

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN TIDULA, VICTORIO TIDULA, DOMINGO GATO, SALVACION GATO, AND JOSE PRIOR, ACCUSED-APPELLANTS.

G.R. No. 123273. July 16, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The violation of the constitutional rights of a person under custodial investigation renders inutile all statements, admissions and confessions taken from him. However, where no such evidence was extracted from him, the alleged violation of his constitutional rights will not affect the admissibility of other pieces of evidence legally obtained and presented during the trial. So, too, objections against the illegality of a warrant of arrest must be invoked by the appellants prior to their plea; otherwise they shall be deemed waived.

The Case

These were the main principles that guided the Court in deciding this appeal from the judgment dated February 11, 1995, promulgated by the Regional Trial Court of Iloilo City, Branch 35,[1] in Criminal Case No. 38946. Found guilty beyond reasonable doubt of robbery with homicide were the following: Ruben Tidula, Domingo Gato, Salvacion C. Gato, Victorio Tidula and Jose Prior.

In an Information dated October 8, 1992, the above-mentioned persons, together with Pablo Genosa, were charged by Assistant Provincial Prosecutor Bernabe D. Dusaban as follows:

“That on or about August 31, 1992, in the Municipality of Oton, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused conspiring, confederating and helping one another, taking advantage of their superior strength and nighttime to better realize their purpose, by means of force and violence upon person, entered the residence of Mark Michael Lazaro Zulueta, and once inside, did then and there wilfully, unlawfully and feloniously ransack, take, steal and carry away with intent to gain one (1) Sony [c]assette tape recorder worth P3,000.00, two (2) jackets worth P4,000.00, one (1) Citizen’s men’s wrist watch worth P1,500.00 and undetermined cash of coins, all owned and belonging to Mark Michael Lazaro Zulueta against his consent [and] to his damage and prejudice in the total amount of [e]ight [t]housand [f]ive [h]undred (P8,500.00) [p]esos, Philippine [c]urrency, and on the occasion or by reason of said robbery, the above-named accused armed with bladed weapons, with a decided purpose to kill, did then and there wilfully, unlawfully and feloniously stab and twist the head of Mark Michael Lazaro Zulueta with the weapons which they were then provided, thereby hitting him and inflicting injuries which caused his death.”

Upon their arraignment on November 24, 1992, the accused, duly assisted by Atty. Edgar P. Parker, Jr., pleaded not guilty.[2] Trial proceeded in due course. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

“WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of [r]obbery with [h]omicide and hereby sentences each to suffer the penalty of reclusion perpetua together with the accessory

penalties provided by law.

Furthermore, the herein accused are likewise ordered to pay the complainants, Spouses Joselito and Marilyn Manubag, the sum of [f]ifty [t]housand (P50,000.00) [p]esos, as death indemnity, and another sum of [f]ifty [t]housand (P50,000.00) [p]esos, as moral damages, and to pay the value of the Citizen wrist watch and the Sony tape recorder which were the items taken during the robbery, in the amount of [f]our [t]housand [f]ive [h]undred (P4,500.00) [p]esos.

Exh. "C", (gray jacket) and Exh. "D" (camouflage jacket) are ordered returned to the Spouses Manubag.

The bail bond posted by accused Jose Prior is hereby cancelled, conformably with Adm. Cir. No. 2-92 of the Supreme Court, dated January 20, 1992. Consequently, his arrest is hereby ordered."

The Facts

Evidence for the Prosecution

In his Brief, the solicitor general^[3] adopted the trial court's summary of the prosecution evidence (to which he added references to the transcript of stenographic notes):

"The evidence of the prosecution shows that Joselito and Marilyn Manubag are husband and wife. They live in a rented family dwelling in Brgy. Trapeche, Oton, Iloilo, about 2-1/2 kilometers from the Poblacion of Oton.

Mark Michael Lazaro Zulueta, son of the complainant Marilyn Manubag by a previous [live]-in partner Lazaro Zulueta Jr., before her marriage to Joselito Manubag, was living with them. (p. 7, November 24, 1992, TSN)

At about 6:45 in the evening of August 31, 1992 when the spouses returned to their house from their grocery store at the public market, they found Mark Michael Lazaro Zulueta, inside the comfort room lying on his stomach, both hands tied behind his back, his mouth stuffed with [a] handkerchief, bloody from several stab wounds, dead. (pp. 31-34, Ibid.)

