

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO BARRETA, DANILO BARRETA, LITO BARRETA, DOMINGO BARRETA (AT LARGE), EDGAR BARRETA, AND ROGELIO BARRETA, ACCUSED,

G.R. No. 120367. October 16, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the joint decision of the Regional Trial Court of Palo, Leyte, Branch 8, in Criminal Cases Nos. 8459-60, promulgated on June 2, 1993, finding accused-appellants Antonio, Edgar, Lito, and Rogelio, all surnamed Barreta, guilty beyond reasonable doubt of robbery in band in Criminal Case No. 8459 and murder in Criminal Case No. 8460, thus:

WHEREFORE, in view of the foregoing, this Court finds each of the four accused Lito Barreta, Antonio Barreta, Edgar Barreta and Rogelio Barreta, guilty of the crime of Murder punishable by reclusion perpetua with accessory penalties provided by law and to indemnify jointly and severally the legal heirs of the deceased Clemente Tesaluna, Sr.[1] in the sum of P50,000.00, plus costs. The imposable penalty being reclusion perpetua, the provisions of the Indeterminate Sentence Law do not apply.

The prosecution having proved beyond reasonable doubt, the crime of robbery in band in conspiracy, each of the four accused is likewise guilty for the crime of robbery in band under Article 294 (5) which is (sic) prision correccional maximum to prision mayor medium or four (4) years two (2) months and one (1) day to ten (10) years should be imposed.

Applying the Indeterminate Sentence Law, each of the four accused is sentenced to an indeterminate penalty ranging from four (4) years of prision correccional as minimum to eight (8) years and twenty one (21) days of prision mayor as maximum. The sum of P700.00 and the properties taken such as hoe, scythe and bolo should be returned to the private complainants.

Issue Warrants of Arrest to Antonio[2] and Danilo[3] both surnamed Barreta who are still at large.

SO ORDERED.[4]

The facts of this case, as gleaned from the records, are as follows:

On January 26, 1988, sometime between 5:00 to 6:00 o'clock in the afternoon, a much-frightened Epifania Balboa arrived at the farmhouse of her son, Dominador Balboa, in Taguite, Babatngon, Leyte. She informed him that there were suspicious-looking persons in the house of his half-brother, Clemente Tesaluna, Jr., some 200 meters away. Dominador and his hired hand, named Celso Salas, became concerned. They farmed in a remote part of a mountainous area accessible only by walking. Strangers were seldom seen there. Dominador dashed off to Clemente's house.

Near the house he stopped, for he could not get nearer than fifty (50) meters. There he easily recognized the brothers Antonio, Danilo, Domingo, Edgar, Lito and Rogelio, all surnamed Barreta. Dominador was familiar with

the Barretas, since they resided in Bagong Silang, a neighboring barangay. Three of them, namely Antonio, Lito and Danilo were holding an unarmed Clemente. They were holding bolos, locally known as "pisao." He saw Antonio, Lito and Danilo stab Clemente with their bolos. Antonio hit Clemente on the right side of his body. Danilo stabbed him on the left, followed by a thrust by Lito to Clemente's right. Meanwhile Domingo, Edgar and Rogelio ransacked Clemente's house. Domingo then took Clemente's hoe, scythe and bolo, then hurriedly left the place. They jumped out of the house and escaped towards the mountains.[5]

Clemente died from the wounds inflicted on him by the Barreta brothers. Epifania informed the victim's wife, Renila, of her husband's fate. Renila asked for help from the barangay chairman. Several barangay officials and some relatives accompanied her home. They found Clemente dead with three clearly visible wounds. The clothes and personal effects of the Tesaluna couple were scattered all over the floor. Some P700.00 in cash and farm implements were missing. The bag where Clemente kept his money was forced open with a bolo. The police investigated the incident. Dr. Victor Hilarion Cruz, of the Leyte Provincial Hospital, performed an autopsy on Clemente. He reported on three stab wounds and a hacking wound. He identified the cause of death as "cardiorespiratory arrest (due) to hacking wound." [6]

The Provincial Prosecutor's Officer filed the Information, docketed as Criminal Case No. 8460, with the RTC of Palo, Leyte. He charged Antonio, Danilo, Domingo, Edgar, Lito, and Rogelio, thus:

That on or about the 26th day of January, 1988 in the municipality of Babatngon, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did, then and there with malice aforethought and with deliberate intent to take the life of Clemente Tesaluna, Sr., willfully, unlawfully and feloniously suddenly, unexpectedly and treacherously take advantage of superior strength and with the aid of armed men attack and hack the latter with long bolos, producing fatal wounds on the body of the said Clemente Tesaluna, Sr., thereby causing his direct and immediate death.

