

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO BARREDO, ROLANDO LAVEROS, CANDIDO LAJO, JR. AND PENEQUITO LAVEROS, ACCUSED, NILO BARREDO AND ROLANDO LAVEROS, APPELLANTS.

G.R. No. 122850. October 07, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Knowing the identity of an accused is different from knowing his name. Hence, the positive identification of the malefactors should not be disregarded just because the names of some of them were supplied to the eyewitness. For the weight of the eyewitness account is premised on the fact that the said witness saw the accused commit the crime, and not because he or she knew their names.

The Case

In an information[1] dated September 20, 1989, Capiz Assistant Provincial Prosecutor Rodolfo B. Arceno charged Rolando Laveros, Nilo Barredo,[2] Penequito Laveros and Candido Lajo, Jr. with kidnapping and murder. Because the said Information failed to indicate the day when the crime was committed, an amended Information[3] dated October 19, 1989, was subsequently filed and docketed as Criminal Case No. 1724. It reads:

"The undersigned accuses PENEQUITO LAVEROS, ROLANDO LAVEROS, NILO BARRIDO and CANDIDO LAJO alias BARUC of the crime of [k]idnapping with [m]urder, committed as follows:

"That on or about 10:00 o'clock in the evening of 10 August 1996 (sic) at Barangay Mangoso, Municipality of Sigma, [P]rovince of Capiz, Philippines, and within the jurisdiction of this honorable court, the above-named accused, conspiring, confederating and mutually helping one another, being then armed with firearms of different calibers did then and there wilfully and feloniously kidnap, carry away and detain one NOLITO CEBUANO[4] against his will, and in the process inflicted severe beating and personal violence on his person which later resulted in his death inspite of his being hospitalized.

"CONTRARY TO LAW with the aggravating circumstances of nighttime and with the aid of armed men."

Another Information was filed against the same accused, charging them with kidnapping Enrico Cebuhano. Upon being arraigned on December 19, 1989, the three accused, assisted by their counsel of choice, pleaded not guilty. Penequito Laveros, on the other hand, had not been arrested. Considering that the accusations in both cases arose from the same set of facts, the two cases upon motion by both prosecution and defense, were jointly tried. After trial in due course, the trial court acquitted the accused of kidnapping in Criminal Case No. 1725, but convicted them of murder in Criminal Case No. 1724. The trial court ruled:[5]

"WHEREFORE, in the light of the foregoing and finding the guilt of the accused beyond reasonable doubt, accused Rolando Laveros, Nilo Barrido and Candido Lajo Jr., alias 'Baruc,' are hereby sentenced to an indeterminate sentence of TWELVE (12) and ONE (1) [sic] of reclusion temporal minimum and to EIGHTEEN (18) YEARS of reclusion temporal as maximum, and to pay the heirs of the deceased Nolito

Cebuhano the sum of P30,000.00 in damages; and to pay the cost of the suit, without however, subsidiary penalty in case of insolvency."

Acting on the appeal of the three accused, the Court of Appeals,[6] in its November 29, 1995 Decision, sentenced each one of them to reclusion perpetua, as follows:

"WHEREFORE, the appealed decision is MODIFIED. Accused-appellants Rolando Laveros, Nilo Barrido, and Candido Lajo, Jr. are hereby found guilty beyond reasonable doubt of the crime of murder, defined and penalized under Article 248, Revised Penal Code, and each is sentenced to suffer imprisonment of reclusion perpetua. They are also ordered to indemnify jointly and severally the heirs of Nolito Cebuhano [in] the sum of P50,000.00.

"Pursuant to the second Paragraph of Section 13, Rule 124 of the Revised Rules of Court, We refrain from entering judgment and certify the instant case and elevate the entire records to the Supreme Court for review."[7]

In view of the penalty involved, the CA correctly refrained from entering judgment and certified the case to this Court.[8] In a Resolution dated July 31, 1996,[9] we dismissed the appeal of Lajo, because he jumped bail. Hence, we shall take up the appeal of Barredo and Laveros only.

The Fact Evidence for the Prosecution

In his Brief, the solicitor general[10] presented the prosecution's version of the facts in this manner:

"On August 10, 1986, at around 10:00 p.m., Enrico Cebuhano was sound asleep in his house located at Brgy. Mangoso, Sigma, Capiz. Suddenly, he was awakened by the presence of masked and armed men inside his house. They passed through the window of the house using a ladder.