Autopsy Report (Exh. "A") shows that the victim sustained the following injuries:

1. Stab wound - length - 1", width - 1/2", depth - 3 1/2", 3 inches from the right nipple, 1 1/2 inches from the right anterior axillary line.
2. Stab wound - length - 1", width - 1/2", depth - 1 1/2", 1 1/2 inches from the right nipple, 4 inches from the right axilla.
3. Stab wound - length - 3/4", width - 1/2", depth - 1/2", 1 [inch] from the right nipple, 3 1/2 inches from the right axilla.
4. Rope markings - wrist both hands.
5. Cervical fracture.

and the cause of death was cardio-respiratory arrest, secondary to multiple stab wounds and cervical fracture. The spouses also discovered that the victim's cassette recorder worth P3,000.00 and wrist watch valued at P1,500.00 together with Joselito's two (2) jackets valued at P4,000.00 and undetermined cash were also missing. (p. 15, Ibid.) The incident was reported to the police authorities of Oton, Iloilo. Without loss of time, the police conducted an intensive investigation to determine the probable authors of the heinous crime. After a few days of sleuthing, the policemen were able to gather positive statements from impartial witnesses to provide them with lead[s]. (pp. 11-17, March 30, 1993, TSN) A search was thereafter launched for the

apprehension and arrest of the suspects. A team was sent to Negros Occ. to track down the suspects which resulted in the arrest of the three (3) accused Victorio Tidula, Jose Prior and Pablo Genosa, all residents of Brgy. Nanga, Guimbal, Iloilo, at Brgy. Alambihod, Ilog, Negros on September 6, 1992. Recovered from Pablo Genosa was a jacket colored gray (Exh. "C") one of the stolen jackets of Joselito in that incident of August 31, 1992. (pp. 6-9 Ibid.) The accused Ruben Tidula and Domingo Gato fled to Boracay Island of Aklan and were arrested on September 8, 1992 in that place. Recovered from them was a camouflage jacket (Exh. "D"). (pp. 4-7, May 17, 1993, TSN)

On September 7, 1992, during the police investigation, Pablo Genosa confessed to the police authorities all he knew about the subject incident.

This is his story. On August 21, 1992 at about 11:00 o'clock in the morning, accused Ruben Tidula, Domingo Gato and Victorio Tidula went to his house in Brgy. Nanga, Guimbal, Iloilo. The three invited him to join in a transaction to kill Mark Michael Lazaro Zulueta and his mother Marilyn Manubag at the instance of the accused Salvacion Gato. The three informed him that Salvacion Gato would pay P2,000.00 for the accomplishment of the purpose. Pablo Genosa complained telling the three that the amount [was] too meager for the work to be done but he was informed that they would also stage a hold-up from which he could get more. Pablo Genosa agreed to join the four male accused. They decided to carry out the plan on August 24, 1992 between 7:30 [and] 8:30 in the evening after the market day of Oton, anticipating that Marilyn Manubag would bring home plenty of money as proceeds of her sale on that day. (pp. 11-17, February 23, 1993, TSN)

On August 24, 1992, Pablo Genosa went to the house of Victorio Tidula and Jose Prior. The three of them proceeded to the waiting shade [sic] at [the] crossing [at] Nanga, Guimbal where they waited for Ruben Tidula and Domingo Gato. When Ruben Tidula and Domingo Gato arrived, Victorio Tidula inquired from Ruben Tidula about the P2,000.00 and he was told that they would just pick-up the money at the house of their Lola Vacion. So the four of them proceeded to the house of Salvacion Gato. Ruben Tidula received the money and Salvacion told them to be careful in the execution in a manner that she will not be implicated. From the house of Salvacion Gato they went back to Oton Public Market to meet Tony Gato, son of Salvacion Gato. Ruben Tidula was armed with a single shot hand gun while the rest were armed with knives. When Tony Gato arrived, the six of them proceeded to Brgy. Sinikway, a slum district by the seashore of Oton, in the house of Jose Prior's friend, about a kilometer away from Oton Public Market where they took [liquor] and talked about the execution of their murderous design. It was in that meeting when Pablo Genosa learned from Tony Gato the reason why their Lola Vacion wanted Marilyn Manubag and her son Mark Michael Lazaro Zulueta killed. The reason as narrated was about the quarrel between Marilyn and the daughters of Salvacion Gato inside the public market of Oton, wherein Mark Michael Lazaro Zulueta intervened leaving a threat to the daughters of Salvacion to kill them someday. Salvacion Gato learned about the threat upon her arrival from Hongkong. The news was not received lightly. Accused Salvacion Gato commented: "If they will have us killed, it is better that we will have them killed first." (pp. 18-25, Ibid.)