Contrary to law.[7]

A separate Information in Criminal Case No. 8459 also charged the six brothers for robbery in band, allegedly committed as follows:

That on or about the 26th day of January, 1988, in the Municipality of Babatngon, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused who were all armed with long-bladed bolos conspiring, confederating and mutually helping one another did, then and there, willfully, unlawfully, and feloniously with intent to gain and with the use of force upon things to wit: by forcibly breaking open with a bolo the clothes bag belonging to Clemente Tesaluna, Sr., take and carry away money in an undetermined amount, to the damage and prejudice of the said owner.

Contrary to law.[8]

Warrants for the arrest of the six Barreta brothers were issued, but only four, namely Antonio, Edgar, Lito and Rogelio were apprehended. The remaining brothers went into hiding.

On arraignment Antonio, Edgar, Lito and Rogelio pleaded not guilty to the charges of murder and robbery in band. Criminal Cases Nos. 8459 and 8460 were then jointly tried.

The prosecution's relied on the testimony of Dominador Balboa who positively identified the Barreta brothers as the malefactors who killed Clemente Tesaluna, Jr., and robbed his house of money and belongings.

The defense averred that it was Lito Barreta alone who killed Clemente. In the afternoon of January 26, 1988, according to the defense's version, Lito was on his way to buy cigarettes at Taguite. Clemente, who suspected that

Lito gathered tuba from his coconut tree, accosted him. Clemente challenged Lito to a fight. Lito denied Clemente's accusation. The latter then drew his bolo, but since Lito was quicker, he beat Clemente to the draw. Lito stabbed Clemente twice with his bolo. He immediately went home. Lito denied that his brothers were involved. He also denied that they robbed Clemente, whom he knew only by name. He could not understand why his brothers were implicated in the stabbing. He also denied that he knew Dominador Balboa, Celso Salas, and Epifania Balboa. He admitted he hit Clemente first below his left armpit and then, while Clemente was down, on his face.[9]

Antonio, Edgar, and Rogelio denied any participation in the murder and robbery. All three testified that at the time of incident, they were at Barangay Silang, Babatngon, Leyte, carousing and making merry after a hard day's work. They presented Fausto Rosales, a farmer, who testified that from January 20, 1988 to January 28, 1988, he hired the three accused to work on his farm from January 20-28, 1988. At the time of the incident, Antonio, Edgar, and Rogelio were working on his farm as hired hands. On January 28, 1988, they had a drinking spree in the residence of a certain Bunglas. That day, they cut the tall grasses on Fausto's farm from 7:00 A.M. to 5:00 P.M., pausing only at 12:00 noon to eat lunch. They went home after their work on January 28, 1988 at five o'clock in the afternoon. He was sure that they were home on January 28, 1988, because when he brought the ½ gallon of tuba to Bunglas' house, the three brothers were with their father, Celestino, in the drinking spree, which lasted until 7:00 P.M. When he went home, he knew nothing of the incident at sitio Bosque, which is 9 to 10 kilometers distant from Barangay Bagong Silang, and could only be negotiated by foot. He did not know the deceased Clemente.[10]

The lower court gave full faith and credence to the prosecution's evidence and, as earlier noted, convicted accused-appellants of the offenses charged.

Appellants moved for reconsideration of the lower court's judgment with respect to Criminal Case No. 8460, arguing that since the trial court found that they were all minors at the time of the incident, they were entitled to the privileged mitigating circumstance of minority under Article 68[11] of the Revised Penal Code. They prayed that the penalty imposed upon them be reduced to four (4) years, two (2) months, and one (1) day of prison correccional as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum. The prosecution opposed the motion, on the ground that only Rogelio Barreta could be considered a minor, and doubtfully at that, there being no evidence to support his claim that he was only seventeen years old at the time of the incident. On November 15, 1993, the trial court denied the motion.

