

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BACCAY AND LAURETO BACCAY, ACCUSED, DOMINGO BACCAY, ACCUSED-APPELLANT.

G.R. No. 120366. January 16, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Domingo Baccay and Laureto Baccay were charged with the special complex crime of Robbery with Homicide for having robbed Isabelo Jimenez of P2,000.00 and on the occasion thereof stabbed him to death and inflicted multiple stab wounds on his son Heherson Jimenez.[1]

On 26 June 1992 accused Domingo Baccay when arraigned pleaded not guilty, while his co-accused Laureto Baccay was found unfit to stand trial due to mental illness and was committed to the Regional Mental Hospital in Tuguegarao, Cagayan.

From the account of prosecution witnesses Gilbert Turaray, Heherson Jimenez and Melchora Jimenez these facts were established: On 14 January 1992, at about 8:00 o'clock in the morning, Domingo Baccay and Laureto Baccay went to the house of Isabelo Jimenez at Zone 2, San Mariano, Isabela, to collect Isabelo's bets for a jueteng game drawn daily in the locality. Isabelo at that time was in the room of his crippled son Heherson talking to him. Isabelo's grandson Gilbert Turaray, then on vacation for the Christmas season, was massaging the feet of his uncle Heherson. Domingo Baccay entered the room first, followed by Laureto. Then Domingo winked at Laureto, as if to give him a signal. Whereupon, Laureto drew a knife and started stabbing Isabelo. Heherson shouted for help, but to no avail. Isabelo ran to the window to shout for help but Domingo held him back by the hair, while Laureto continued stabbing him. Heherson, despite being crippled, managed to box Laureto, disarmed him momentarily, but Domingo picked up the knife and stabbed Heherson several times. After divesting Isabelo of his money from his shirt pocket, Laureto and Domingo hurriedly left.

Gilbert Turaray, who managed to position himself behind a rocking chair, witnessed the startling occurrence.

Melchora Jimenez, Isabelo's wife, testified that Laureto arrived in their house first; she even served him coffee. Soon Domingo also arrived. He patted Laureto on the shoulder and upon Isabelo's bidding went into her son's room. Laureto immediately followed. Not long after, she heard her son cry for help. She ran to the room only to find it locked. However, through a hole in the wall she saw her husband Isabelo and her son Heherson being stabbed by Domingo and Laureto.

Domingo Baccay admitted having been at the Jimenez residence in the morning of 14 January 1992 but claimed he was there only for the jueteng bets of Isabelo. Domingo denied however that he ever stabbed Isabelo although he admitted noticing the knife in Loreto's possession. In fact, it was for this reason, according to him, that he immediately ran out to ask for help. Although he asserted that he was shaken by the incident, he nevertheless overcame his fear after a few minutes and continued collecting bets for the jueteng game.

This version as narrated by Domingo Baccay was corroborated by Wilfredo Aggabao and Manuel Gabriel, to whom accused Domingo ran for help, and that the latter even reported to them that Laureto stabbed Isabelo Jimenez.

On 7 November 1994 the trial court found the accused Domingo Baccay guilty as charged[2] and sentenced him to reclusion perpetua with the accessory penalties provided by law, ordered him to indemnify the heirs of Isabelo Jimenez P50,000.00, P200,000.00 for moral and exemplary damages and P2,000.00 taken by him and his co-accused Laureto Baccay from Isabelo Jimenez. Accused Domingo Baccay was also ordered to indemnify Heherson Jimenez P150,000.00 as reasonable medical expenses incurred by him during his treatment plus P50,000.00 as moral and exemplary damages, and to pay the costs.[3]

Accused-appellant imputes the following errors to the court a quo: (1) in holding that the sworn statement of Heherson Jimenez taken by Pat. Alfonso Deraco was an antemortem statement or part of the *res gestae*; (2) in giving undue credence to the testimony of prosecution witness Gilbert Turaray; (3) when it ruled that the deceased Isabelo Jimenez was divested or robbed of his money; (4) when it ruled that the crime charged was committed by accused-appellant Domingo Baccay in conspiracy with his co-accused; and, (5) in finding the accused guilty of robbery with homicide.[4]

The appeal is without merit.

Firstly, appellant questions the trial court's appreciation of the sworn statement of Heherson Jimenez taken by Pat. Alfonso Deraco as an antemortem statement or as part of the *res gestae*.

Even without the statement of Heherson, the testimonies of the prosecution witnesses will suffice to convict accused-appellant of the crime charged. Greater weight is given to the categorical identification of the accused by the prosecution witnesses than to the accused's plain denial of participation in the commission of the crime. His reliance on *People v. Dunig* and *People v. Elizaga* is totally misplaced. In both cases the trial courts' convictions were based solely on dying declarations. There were no other witnesses. On appeal the Court found that under the circumstances of the two (2) cases, it was impossible for the victims to have accurately identified the malefactors. Thus the dying declarations were inaccurate hence unreliable and the convictions were reversed. The instant case is not analogous to the two (2) cases. The conviction of appellant Domingo Baccay did not rely solely on a dying declaration. Prosecution witnesses Melchora Jimenez, Heherson Jimenez and Gilbert Turaray positively identified Domingo as one of the malefactors. Consequently, disregarding the dying declarations as such would not in any way affect the soundness of the decision.

