMPULAN GUILTY beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE and sentences each of them to suffer the maximum penalty of DEATH; to pay, jointly and severally, the heirs of victim PO1 Gerry Perez the sum of FIFTY THOUSAND (P50,000.00) PESOS as death indemnity; the sum of EIGHT THOUSAND (P8,000.00) PESOS representing the value of the .38 caliber revolver of the same victim; to indemnify the said heirs the sum of ONE HUNDRED NINE THOUSAND (P109,000.00) PESOS as actual and compensatory damages; the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages and finally, to pay Percival Catindig his stolen money in the sum of TWO HUNDRED (P200.00) PESOS. With costs.

The case as against the other two (2) unidentified accused who are still at large is hereby archived pending

their arrest.

(p. 79, Rollo.)

In view of the fact that the penalty imposed is death, the case is now before this Court on automatic review.

In his brief, accused-appellant Archie Bulan contends in his lone assigned error that the evidence of the prosecution is insufficient to sustain a finding of guilt (p. 83, Rollo).

For their part, accused-appellants Dante Piandiong and Jesus Morillos make the following assignment of errors:

1. The Honorable Regional Trial Court erred in not considering the reason why the prosecution witnesses were able to identify the accused-appellants during the trial.
2. The Honorable Regional Trial Court erred in holding that the evidence adduced by the prosecution clearly established the guilt of the accused-appellants.
3. The Honorable Regional Trial Court erred in holding that there was no motive on the part of the prosecution witnesses to falsely testify against the accused-appellants.
4. The Honorable Regional Trial Court erred in not considering that the police line-up was not properly conducted.
5. The Honorable Regional Trial Court erred in holding that the defense of alibi is weak without looking any further on the veracity of the same.

and,

6. In general, the Honorable Regional Trial Court erred in not using the powers of the court to summon other witnesses/persons who can shed light on the case and to exercise extra diligence and efforts to ascertain the true facts of the case considering the gravity of the offense charged.

(pp. 128-129, Rollo.)

The facts of the case, as supported by the evidence and as correctly summarized by the trial court are as follows:

Prosecution witness Percival Catindig is a 28 year old employee and a resident of 346 Libis, Espina, Kalookan City. He testified that on February 21, 1994 at about 10 o'clock in the evening, he boarded a public utility jeepney bound for Novaliches with his companions, namely: PO1 Gerry Perez, Leonisa S. Bacay and Rowena Reyboneria. Accordingly, the group had just visited Eric de Castro at the latter's house in Pangarap Village, Kalookan City. After covering the distance of about 500 meters the vehicle stopped and some passengers alighted from the jeepney. It was at this point that about five to six (5-6) men boarded the said jeepney at Malaria Street, Kalookan City. The witness then identified the herein three (3) accused as belonging to the said group. After the vehicle travelled a distance of another 500 meters, one of the three (3) accused who was seated beside herein witness stood up and announced a hold-up, ordering all the passengers not to make any wrong move. The three (3) accused Piandiong, Bulan and Morillos then pointed their guns at the passengers. Thereafter, the latter who was seated at the rear right side of the vehicle brandished a hand grenade which he held with his right hand while his left hand was holding the bomb's pin. Accused Morillos then warned the frightened passengers not to do any foolish move or else he will pull the grenade's pin and they will all perish together. Thereupon, Archie Bulan who was holding a .38 caliber revolver, started divesting the passengers of their monies, jewelries and other personal belongings.

The witness recounted that Piandiong was seated at the left side of the jeepney while Bulan was positioned at the right side of the vehicle opposite the former. The unidentified companions of the three (3) accused who were holding a .38 caliber revolver each, prevented the passengers from alighting the vehicle. At this point, the victim, PO1 Gerry Perez who was seated at the back of the driver's seat, attempted to draw his gun but accused

Dante Piandiong swiftly grabbed the former's neck with his left hand and shot the policeman at the right side of his chest. The bloodied police officer then pleaded that he be brought to the hospital. In response, the culprits confiscated the victim's service pistol, his two (2) rings and his necklace. After the hold-uppers alighted from the vehicle with their loot, accused Dante Piandiong again shot the victim at the right side of his cheek. During all the time, herein witness was not able to do anything since a gun was menacingly levelled at the right side of his body. His P200.00 as well as his coin purse was also confiscated by accused Piandiong. The witness immediately took the victim to the nearest hospital. Claiming lack of necessary equipments, the hospital staff refused to admit the victim for medical assistance. When the jeepney neared Baesa, Quezon City, the witness spotted a Red Cross vehicle and lost no time in transferring the wounded policeman in the said vehicle which in turn, rushed the victim to the emergency room of the MCU Hospital. Later on, the witness was informed that SPO1 Gerry Perez died. He stayed at the hospital up to 3 o'clock in the morning of February 22, 1994. He executed his first sworn statement relative to the incident on February 23, 1994 before the Kalookan City Police Station 2 while his second statement was given before the Urduja Police Station, Kalookan City on February 28, 1994.