Hence, the instant case, with appellants assigning the following errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING ALL THE ACCUSED GUILTY OF THE CRIMES OF ROBBERY AND MURDER BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN NOT PRESCRIBING THE CORRECT PENALTY FOR THE PROPER CRIME AND IN NOT APPRECIATING THE PRIVILEGE(D) MITIGATING CIRCUMSTANCE OF MINORITY IN FAVOR OF ACCUSED-APPELLANTS.

We find pertinent the following issues: (1) Whether the guilt of appellants of the crimes of robbery in band and murder were proven by the prosecution beyond reasonable doubt; and (2) Whether minority should be considered as a privileged mitigating circumstance in favor of appellants.

Appellants assail the testimony of Dominador Balboa for being "incredible." [12] They submit that Dominador

testified that it was both late in the afternoon and windy, and the scene "definitely dark and turbulent." [13] With poor vision and being fifty meters away, Dominador could not have positively identified the accused who were inside the house. Appellants also argue that Epifania Balboa did not know the "six persons" who came to the house of the victim; her identification of appellants as the perpetrators of the crime is thus doubtful. Appellants suggest that the relatives of the victim would like to see virtually all the members of the Barreta family suffer because Lito Barreta killed the latter in a fight. Finally, appellants charge that the trial court erred in refusing to appreciate their alibi, which was corroborated by Fausto Rosales.

We have carefully examined the records of this case and find nothing in them to support appellants' claim that it was so dark and turbulent so as to make positive identification difficult. What Dominador testified to was that he decided not to prepare smoke for copra because it was already late and it was windy. [14] Nothing would show that Dominador had poor vision. Dominador's positive identification was unshaken under rigorous cross-examination. It was straightforward and candid. As a rule, appellate courts will not interfere with the judgment of the trial court in passing upon the credibility of a witness, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted or misapprehended. [15] That general rule holds true in this case.

Nor do we doubt Epifania's identification because she did not know the "six persons." Even if she did not know their names prior to the incident, [16] she was able to identify them in open court. There is nothing in law or jurisprudence which requires, as a condition sine qua non, that, for a positive identification of a felon by a prosecution witness to be good, the witness must first know the former personally. [17] The witness need not have to know the names of the accused for so long as she recognizes their faces. [18] Besides, the defense did not contradict her identification of appellants whose presence so frightened her that she ran off to call for help.

Neither are we convinced of any alleged malicious motive on the part of the witnesses who testified against the appellants. The records are bare of any evidentiary support for such an allegation. The presumption is that no such improper motive exists and their testimonies should thereby be accorded full faith and credit. [19]

Appellants insinuate that since Dominador Balboa is a half-brother of the victim, he had motive enough to testify against them, even falsely. But as often stated, we hold that relatives of a victim would not avenge the death of their kin by blaming it on persons whom they know to be innocent. [20] Family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants, [21] so that justice would be served.

The alibi of Antonio, Edgar, and Rogelio likewise fails to persuade us against the positive identification made by the eyewitness. For alibi to prosper, the accused should prove not only that he was at some other place when the crime was committed but also that it was physically impossible for him to be at the locus criminis at the time of the commission. [22] The distance between Taguite and Bagong Silang, Babatngon is a mere 3.5 kilometers which can be negotiated by walking in two hours. [23] The distance of 3.5 kilometers to the crime scene cannot provide sufficient credence to appellants' alibi.

That Lito alone killed Clemente in self-defense is less than believable. He said he met the victim in a chance encounter on the road to Taguite after the latter accused him of stealing tuba from his coconut palm. [24] He said he stabbed the victim twice in self-defense, after which he left the victim. [25] Physical evidence, however, does not support Lito's testimony. For he claimed that he inflicted two stab wounds on the victim. The autopsy report [26] clearly showed that the victim suffered three (3) stab wounds and one (1) hacking wound. [27] Further Lito's claim that he left the victim dead on the road is contradicted by the Renila Tesaluna's testimony that she and barangay officials found her husband's corpse in their kitchen. [28] Thus, on the first issue, we must conclude that

no errors were committed by the court a quo.

On the second issue, without admitting their guilt, appellants fault the trial court for convicting them of the separate offenses of murder and robbery in band, instead of the special complex crime of robbery with homicide. They also claim that said court erred in failing to consider the special privileged mitigating circumstance of minority of appellants in imposing upon them the penalty of reclusion perpetua for murder.

In robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property thus taken belongs to another; (3) the taking is characterized by *animus lucrandi*; and (4) on the occasion of the robbery or by reason thereof, the crime of homicide, as used in its generic sense, was committed.[29] In robbery with homicide, the principal purpose of the accused must be shown to be to commit robbery, the homicide being committed either by reason of, or on occasion of the robbery.[30] The homicide may precede or occur after the robbery. What is essential is that there is a nexus, an intimate connection between robbery and the killing, whether the latter be prior or subsequent to the former, or whether both crimes be committed at the same time.[31]

In the instant case, the testimony of prosecution eyewitness Dominador Balboa shows that the killing of the deceased took place simultaneously with the robbery.[32] While Antonio, Lito, and Danilo attacked the victim in his kitchen, Danilo, Domingo, and Rogelio were ransacking the house for valuables to steal. These simultaneous events show appellants' intention to both rob and kill the victim. There is no showing that the robbery was committed after the homicide as an afterthought or as a minor incident to the homicide. The criminal acts of appellants cannot, thus, be viewed as two distinct offenses. Hence, appellants should not have been convicted of the separate offenses of murder and robbery in band under Articles 248 (1)[33] and 296[34] of the Revised Penal Code, respectively, but of robbery with homicide under Article 294 (1)[35] of the Revised Penal Code.

Finally, appellants, except for Rogelio, are not entitled to the privileged mitigating circumstance of minority. When appellant Antonio Barreta testified in his defense on January 8, 1991, he admitted that he was 24 years old.[36] Appellant Lito Barreta, in turn, declared that he was 22 years of age, when he took the witness stand on September 17, 1990,[37] while appellant Rogelio Barreta admitted to being 19 years of age when he testified on November 6, 1990.[38] Since the incident in question took place on January 26, 1988, appellant Antonio Barreta must have been 22 years old at that time, appellant Lito Barreta, 20 years old, and appellant Rogelio Barreta 17 years old, if their claims and admissions are to be taken at face value. Thus, only Rogelio can be deemed a minor at the time of the commission of the offense. Mitigating circumstances are personal to an accused in whose favor they are determined to exist and cannot be enjoyed by his co-accused.[39] Rogelio, being below 18 years of age at the time the crime was committed, is entitled to the privileged mitigating circumstance of minority pursuant to Article 68 (1) of the Revised Penal Code. The penalty for *robo con homicidio* at the time of the commission of the offense is reclusion perpetua to death. At that time, the imposition of the death penalty was suspended by virtue of Article III, Section 19 (1) of the Constitution. Hence, the maximum allowable penalty was reclusion perpetua, which the trial court imposed in Criminal Case No. 8460. Under Article 68 (2) of the Revised Penal Code, where the offender is over 15 and under 18 years of age, "the penalty next lower than that prescribed by law shall be imposed, but always in the proper period." The penalty next lower is reclusion temporal. Applying the Indeterminate Sentence Law, the penalty imposable upon Rogelio is *prision mayor* maximum to reclusion temporal medium, or from ten (10) years and one (1) day to seventeen (17) years and four (4) months. The penalty imposed in Criminal Case No. 8459 (robbery in band) should be deleted as this will favor all the accused, the proper charge being for a special complex crime of robbery with homicide, instead of two separate offenses of murder and robbery in band.

WHEREFORE, the decision of the Regional Trial Court of Palo, Leyte, Branch 8, in Criminal Cases Nos.

8459-60, dated June 2, 1993, is MODIFIED. Appellants Antonio, Edgar, Lito and Rogelio, all surnamed Barreta are found GUILTY beyond reasonable doubt of the special complex crime of ROBBERY WITH HOMICIDE as defined and penalized under Article 294 (1) of the Revised Penal Code. Antonio, Edgar and Lito, all surnamed Barreta, are hereby sentenced to suffer the penalty of reclusion perpetua with the accessory penalties provided by law. The privileged mitigating circumstance of minority being in Rogelio Barreta's favor, he is hereby sentenced to a prison term of ten (10) years and one (1) day of prision mayor as minimum to twelve (12) years, five (5) months, and ten (10) days of reclusion temporal as maximum. Appellants are also ordered to jointly and severally pay the heirs of Clemente Tesaluna, Jr., P50,000.00 as civil indemnity.

No pronouncement as to costs.

SO ORDERED.