Appellant also alleges that the testimony of Heherson Jimenez is not worthy of credence because it suffers from the following inconsistencies: (a) Heherson Jimenez testified that he was stabbed many times by the two accused, but on cross-examination he contradicted himself by stating that only the appellant stabbed him. On the other hand, Turaray who witnessed the whole event from behind a chair testified unflinchingly that after Laureto finished stabbing Isabelo, Laureto turned to stab Heherson who was able to box Laureto thereby making the latter drop the knife. Domingo then picked up the knife and started stabbing Heherson.[5] (b) Appellant brands as highly improbable Heherson's testimony that the stabbing was done simultaneously in the light of the prosecution evidence that only one knife was used in the incident. But the stabbing, as pointed out in the preceding discussion, was done successively. (c) According to Heherson, Domingo knifed him last. Appellant contends that if this be the case, then the knife should have been in Domingo's possession, not in Laureto's hand as shown in the records. But there is no inconsistency here. The records show that before fleeing, Domingo went through the pocket of Isabelo.[6] Thereby, it can only be logically surmised that he momentarily let go of the knife in order to get the money from Isabelo's pocket. But Laureto, knowing the knife to be his, picked it up after Domingo left.

The Court does not expect that a witness' testimony be perfectly congruent so long as the narration concurs on material points. Minor lapses do not detract from the overwhelming testimonies of prosecution witnesses' positively identifying the malefactors. Furthermore, a witness who has undergone a harrowing experience cannot be expected to be entirely consistent.

Secondly, appellant questions the trial court's giving undue credence to the testimony of prosecution witness Gilbert Turaray, contending that he was coached and his testimony highly flawed. For one, appellant assails Gilbert Turaray's testimony that Heherson Jimenez, a cripple lying in bed, could manage to get up and punch his father's assailant although Heherson was supposedly positioned away from them.

These allegations are factually baseless. The locus criminis is a very small room approximately measuring only three by four meters.[7] Moreover, Heherson Jimenez said that after the assailants left he was able to crawl to the door bleeding and half conscious.[8] In this regard, it may be said that people have been known to accomplish incredible feats in times of utmost danger.

The allegation that Gilbert Turaray was tutored in relation to the number of wounds sustained by both his grandfather and uncle is a trivial matter that does not affect the positive identification of the accused. At any rate the witness admitted that he had heard of the number of wounds from other people.[9]

Appellant also insists that since Gilbert was positioned behind the rocking chair he could not have seen the incident. We disagree. Gibert on cross-examination thus explained:

Q:

And you declared a while ago that you were hiding behind the rocking chair where Domingo Baccay was seated. So that your view was obstructed, is (sic) it not?

A:

I can see them, sir (underscoring supplied).[10]

It is doctrinally entrenched that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witness on the stand and determine if they are telling the truth or not. Thus -

The court also finds the testimony of Gilbert Turaray to be trustworthy. In his straightforward narration, he vividly recalled how his grandfather and his uncle were assaulted by both accused, Laureto stabbing the old man and Domingo stabbing his uncle, Heherson. There was no reason or any known motive for him to perjure his testimony and point to accused Domingo Baccay who joined his co-accused Laureto Baccay in the stabbing affray.[11]

For appellant to impute revenge on the witnesses as the motivation for pinpointing him is groundless. Revenge is a normal reaction of one betrayed, harmed or otherwise of one who has lost a loved one, but it does not follow that the desire to avenge such betrayal, harm or loss would include implicating even innocent persons.

Thirdly, appellant contends that the trial court erred in concluding that the deceased Isabelo Jimenez was divested or robbed of his money. In robbery with homicide, the prosecution need only prove these elements: (a) the taking of personal property with violence or intimidation against persons; (b) that the property taken belongs to another; (c) the taking was done with *animo lucrandi*; and, (d) on the occasion of the robbery or by reason thereof homicide was committed.[12] All these elements were established by the prosecution. Gilbert Turaray clearly and credibly testified on cross-examination thus -

Q:

They did not take anything?

A:

They got something, sir.

Q:

What something are you referring to?

A:

Money, sir.

Q:

Where was that money kept?

A:

At the pocket of my Lolo, sir.

Q:

Why, did you see that what they took was money?

A:

I saw the money at the pocket of my Lolo, sir.

x x x x

Q:

Do you know if your Lolo was wearing a wallet?

A:

My Lolo had a wallet but he placed the money in his pocket, sir.[13] (underscoring supplied).