"The intruders hogtied Enrico and at the same time told him that they were NPA's. After hogtying Enrico, the intruders brought Enrico downstairs after which they removed their masks. Enrico recognized the intruders as Penequito Laveros, Rolando Laveros, Nilo Barredo, Honorio Barredo and Candido Lajo, Jr. alias 'Baruc' (p.2 tsn, March 5 1990). Honorato Barredo and Rolando Laveros demanded the sum of P10,000.00. Enrico told them that he did not have that much. Irked, Enrico was mauled the the intruders (p.3, tsn, Ibid.)

"After the mauling, Enrico was made to squat on the ground guarded by Penequito Laveros and Honorato Barredo who pointed their guns at his head and shoulder. Enrico's mouth was stuffed with santol leaves and the barrel of a gun was shoved to it. (p.4, tsn, Ibid).

"The intruders later brought Enrico to the house of Nolito Cebuhano, Enrico's son, after which they removed the santol leaves from his mouth. Enrico was ordered by the intruders to call his son which he did. Nolito went down from his house and he was also hogtied. (p.4, tsn, Ibid).

"Enrico and Nolito Cebuhano were brought to the mountains of Atepilo,[11] Mambusao, Capiz. Along the way, Enrico was again mauled by the intruders. Rolando Laveros held Enrico by the collar, while Nilo Barredo, Candido Lajo, Jr., Penequito Laveros and Honorato Barredo kept hitting him with their guns (p.5, tsn, Ibid).

"Enrico was made to lie on his stomach on the upper portion of the feeder road by Rolando Laveros and Nilo Barredo and [Candido Lajo, Jr.] alias 'Baruc.' Penequito Laveros and Honorato Barredo tarried on the lower portion of the road where they mauled Nolito. Enrico could hear the moans of Nolito but he was not able to do anything (p.5, tsn, Ibid).

"During the mauling of Nolito in the hands of Honorato Barredo and Penequito Laveros, Enrico noticed that the area downhill was somewhat thick with foliage. When his guards' attention [was] distracted, he rolled downhill. Enrico's guards fired at his direction but he was not hit (p.6, tsn, ibid).

"Enrico lost consciousness and it was already 5:00 o'clock in the morning when he regained consciousness. Enrico found himself in a clump of bamboos. He heard the crowing of a rooster and crawled toward where it came from. He saw a house and called for help. A woman appeared from the house and he asked her the way to Brgy. Mangoso. The woman told him to go straight ahead since that was the way to said barangay. Enrico told the woman that he could not possibly make it on his own and the woman's husband brought Enrico to his house in Brgy. Mangoso (p. 7, tsn, Ibid).

"Upon reaching his house, Enrico was brought to Dao Emergency Hospital where he incurred expenses in the amount of P3,000.00. At Dao Emergency Hospital, he was informed by his mother-in-law that Nolito had been found and brought to the same hospital but was later transferred to St. Anthony's Hospital where he expired at 10:00 p.m. on August 11, 1986 (p.7, tsn, Ibid).

Evidence for the Defense

In their 11-page Brief,[12] Appellants Laveros and Barredo interpose alibi as a defense, claiming that on August 10, 1986, they never left the municipal building, of Mambusao, Capiz, where they had been allegedly staying. Their version of the facts is as follows:[13]

"On July 30, 1986, a joint military operation was launched by the Philippine Army, Constabulary and Police against the New People's Army at Sitio Maralusan, Barangay Atiplo, Mambusao, Capiz and the residents thereat which included appellants, were instructed by Captain Joren, Captain Segobre and Police Lieutenant Golingay to evacuate.

"The male evacuees were housed at the Municipal Building where they occupied a room (which at the time of the trial of the case was occupied by the Branch Clerk of Court, Regional Trial Court, Branch 20) while the women and children stayed with their relatives at Poblacion Tabuc, Mambusao, Capiz.

"The men who stayed at the Municipal Building for two weeks (from July 30, 1986 up to August 14, 1986) before they were transferred to the Mambusao Cultural Center, were guarded by two policemen, Pfc. Nelson Factolerin and Pfc. Juan Bayot, who also slept with them in the same room every night.

x x x x x x x x

"On August 10, 1986, appellants never left the Municipal Building of Mambusao, Capiz where they were staying and in the evening of that same day, they went to sleep at around 7:00 o'clock p.m. and woke up the following day at around 6:00 a.m.