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

[1] Sometimes referred to as Clemente Tesalona, Jr. (also spelled as "Tisalona"). The victim's mother, Epifania Balboa, testified that the Clemente Tesalona, Sr. was her late husband and father of the victim, Clemente Tesalona, Jr. Hence, the victim's proper name is Clemente Tesaluna, Jr. See TSN, March 6, 1990, p. 3.

[2] This should read "Domingo" not "Antonio." Domingo Barreta, one of the accused in Criminal Cases Nos. 8459-60, went into hiding with Danilo Barreta, another of the accused in the aforesaid cases and remains at large. See Records, Criminal Case No. 8459, pp. 10-11.

[3] Danilo Barreta was apprehended by the police in Tacloban City on 8 April 1991. See Records, Criminal Case No. 8460, p. 182. When arraigned, he initially pleaded 'not guilty' but following plea bargaining with the prosecution, pleaded guilty to homicide and was sentenced to eight years and one day of prision mayor as minimum to fourteen years and eight months of reclusion temporal as maximum and indemnify the heirs of the victim in the amount of P50,000.00. See Records, supra, at 216-217. Danilo Barreta likewise entered into plea bargaining with the prosecution in Criminal Case No. 8459, pleading guilty to simple robbery and was sentenced to suffer imprisonment ranging from six months of arresto mayor as minimum to five years, nine months and twenty-one days of prision correccional as maximum and to pay the costs. See Records, Criminal Case No. 8459, pp. 43-44.

[4] Records, Criminal Case No. 8460, pp. 200-201.

[5] Records, Criminal Case No. 8459, p. 194.

[6] Supra Note 4, at 9.

[7] Id. at 1.

[8] Records, Criminal Case No. 8459, p. 1.

[9] Id. at 195-196.

[10] Ibid.

[11] "ART. 68. Penalty to be imposed upon a person under eighteen years of age. - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

"1. When a person under fifteen but over nine years of age who is not exempted from liability by reason of the

court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degree at least than that prescribed by law for the crime which he committed.

"2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed but always in the proper period."

[12] Rollo, p. 63.

[13] Id. at 64.

[14] TSN, September 19, 1989, p. 4.

[15] *People v. Leonor*, 305 SCRA 285, 296 (1999).

[16] TSN, March 6, 1990, p. 4.

[17] *People v. Daraman*, 294 SCRA 27 (1998).

[18] *People v. Evangelista*, 282 SCRA 37 (1997).

[19] *People v. Salas*, G.R. No. 115192, March 7, 2000, pp. 8-9.

[20] *People v. Crisostomo*, 293 SCRA 85 (1998).

[21] *People v. Cawaling*, 293 SCRA 267 (1998).

[22] *People v. Suito*, G.R. No. 125820, March 31, 2000, pp. 8-9.

[23] Records, p. 199.

[24] TSN, September 17, 1990, p. 4.

[25] Id. at 6.

[26] Supra Note 5.

[27] TSN, August 21, 1990, pp. 3-5.

[28] TSN, March 5, 1990, p. 4.

[29] *People v. Olivarez, Jr.*, 299 SCRA 635, 645 (1998) citing *People v. Mendoza*, 284 SCRA 705 (1998), *People v. Baccay*, 284 SCRA 296 (1998), and *People v. Gavina*, 264 SCRA 450 (1996).

[30] *People v. Mendoza*, 284 SCRA 705, 710-711 (1998) citing *People v. Ponciano*, 204 SCRA 627 (1991).

[31] *People v. Nang*, 289 SCRA 16, 33 (1998) citing *People v. Hernandez*, 46 Phil. 48 (1924).

[32] TSN, September 19, 1989, p. 7 in relation to pp. 10-11.

[33] "ART. 248. Murder. - Any person, who not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

"1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity."

[34] "ART. 296. Definition of a band and penalty incurred by the members thereof. - When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed

upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

"Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that the attempted to prevent the same."

[35] "ART. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against any person shall suffer:

"1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

[36] TSN, January 8, 1991, p. 2.

[37] TSN, September 17, 1990, p. 2.

[38] TSN, November 6, 1990, p. 2.

[39] *People v. Barro, Sr., et al.*, G.R. No. 118098, August 17, 2000, p. 17, citing *People v. Quitarior*, 285 SCRA 196 (1998).

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