(pp. 68-69, Rollo.)

Accused-appellant Bulan contends that conspiracy was not established by positive evidence. He argues that "all that the records could show is the unreliable and uncorroborated declaration of alleged eyewitness Leonisa Bacay that accused-appellant was holding a gun at the time of the alleged hold-up incident. Other than this, the records will indubitably show accused-appellant never did any other act unmistakably tending to show his criminal conspiracy with the acts of the other accused, Dante Piandiong in shooting PO1 Gerry Perez, and commandeering his service pistol, and Jesus Morillos in divesting the money and other valuables of Percival Catindig. We submit, that mere holding of a gun, under an admittedly incriminating and compromising circumstances will not amount to a valid conclusion that accused-appellant subscribed and imbibed the same criminal intent of the herein other accused-appellants Dante Piandiong and Jesus Morillos" (pp. 89-90, Rollo).

The contention of accused-appellant Bulan runs counter to the evidence. He and his co-accused boarded the jeepney together; they drew out their guns and pointed them at the victims, while simultaneously announcing a hold-up and ordering the passengers not to make any wrong move. Percival Catindig testified that accused-appellant Bulan was one of the malefactors who divested the passengers of their valuables and money. Such act, even if taken independently of another incriminatory deed, that of pointing his gun at the passengers, clearly and unmistakably indicates that he was acting in concert with his fellow co-accused. It is egregiously farcical to state that accused-appellant Bulan was a mere by-stander at the scene who just innocently drew out his gun in imitation of the hold-uppers without in any way joining in their design to rob the passengers. What was his intention in drawing out his gun and pointing it at the passengers except to intimidate them into yielding their money and valuables without any fight or resistance? There is no need to prove a previous agreement among the felons to commit the crime if by their overt acts it is clear that they acted in concert in the pursuit of their unlawful design (*People vs. Amaguin*, 229 SCRA 166 [1994]). Concerted acts of the accused to obtain a common criminal objective signify conspiracy (*People vs. Silong*, 232 SCRA 487 [1994]). Here, the overt acts of accused-appellants manifestly show that they acted in concert. They were together in boarding the jeepney. They were together in announcing a hold-up. They were one group in divesting the victims of the valuables. Not one of the companions of accused-appellant Piandiong relented even after he shot the policeman. They were together in getting off the vehicle. If there was no unison among accused-appellants in their evil and criminal designs, there could not ever be a conviction based on conspiracy.

In *People vs. Dela Cruz* (217 SCRA 283 [1993]), a case which is on all fours with the case at bar, the Court categorically ruled that:

Conspiracy among the perpetrators was duly proven. Pretending to be passengers, they boarded the jeepney at the same time near the foot of the Lambingan Bridge. When the hold-up was announced, each moved with precision in pursuit of an assigned task — obviously earlier agreed upon. One poked his gun at the head of the driver while the rest pointed their knives at the passengers. At the same time, they divested the said passengers of their valuables. They all alighted from the jeepney at the same time with the loot. These acts, taken together, are sufficient to establish the existence of a common design among the appellant and his companions to commit the offense charged. Otherwise stated, such acts showed nothing less than a joint purpose and design, and a concerted action and community of interest; these establish beyond reasonable doubt the existence of conspiracy. Direct proof is not essential to prove conspiracy, it may be shown by acts and circumstances from which may logically be inferred the existence of a common design, or may be deduced from the mode and manner in which the offense was perpetrated.

Accused-appellants Piandiong and Morillos put forth the argument that they were not sufficiently identified. According to them, the prosecution witnesses identified them as the perpetrators of the crime only upon the suggestion of Jun Muslim, a policeman, who allegedly held accused-appellants' hands to sort of finger them as the perpetrators of the crime when there was a "confrontation" with the witnesses — thus the easy identification later in court.

Accused-appellants' arguments are not entitled to any merit.

In the first place, this assertion is not corroborated by any disinterested and reliable witness.