"In that same evening of August 10, 1986 however, Enrico Cebuano and his son, Nolito Cebuano, were taken away from their respective houses at Barangay Mangoso, Sigma, Capiz by several armed men, subjected to physical punishment and as a result of which Nolito Cebuano died inspite of medical attention."

Ruling of the Trial Court

The trial court concluded that the appellants' defense of alibi cannot overthrow a clear and convincing identification made by Enrico Cebuhano, who testified that appellants were part of the group that mauled him and his son. The trial court, however, convicted appellants only of murder, not kidnapping with murder as charged in the Information, because their sole intent was to kill Nohto, the abduction being merely incidental thereto, viz.:

"It is believed by this court that the accused's intention w[as] to liquidate both father and son, so that the kidnapping was not the main purpose of the accused. The abduction was only incidental to the main purpose of killing both father and son, hence, the crime committed in Criminal Case No. 1724 is not [the] complex crime of [K]idnapping with [m]urder but it is only simple [m]urder aggravated by nighttime and superior strength aided by several armed men." [14]

Ruling of the Court of Appeals

The Court of Appeals ruled that the inconsistencies between Enrico Cebuhano's testimony in open court and the affidavit he executed in Iloilo were minor and did not affect his credibility and the veracity of his testimony. Also, said affidavit could not be considered in the resolution of this case, because it was not formally offered as evidence.

The appellate court further ruled that "the totality of the evidence indicates that there was conspiracy"[15] - a concerted action towards a common purpose - as could be inferred from the acts of the group of armed men, which included appellants.

Like the trial court, the Court of Appeals found appellants guilty of murder.[16] Their alibi was found unavailing, as they were not able to prove that it was absolutely impossible for them to be at the locus criminis at the time the crime was committed. The aggravating circumstance of nighttime was dispensed with, since there was no proof that the cover of darkness was specifically sought out by appellants.

Assignment of Errors

In assailing the Decision of the trial and the appellate courts, appellants allege the following:

"1. Error in convicting appellants despite lack of positive identification and lack of proof beyond reasonable doubt;

"2. Error in not finding that appellants had no participation in the infliction of physical injuries on the person of Nolito Cebuhano which caused his death; [and]

"3. Error in failing to give credence to appellants['] defense of alibi."[17]

The Court's RulingThe appeal is not meritorious.

First Issue: Positive Identification of Appellants

Appellants dispute the plausibility of Enrico Cebuhano's claim that he was able to identify the assailants because they took off their masks. Persons who wear masks would not take them off so casually in the presence of their victims, as doing so would thereby reveal their identities. Also, appellants claim that "in his affidavit which he executed in Iloilo City after the incident, Enrico Cebuhano mentioned Richard Longares and Edilberto Norba as the persons who mauled"[18] his son and caused the latter's death. Furthermore, appellants also argue that their names were merely given to him by his daughter.

The above arguments are untenable. In his testimony, Enrico Cebuhano clearly stated that the men who entered his home removed their masks when he was brought downstairs. Why they did so was known only to them. It is possible that they thought that there was no one in the vicinity who could identify them, or that they wanted Enrico to see who they were so as to intimidate him. It is also possible that they felt secure because there were 14 of them who were all armed. In any event, what is important is that the trial court found Enrico Cebuhano's testimony to be both credible and believable, and that he was able to positively identify appellants herein, because the men who entered his home removed their masks, as his testimony shows:

"ATTY. CARREON:

Q:

When you woke up you notice[d] these person[s] inside your house?

ATTY. NAVARRA:

We object, leading.

ATTY. CARREON:

Q:

What happened later on[?]

A:

After I woke up, the 5 of them who were telling me that they [were] NPA brought me downstairs. They were wearing masks and when we were downstairs, they took off their masks.

x x x x x x x x

COURT

Q:

You have been telling the Court that they mauled you and they brought you to [B]arangay Atiplo. To whom do you refer [as] they? Who are these people?