Although there may be inconsistencies in the testimony of prosecution witness Melchora Jimenez as to the amount of cash taken from the victim, there is no disputing the fact that cash was indeed taken. That the testimonies of witnesses for the prosecution were not totally consistent do not necessarily impair their evidentiary value, especially when there is no doubt that indeed robbery took place, and such was the purpose of the homicide.

Fourthly, appellant disputes his conviction on conspiracy. But conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[14] Conspiracy need not be proved by direct evidence but may be inferred from the acts of the accused, e.g., (a) Before going into Heherson's room, Domingo tapped Laureto's shoulder;[15] (b) Domingo locked the door after Laureto entered the room;[16] (c) Immediately after locking the door, Domingo made a signal to Laureto by winking his eye;[17] (d) When Isabelo ran to the window to shout for help, Domingo pulled him back by his hair and held his hands while Laureto continued stabbing him;[18] (e) When Heherson intervened and punched Laureto, Domingo stabbed

Heherson several times;^[19] and, (f) Before the two (2) accused left the room, Domingo took money from Isabelo's pocket.^[20] With the foregoing circumstances, there can be no other conclusion than that the successful perpetration of the crime was done through the concerted efforts of both accused Domingo Baccay and Laureto Baccay. This automatically adversely resolves appellant's final contention that his guilt was not proved beyond reasonable doubt.

For appellant to insist that his version is more credible than that of the prosecution is futile. In fact, the testimonies of defense witnesses Manuel Gabriel and Wilfredo Aggabao disprove accused-appellant's claim that he was not present during the stabbing. Specifically, Manuel testified that Domingo had reported to them that Laureto Baccay was stabbing Isabelo Jimenez.^[21] Wilfredo Aggabao, on his part, quoted Domingo as saying to them, "Please report to the police because they (sic) were stabbing Isabelo Jimenez."^[22]

Accused-appellant testified that he left the room of Heherson the moment Laureto Baccay went in. This is highly incredible, for why then was he so positive about the stabbing of Isabelo and Heherson? And why did he not himself report the incident to the police?

Appellant finally contends that his non-flight from the scene of the crime is indicative of his innocence. Or, could it not also be, of his callousness? For, to what else could we attribute his nonchalance in going about his routine of collecting jueteng bets a few minutes after the occurrence of a gruesome crime? Could he not have the human curiosity to find out what happened to Isabelo? At the very least, could he not have lent him aid to save his life? Indeed, there are no pat explanations for the workings of an evil mind!

Lastly, the award for moral and exemplary damages should be deleted in the absence of sufficient proof for its justification. With respect to the deceased Isabelo Jimenez, actual damages totalling P66,470.00 should be given as evidenced by the records.

WHEREFORE, the judgment of the court a quo: (a) finding accused-appellant Domingo Baccay guilty of Robbery with Homicide as charged, (b) sentencing him to reclusion perpetua with all the accessory penalties provided by law, (c) ordering him to restitute the amount of P2,000.00 taken from Isabelo Jimenez and to pay Heherson Jimenez the amount of P150,000.00 for medical expenses, is **AFFIRMED**; with the modification that only the amounts of P50,000.00 as indemnification for Isabelo's death and P66,470.00 for actual damages be paid the heirs of Isabelo Jimenez. Moral and exemplary damages are deleted.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, and Kapunan, JJ., concur.

[1] Rollo, p. 27.

[2] The Information charged accused-appellant Domingo Baccay together with Laureto Baccay with Robbery with Homicide although the dispositive portion of the Decision of the trial court failed to specify the particular crime of which accused-appellant was convicted.

[3] Decision penned by Judge Teodulo E. Mirasol, RTC-Br. 15, Iligan, Isabela.

[4] Appellant's Brief, pp. 1-2; Rollo, pp. 32-33.

[5] TSN, 25 August 1992, p. 56.

[6] *Id.*, p. 56.

- [7] Id., p. 62
- [8] TSN, 28 August 1992, p. 89.
- [9] TSN, 25 August 1992, pp. 47 & 50.
- [10] TSN, 25 August 1992, p. 54.
- [11] Decision, p. 4; i, p. 17.
- [12] People vs. Cabiles, G.R. No. 113785, 14 September 1995, 248 SCRA 207.
- [13] TSN, 25 August 1992, p. 57.
- [14] Art. 8, par. 2, The Revised Penal Code.
- [15] TSN, 28 August 1992, p. 102.
- [16] Id., pp. 87-88, 90, 92.
- [17] TSN, 25 August 1992, pp. 56 & 67; 28 August 1992, p. 86.
- [18] TSN, 25 August 1992, 56 & 104.
- [19] Id., p. 56.
- [20] Id., p. 66.
- [21] TSN, 22 July 1993, p. 5.
- [22] TSN, 16 September 1993, p. 7.

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