In the second place, it is contrary to human nature for the witnesses to finger innocent persons as the perpetrators of a very serious crime. The wish of the witnesses, as the victims of the crime, is only for the apprehension and punishment of the actual perpetrators of the crime so that the wrong done to them may be vindicated.

To be sure, the record is devoid of any evidence showing that the prosecution witnesses were actuated by ill motives as to testify falsely against accused-appellants. Their testimony must, therefore, be given full faith and credit. When there is no showing that the prosecution witnesses were actuated by any improper motive, the presumption is that they are not so actuated and their testimony is entitled to full faith and credit (*People vs. De la Cruz*, 229 SCRA 754 [1994]; *People vs. Perciano*, 233 SCRA 393 [1994]).

It must be remembered that the witnesses and the robbers were seated close to or facing each other, thus, the positive identification by Percival Catindig of accused-appellants as the hold-uppers (p. 3, tsn., Aug. 22, 1994).

Likewise, Leonisa Bacay was positive and categorical in her identification of accused-appellants as the malefactors, to wit:

Q. Would it be correct to say that this person who announced the hold-up situated beside Percival in line with your seat, is not one of the three accused in this case?

A. He was one, sir.

Q. Who among these three (3) accused are you referring to?

A. Dante Piandiong, sir.

Q. And the other accused also fronting Gerry Perez is not also one of the three suspects in this case?

A. He is one of them, sir.

Q. Who is he?

A. Morillos, sir.

Q. How about the third one, would it be correct to say that he is not one of the suspects in this case?

A. He is one, sir.

Q. Who is he?

A. Archie Bulan, sir.

Q. The one situated opposite Percival?

A. Yes, sir.

Q. How about the other three, were they seated?

A. I cannot exactly remember where the three positioned themselves, but three were clinging at the jeepney, sir.

Q. How many persons were clinging in the jeep?

A. I noticed only two, sir.

(p. 6, tsn, September 6, 1994)

(pp. 198-199, Rollo.)

Accused-appellants try to cast doubt on the veracity of the testimony of, especially the identification by, the prosecution witnesses on the ground that they were friends of the victim Gerry Perez. This argument carries no weight whatsoever. Mere relationship of a witness to the victim does not impair his credibility as to render his testimony unworthy of credence where no improper motive can be ascribed to him for so testifying (*People vs. Pastoral*, 226 SCRA 219 [1993]; *People vs. Jotoy*, 222 SCRA 801 [1993]; *People vs. Sarino*, 221 SCRA 234 [1993]), and there being no ill motives which can be attributed to the prosecution witnesses in the case at hand, their positive and categorical declarations on the witness stand under solemn oath deserve full faith and credence.

Turning their attention to the police line-up, accused-appellants Piandiong and Morillos contend that the same was irregularly conducted. According to them, Jun Muslim coached the witnesses to point to them as among the malefactors. As aforesaid, this argument is totally uncorroborated by an unprejudiced witness. On the other hand, the testimony of PO3 Celerino Susano clearly shows that the police line-up was not attended by any irregularity, thusly:

Q: For what purpose were the persons of Piandiong and Morillos turned over to you by the duty desk officer?

A: The two (2) suspects were turned over to me by the arresting officers for the reasons that both were charged with robbery with homicide.

Q: And after these two (2) persons were turned over to you by the duty desk officer, what did you do if any relative to these two (2) persons namely, Piandiong and Morillos?

A: When the two (2) persons were turned over to me, I went to the place of the witness to confront them.

Q: And who are these witnesses you are referring to?

A: Leonisa Bacay, Rowena Reynoberia and Percival Catindig.

Q: In what particular place in Caloocan City did you go so as to contact these witnesses to whom you are earlier mentioned?

A: Libis, Caloocan City.

Q: By the way Mr. Witness, how did you come to know that these persons were witnesses?

A: I know that these persons were witnesses because I met them already at the hospital.

Q: And were you able to contact these three (3) persons?

A: Yes, sir.

Q: Thereafter, where did you invite them to if any?

A: I invited them to the headquarters to confront with the witnesses.

Q: And did they go with you?

A: Yes, sir.

Q: And after they arrived at the police headquarters, what did you do next if any?

A: When they arrived at the police headquarters we made a police line-up.

Q: In what way did you made this police line-up?

A: We lined up six (6) persons including the two (2) suspects.

Q: Where were they when you lined up these six (6) persons?

A: At the precinct.