A:

Rolando Laveros who was holding my collar while Nilo Barrido, Candido Lajo, Penequito Laveros and [H]onorato Barrido were hitting me with their guns."[19]

Moreover, the trial court, which had the opportunity of observing the manner and demeanor of Witness Enrico Cebuhano, was convinced of his credibility. We find no reason to reverse or modify the trial court's evaluation, especially because it was affirmed by the Court of Appeals. "It is a time tested doctrine that a trial court's assessment of the credibility of a witness is entitled great weight - even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence."[20]

Appellants' contention regarding the inconsistency between Enrico Cebuhano's testimony and the affidavit he executed in Iloilo does not detract from his credibility. First, said affidavit was not submitted as evidence by either party. Second, Enrico Cebuhano testified on cross-examination that there were at least 14 persons listed in the affidavit who took part in the acts committed against him and his son; thus, the statement in his affidavit -- that it was Edilberto Norba and Richard Longares who mauled him and his son - did not necessarily imply that the others, particularly appellants herein, took no part in the crime charged or some other act showing their complicity therein.

"COURT

Q:

How many names were listed in your affidavit?

A:

Actually, there were sixteen (16) of them who were the perpetrators but fourteen of them were known to me. If they will be shown to me, I can identify them. I do not know the other two."[21]

In any event, the alleged inconsistencies between Enrico Cebuhano's testimony and his affidavit executed in Iloilo do not impugn his credibility. "The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him,"[22] because "affidavits, being taken ex parte, are almost always incomplete and often inaccurate, sometimes from partial suggestion and sometimes from want of suggestion and inquiries, without the aid of which the witness may

be unable to recall the connected collateral circumstances x x x."[23]

The argument of the appellants - that Enrico Cebuhano was able to identify them because his daughter supplied him the names of the to perpetrators - is also unpersuasive. Enrico Cebuhano's testimony shows that his daughter did give him two names, one of which was that of Richard Longares. It is incorrect, however, to infer from said testimony that Enrico would not have been able to identify the appellants, if his daughter had not furnished him such names. Enrico testified:

"Q:

So that you want to impress this Honorable Court that you included Richard Longares as one of the persons who mauled you and your son, and caused the death of your son, even without knowing him because his name was supplied to you, is that correct?

A:

Yes sir. It was listed down by my children.

x x x x x x x x

ATTY. NAVARRA

Q:

Since fourteen (14) were mentioned in your affidavit executed in Iloilo City, who supplied the other two (2) which you included in the affidavit of yours?

A:

My children."[24]

"COURT

Q:

You have been telling the Court that they mauled you and they brought you to [B]arangay Atiplo. To whom do you refer [as] they? Who are these people?

A:

Rolando Laveros who was holding my collar while Nilo Barrido, Candido Lajo, Penequito Laveros and Honorato Barrido were hitting me with their guns."[25]

The above testimony shows that Enrico positively identified appellants as the perpetrators of the crime, because he was able to see the faces of the men who had assaulted him and his son, and not because their names were supplied by his daughter. The identification of persons is not to be confused with knowledge of their names.

Second Issue: Conspiracy

Appellants contend that conspiracy among them was never proved, and that there was no common purpose or design to injure Nolito Cebuhano. Appellants further argue that Enrico Cebuhano's testimony did not mention that appellants participated in the infliction of bodily harm against Nolito Cebuhano, for it was allegedly Penequito Laveros and Honorato Barredo who had mauled Nolito to his death. Consequently, since there was no conspiracy among them, appellants cannot be held responsible for Penequito Laveros and Honorato Barredo's act of killing Nolito Cebuhano.

In *People vs. Magallano*, the Court ruled that "direct proof is not essential to establish conspiracy as this may be

inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest."[26]

In this case, although it was Penequito Laveros and Honorato Barredo who actually beat up Nolito Cebuhano, and thereby caused his death, appellants cannot deny liability for said acts, because in conspiracy, the act of one is the act of all. That they had a common design or purpose is shown by the fact that they were part of a group who entered Enrico Cebuhano's home, tied him up, demanded money from him, mauled him and later forced him to call his son. Appellants, including Penequito Laveros and Honorato Barredo, as well as several other men, were all armed and wearing masks. Appellants were also among those who brought both Enrico and Nolito Cebuhano to the mountains. On the way, there was even an incident, in which Enrico, while being held by Rolando Barredo by the collar, was repeatedly hit by Nilo Barredo, Candido Lajo, Jr., Penequito Laveros and Honorato Barredo with their guns.

Third Issue: Alibi

Appellants likewise interpose the defense of Alibi, stating that on August 10, 1986, from seven in the evening until six the following morning, they were sleeping inside the municipal building of Mambusao, Capiz.