From the house of Jose Prior's friend at about 7:00 o'clock in the evening of August 24, 1992 they left for Oton Public Market to execute the plan. However, they were not able to accomplish the plan because of the presence of many people. So the five proceeded to Brgy. Trapeche, Oton leaving behind Tony Gato. The five noticed that Mark Michael Lazaro Zulueta was inside the house when Joselito Manubag and Marilyn Manubag arrived. Again, they were not able to commit as planned because the place was well-lighted and there were many people near the house at that time. The accused again met in Brgy. Nanga, Guimbal to plan the execution of their scheme on August 31, 1992 which is also a Monday and market day of Oton. (pp. 25-29, Ibid.)

On August 29, 1992, Domingo Gato told Pablo Genosa to be at the crossing [at] Nanga, Guimbal on August 31, 1992. Accordingly, Pablo Genosa went to [the] crossing [at] Nanga where Ruben Tidula and Domingo Gato joined him. Ruben Tidula told him that Jose Prior and Victorio Gato [sic] were already in the house of Salvacion Gato in Trapeche, Oton. So, the three of them went there. When they arrived, Victorio Tidula, Jose Prior and Tony Gato were already there. At 6:00 o'clock in the evening the accused Salvacion Gato directed

them to proceed with their plan so they left towards the house of Joselito and Marilyn Manubag which [was] only 150 meters away. When they reached the house, it was dark so they waited a little while. When Mark Michael Lazaro Zulueta arrived, he opened the padlock of the gate. Ruben Tidula and Jose Prior appeared in the dark and immediately approached him and pointed at him their single shot armalite hand gun and knife respectively. The three accused, Ruben Tidula, Jose Prior and Domingo Gato, entered the gate and went inside the house thru the backdoor. About 15 minutes later Ruben Tidula and Jose Prior went out of the house and were met by Pablo Genosa and Victorio Tidula. They were told to go ahead because Mark Michael Lazaro Zulueta was already dead and Domingo Gato had already left. Witness Pablo Genosa noticed that Ruben Tidula and Domingo Gato were already wearing jackets while Jose Prior was carrying a cassette recorder. Pablo Genosa and Jose Prior left together and took a passenger jeep in going home to Nanga, Guimbal. The following day, September 1, 1992, Pablo Genosa heard over the radio the news about the killing of Mark Michael Lazaro Zulueta and the robbery in house of the spouses Joselito and Marilyn Manubag. Later Victorio Tidula was picked-up by the police authorities. On September 2, 1992, Domingo Gato gave to Pablo Genosa P200.00 as his share in the money which came from the accused Salvacion Gato, informing him to prepare because they would be leaving the following day, September 3, 1992, for Ilog, Negros Occ. where they were arrested on September 6, 1992. (pp. 29-44, Ibid.)”

Evidence for the Defense

The defense contends that “the accusations against the accused were purely framed up and that the sworn statement of xxx Pablo Genosa was a fabrication.”[4]

Interposing alibi, the defense presented fourteen (14) witnesses,[5] whose testimonies were summarized by the court a quo as follows:[6]

“Accused Victorio Tidula and Jose Prior claim that they went to Brgy. Alambihod, Ilog, Neg. Occ. on August 30, 1992, hence, they could not have committed the crime in question on August 31, 1992. Their reason for being in Brgy. Alambihod was to earn a livelihood by harvesting palay.

Accused Domingo Gato claims that he was in Brgy. Malay, Boracay, Aklan on August 14, 1992 to earn a livelihood by fishing around the island of Boracay until he was arrested, hence, he could not be present in Brgy. Trapeche, Oton on August 31, 1992.

The other accused, Ruben Tidula claims that in the evening of August 31, 1992 when the crime was committed, he was at home in Brgy. Nanga, Guimbal, hence, he could not have committed the crime although he admitted that at around 4:30 in the afternoon of that day, he was in Brgy. Trapeche, Oton to deliver bamboo poles to Romulo, the son-in-law of Salvacion Gato.

Accused Salvacion Gato alleged that she is a herbal doctor. When the crime was committed in the evening of August 31, 1992, she was out of Brgy. Trapeche, Oton, attending to her patients, hence, she could not have committed the offense.”