Q: In what particular place of the precinct?

A: SID room.

Q: Aside from these six (6) persons, who else were there inside the SID room?

A: The other members of the police line-up.

Q: And after you have lined-up that two (2) suspects on the four (4) other persons, what did these witnesses do the three (3) witnesses you mentioned earlier do?

A: The witnesses personally pinpointed Morillos and Piandiong.

Q: As what?

A: As the persons who robbed them and shot PO1 Perez.

Q: And after they were identified by witnesses Catindig, Reyboneria and Bacay, what was the next step you undertook relative to the investigation?

A: I took their sworn statements.

Q: How about accused Piandiong and Morillos what did you do with them if any?

A: After the witnesses were pinpointed Morillos and Piandiong I made a referral letter.

Q: Now, Mr. Witness, tell to this Honorable Court whether or not Piandiong and Morillos had any occasion to give their written statements relative to this case?

A: I informed them that if they want to give their statements, they can get their own counsel.

Q: And what was their answer?

A: They answer in the negative, and they were not given any statement.

Q: Now, before you told these two (2) suspects namely, Piandiong and Morillos about their right to get a lawyer, what other rights if any did you apprise them about?

A: I informed them that they have the right to remain silent.

Q: What else if any?

A: I think that is the only thing I told them.

Q: In what dialect or language did you apprise Piandiong and Morillos about their rights to remain silent?

A: In Tagalog, sir.

Q: Who was present when you informed them those constitutional rights?

A: We only, sir.

Q: How about Archie Bulan Mr. Witness, when did you met him relative to the investigation you conducted in this case?

A: Archie Bulan I met him when the arresting officer turned over to me.

Q: When was that?

A: April 11, 1994 about 10 o'clock in the evening.

Q: Who turned him over to you?

A: The arresting officer, sir.

Q: In the person of ?

A: PO1 Gilbert Annang, sir.

Q: And after accused Archie Bulan was turned over to you by police officer Gilbert Annang, what did you do next if any?

A: Again, I went to the residence of the witnesses and brought them to the headquarters for confrontation of the suspects.

Q: Who are these witnesses to whom you went?

A: Leonisa Bacay, Rowena Reyboneria and Percival Catindig.

Q: Again, Mr. Witness, in what way did you make the police lined-up relative to Archie Bulan?

A: I also placed him in a police lined-up with six (6) persons and then the witnesses pinpointed Archie Bulan was the same person who robbed them and shot Perez.

Q: Mr. Witness, with regards to the witnesses and then referred them to the fiscal?

A: I took the sworn statements of these witnesses if you still remember.

(pp. 20-23, tsn, October 5, 1994)

When queried by the trial court, Susano testified:

Q: Alright, this is a clarificatory questions from the court. When you lined up six (6) persons including the two (2) accused Morillos and Piandiong were the witnesses already present?

A: No, your Honor.

Q: The question of the court is, when you actually lined up six (6) persons together with the two (2) accused Morillos and Piandiong, tell to the court whether the prosecution witnesses Reyboneria, Bacay and Catindig were already present?

A: Are not present, your Honor.

Q: So in other words, is it now your testimony that the three (3) prosecution witnesses had not been informed by you or in any police officer of the presence of accused Morillos and Piandiong in that six (6) persons who were placed in a line-up?

A: None, your Honor.

(p. 29, Ibid)

It is significant to note at this point that the crime was committed on February 21, 1994, and accused-appellants Piandiong and Morillos were arrested and subsequently identified at the police line-up on February 27, 1994 (pp. 7-8, RTC Decision; pp. 23-24, Rollo), or only 6 days after the commission of the crime. The memory of the events and the dramatis personae of February 21, 1994 were thus still fresh in the minds of the witnesses.

At any rate, a police line-up is not essential (*People vs. Sartagoda*, 221 SCRA 251 [1993]; *People vs. Buntan, Sr.*, 221 SCRA 421 [1993]). Decisive of the guilt or innocence of an accused is the testimony of witnesses in court identifying him as the perpetrator of the crime. Judicial decisions are based on testimony and other evidence presented in court, and not on extraneous matters occurring during the police investigation.