This claim must be rejected. Alibi is one of the weakest defenses, because it is easy to fabricate and difficult to disprove. To succeed in using alibi, the defense must show that it was physically impossible for appellants to have been present at the place of the crime at the time it was committed.[27]

In the case at bar, appellants testified that they were staying at the municipal building of Mambusao, Capiz for protection against recent NPA activity in a nearby town. Appellants, however, were not prisoners and were thus free to leave the place at anytime:

"Q:

Can you tell what particular date was that when you, together with your fifteen (15) people from Sitio Maralusan, evacuated to the municipal building of Mambusao, Capiz?

A:

July 30, 1986.

Q:

Why did You and Your companions evacuated [sic] to the municipal building of Mambusao, Capiz on July 30, 1986?

A:

On July 30, 1986, we were told by Capt. Joren, Capt. Segobre and P/Lt. Golingay to evacuate to the municipal building of Mambusao, Capiz.

Q:

Were you told by these persons, namely: Capt. Joren, Capt. Segobre and Lt. Golingay the reason why you were evacuated to the municipal building that day, July 30, 1986.

A:

Yes, sir.

Q:

And what was the reason given to you?

A:

On July 30, 1986, they were having a full operation in our sitio, Maralusan and we were told to evacuate to the municipal building of Mambusao, Capiz, because we might be hit during crossfire.

x x x x x x x x

Q:

If you want to go out in the evening, you can get out?

A:

Yes, sir.

Q:

So you were not treated as prisoners as what your co-accused had been telling the court?

A:

We were not treated as prisoners."[28]

Furthermore appellants were not able to prove that the distance from the Municipal Hall to the homes of Enrico and Nolito Cebuhano was such that it was impossible for them to slip out of the said building and be at the locus criminis to commit the felonious act. Besides, the defense must fail before Enrico Cebuhano's positive identification.

WHEREFORE, the Court hereby. DENIES the appeal and AFFIRMS the assailed Decision of the Court of Appeals. Costs against appellants.

Let copies of this Decision be furnished the Secretary of Interior and Local Government and the Secretary of Justice so that Penequito Laveros and Candido Lajo Jr. may be brought to justice.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] CA Records, p.11.

[2] Also spelled "Barrido."

[3] CA Records, p.13.

[4] This was also spelled "Cebuhano."

[5] RTC Decision, pp. 1-13; CA Records, pp.21-33.

[6] Eleventh Division, composed of J. Buenaventura, J. Guerrero, ponente and JJ. Minerva P. Gonzaga-Reyes and Romeo A. Brawner.

[7] CA Decision, p.12; CA Records, p.123.

[8] The case was deemed submitted for resolution on June 15, 1998 upon receipt by this Court of Appelle's Brief. Filing of a reply was deemed waived, as none was filed within the reglementary period.

[9] Rollo, p.7.

[10] Rollo, p.170; the Appellee's Brief was signed by Solicitor General Silvestre H. Bello III, Assistant Solicitor Carlos N. Ortega, Assistant Solicitor General Amy C. Lazaro-Javier and Solicitor Romeo R. Ramolete.

[11] Also spelled as "Atiplo."

[12] Signed by Atty. Tomas M. Navarra; rollo, pp.126-136.

[13] Appellant's Brief, pp.3-4; rollo, pp.128-129.

[14] RTC Decision, p.10; CA Records, p.30.

[15] CA Decision, p.8; CA Records, p.119.

[16] Ibid., p.11; CA Records, p.122.

[17] Appellant's Brief, pp.4-5; rollo, pp.129-130.

[18] Ibid., p.5; rollo, p.130.

[19] TSN, March 5, 1990, pp.3-5.

[20] People v. Romeo Nell, G.R. No. 109660, July 1, 1997; p.10, per Panganiban, J.

[21] TSN, April 10, 1990, p.3.

[22] People v. Calegan, 233 SCRA 537, 544-545, June 30, 1994, per Bellosillo, J.

[23] People v. Villanueva, 215 SCRA 22, 28, October 21, 1992, per Feliciano, J.

[24] TSN, April 10, 1990, pp.3-4.

[25] TSN, March 5, 1990, p.5.

[26] 266 SCRA 305, 314, January 16, 1997, per Regalado, J.

[27] People v. Canada, 253 SCRA 277, 286, February 6, 1996.

[28] TSN, May 29, 1990, pp.36-39.

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