The Ruling of the Trial Court

Relying on the testimony of Pablo Genosa, the accused who was discharged as a state witness, the trial court ruled in favor of the prosecution.

On the witness stand, Pablo Genosa testified on the planning and the execution of the crime and reiterated the account which he had earlier given to the police authorities of Oton, Iloilo, right after his arrest. The trial court also ruled that the evidence on record did not show that Pablo Genosa was coerced, promised anything, or motivated by any evil intent.[7]

Furthermore, Genosa’s testimony was substantially corroborated in its material points by the testimonies of SPO3

Roberto Panique, Joselito Manubag, Marilyn Manubag, Dr. Vicente Carreon and by the following circumstances:

“That the accused Ruben Tidula, Domingo Gato, Victorio Tidula and Jose Prior as well as state witness Pablo Genosa are all residents of Brgy. Nanga, Guimbal, Iloilo.”

“That immediately after the incident, all the accused, except Salvacion Gato, left their place of residence. Pablo Genosa, Victorio [T]idula and Jose Prior went to Ilog, Neg. Occ. where they were arrested by the police authorities on September 6, 1992 and a gray jacket (Exh. “C”) was recovered from their possession. Accused Ruben Tidula and Domingo Gato went to Boracay Island and were arrested on September 8, 1992 in that place. Recovered from them was a camouflage jacket (Exh. “D”).”

Hence, this appeal direct to this Court.[8]

Assignment of Errors

In assailing the trial court’s Decision, appellants cite the following errors:

“I

The court erred in not ruling against the violation of the constitutional rights of the accused during the custodial investigation.

II

The court erred in not ruling against the issuance of warrants of arrest in violation of the constitutional rights of the accused.

III

The court erred in discharging accused Pablo Genosa and utiliz[ing] him to frame up and charge all the accused in consideration of reward and promise by the offended party.

IV

The court erred in convicting the accused based on inconsistencies [in] the testimony and purely circumstantial evidence of the prosecution witness.”

The Court’s Ruling

The appeal is bereft of merit.

First Issue:

Violation of Constitutional Rights

During Custodial Investigation

Appellants contend that their constitutional rights were violated during their custodial investigation, claiming that the police investigator of the Oton Police Station did not inform them of such rights, and that they were not assisted by counsel. Appellants likewise claim that the Sworn Statement of Pablo Genosa cannot be admitted in evidence,[9] because the police investigator did not explain to him the legal effects of the investigation.[10]

While we caution police officers to be resolute in safeguarding the rights of those under custodial investigation, the alleged violation of the constitutional rights of the present appellants is immaterial to the disposition of this case. This alleged infringement is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction. Section 12 (3) of Article III of the 1987 Constitution[11] states that a confession or admission obtained during custodial investigation in a manner that violates the constitutional rights of the accused shall be inadmissible in evidence against him or her.

In the present case, appellants, while under custodial investigation, did not give any statement regarding the crime; much less did they write any confession or admission. Hence, no inadmissible evidence was obtained from them despite the alleged violation of their constitutional rights. In this light, the cases cited in the Appellants' Brief[12] are misplaced, because they pertain to the inadmissibility of extrajudicial confessions obtained in violation of constitutional rights.

Appellants' objections to the Sworn Statement of Pablo Genosa are likewise misplaced. It is clear that Genosa was properly informed of his rights and the consequences of his declarations. Furthermore, he was properly assisted by a lawyer, as shown by his Sworn Statement which in part reads:

"Preliminary: Mr. Pablo Genosa, you are being informed that you are under investigation in connection with the [r]obbery with [h]omicide case that happened on August 31, 1992, at Brgy. Trapiche, Oton, Iloilo, which resulted [in] the death of Mark Michael Lazaro Zulueta wherein you are one of the suspect[s]. Aside from this you are also being informed that under Art. III, Section 12 of the new Constitution of the Republic of the Philippines, you have the right to remain silent and to be assisted by a counsel of your own choice to assist you in this investigation and do not answer any question if you think it can discriminate [sic] you. Is this understood by you?

Answer: Yes Sir.

x x x x x x x x

Question: Now that Atty. Rogelio C. Antiquera is here to assist you in this investigation, do we proceed in investigating you?