All three accused-appellants set up the defense of alibi, insisting that they were somewhere else when the crime

was committed. Regrettably, this defense cannot save the day for them, for alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because of its easy fabrication without much opportunity at checking or rebutting it (*People vs. Matildo*, 230 SCRA 635 [1994]). To prosper, alibi must meet strictly the requirements of time and place (*People vs. Dela Cruz*, 229 SCRA 754 [1994]), meaning that the accused was not at the scene of the crime at the time it was committed, and that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission (*People vs. Saguban*, 231 SCRA 744 [1994]); *People vs. Dolor*, 231 SCRA 414 [1994]). In the case at bar, by their own testimony accused-appellants Piandiong and Morillos were in places only about an hour's travel from the scene of the crime, while accused-appellant Bulan was in Camarin, Caloocan City, which is only a 5-minute walk away from the scene of the crime. It was, therefore, not physically impossible for accused-appellants to have been present at the scene of the crime at the time of commission thereof.

More importantly, accused-appellants' alibis cannot prevail over their positive identification by eyewitnesses who had no improper motive to falsely testify (*People vs. Javier*, 229 SCRA 638 [1994]; *People vs. Talaver*, 230 SCRA 281 [1994]).

Lastly, accused-appellants argue that the trial court failed to summon other witnesses who could have shed light on the case. If accused-appellants were aware that there were certain witnesses who could have given the case a view from another angle, they should have petitioned the trial court to subpoena said witnesses. But they did not. The fault, therefore, lies with them, not with the trial court.

In the present case, the commission of homicide on the occasion of robbery is beyond dispute. PO1 Gerry Perez was shot at the right side of his chest by accused-appellant Piandiong. After the hold-uppers had alighted from the vehicle with their loot, accused-appellant Piandiong again shot PO1 Gerry Perez at the right side of his face, with the slug entering the cheek. PO1 Gerry Perez was rushed to the emergency room of the MCU Hospital where he later on died, as indeed, any of the wounds could have been fatal (p. 8, RTC Decision; p. 24, Rollo).

For the crime of robbery with homicide to exist, it is enough that a homicide results by reason or on the occasion of robbery (*People vs. Saliling*, 69 SCRA 427 [1976]). It is a well-settled rule that when homicide takes place as a consequence or on the occasion of a robbery, all those who took part in the robbery are guilty as principals of the crime of robbery with homicide, although they did not actually take part in the homicide. The exception to the rule is when it is clearly shown that they endeavored to prevent the unlawful killing (*People vs. Balanag*, 236 SCRA 474 [1994]). In the present case, there is no evidence that accused-appellants Bulan and Morillos tried to prevent accused-appellant Piandiong from shooting PO1 Gerry Perez. Their liability, therefore, is the same as that of Piandiong.

All accused-appellants are thus guilty of the crime of robbery with homicide which under Paragraph 1 of Article 294 of the Revised Penal Code, as amended by Republic Act No. 7659, is punishable by reclusion perpetua to death.

The Court holds that the court a quo did not err in imposing the maximum penalty of death. The commission of robbery with homicide was attended by the aggravating circumstance of band, having been perpetrated by more than three (3) armed malefactors who acted together in the commission thereof (Paragraph No. 6 of Article 14 of the Revised Penal Code; *People vs. Dela Cruz*, supra). There being one aggravating circumstance attendant to the commission of the felony without any mitigating circumstance to offset the same, the penalty imposable under Paragraph 1 of Article 294 of the Revised Penal Code, as amended by Republic Act 7659, is death, the maximum penalty (Paragraph 2, No. 1 of Article 63 of the Revised Penal Code).

The imposition of the death penalty for robbery with homicide which is considered a heinous crime "for being [a]

grievous, odious and hateful" offense and "which, by reason of [its] inherent or manifest wickedness, viciousness, atrocity and perversity [is] repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society" was found compelling and just by Congress in the interest of justice, public order, and the rule of law. In point of fact, even under the original Article 294 of the Revised Penal Code, the penalty imposable for a crime such as the one committed by accused-appellants, attended as it was by an aggravating circumstance, is death. Said penalty was merely suspended by the 1987 Constitution until it was reimposed by Republic Act No. 7659.

The act of accused-appellants before alighting from the jeepney in shooting PO1 Gerry Perez at the right side of the face while he was already mortally wounded and lying crumpled and unconscious in the embrace of his girl friend, Leonisa Bacay, patently reveals the brutality, mercilessness, wickedness, viciousness, atrocity, perversity, and malevolence of accused-appellants which calls for the condign punishment of death, as mandated by law.

Nonetheless, two Members of the Court voted to impose the penalty of reclusion perpetua.

WHEREFORE, the appealed decision is hereby AFFIRMED, with costs against accused-appellants.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

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