Answer: Yes Sir."[13]

Moreover, Genosa's Sworn Statement was not the sole evidence presented by the prosecution. In fact, the trial court relied mainly on his testimony in open court, not on his Sworn Statement.

Second Issue:

Legality of the Warrants of Arrest

Next, appellants assail the legality of their arrest, emphasizing that Pablo Genosa, Victorio Tidula and Jose Prior were all arrested without warrants. Also, the warrant for the arrest of Ruben Tidula and Domingo Gato was dated September 12, 1992, which was four days later than the date on which it was served, September 8, 1992.[14] Appellants likewise claim that the warrant for the arrest of Salvacion Gato, which was dated September 5, 1992, was supposedly based on the Sworn Statement of Pablo Genosa which was, however, dated two days later, September 7, 1992.

It must be noted, though, that while the photocopy of the warrant for the arrest of Salvacion Gato (submitted by accused-appellants) is dated September 5, 1992, a careful examination of the records shows that the original copy of the said warrant is dated September 8, 1992.[15] It is a basic rule of evidence that the original copy prevails over a mere photocopy.

And assuming that the aforementioned warrants were indeed defective or void,[16] appellants failed to make a timely objection thereto, that is, prior to the entry of their plea. In *People v. Salvatierra*, the Court ruled:

"Appellant is estopped from questioning the legality of his arrest considering that he never raised this before entering his plea. Any objection involving a warrant of arrest or the acquisition of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived."[17]

Consequently, the defects in the arrest warrants and in the resulting arrests were cured by appellants' voluntary

submission to the jurisdiction of the trial court, as manifested by the individual pleas they entered during their arraignment and by their active participation in the trial thereafter, without any mention of such defects.

Third Issue:

Discharge of Pablo Genosa

Appellants likewise question the discharge of Pablo Genosa as a state witness, claiming that he was merely used^[18] by the police to “frame-up” the other accused, and that he was promised a reward by Marilyn Manubag. Appellants also allege a conspiracy between the police investigators and Pablo Genosa, pointing out that only he was given the assistance of counsel during the custodial investigation, and that he alone executed a sworn statement before the police investigators. These contentions, however, are of no moment, because Genosa was the only one willing to make a statement and to tell the truth. In fact, he had declared, when asked by the police investigators, that he wanted to be assisted by counsel. This is clear from his Sworn Statement, which in part reads:

“Question: Do you want to be assisted by counsel of your own choice to assist you in this investigation?

Answer: Yes Sir.”^[19]

Moreover, the discharge of Genosa as an accused to become a state witness was contingent on the initiative of the prosecution and the sound discretion of the trial court. As stated by this Court in *People v. Espanola*, “part of the prosecutorial discretion is the determination of who should be used as state witness in order to bolster the successful prosecution of criminal offenses.”^[20]

The prosecution may move for, and the trial court may approve, the discharge of an accused in order that he may become a witness for the state, pursuant to Section 9 of Rule 119 of the Rules of Court, which reads:

“SEC. 9. Discharge of accused to be state witness. -- When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty;
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.”

Justifying the discharge of Genosa, the trial court ratiocinated:

“There is no question that there was no other direct evidence available for the proper prosecution of the crime charged, except the testimony of Pablo Genosa which impelled the necessity of discharging him to take the witness stand.”^[21]

Genosa’s testimony was substantially corroborated by the testimonies of SPO3 Roberto Panique, Joselito Manubag, Marilyn Manubag and Dr. Vicente Carreon. The subsequent recovery of several stolen items from the accused-appellants further bolsters his credibility.

Furthermore, Genosa does not appear to be the most guilty among the accused, since it is clear from the facts of

the case that he was not the leader of their group. Neither was he one of the three accused who entered the house of Marilyn Manubag and delivered the fatal blow to Mark Michael Lazaro Zulueta. In addition, there is no showing that Genosa had been previously convicted of any offense involving moral turpitude.

Therefore, the trial court fully complied with the requisites set forth in Section 9 of Rule 119 of the Rules of Court when it discharged Pablo Genosa as an accused in order to become a state witness.

Fourth Issue:

Alleged Inconsistencies in Genosa's Testimony

Appellants also seek to discredit the testimony of Genosa, citing alleged glaring inconsistencies in regard to (a) the time and the place where the plan to kill[22] and rob was hatched and (b) the amount of money he received for his part in the crime.

We find the alleged inconsistencies insignificant. They do not affect the important points Genosa established, namely, the commission of the crime itself and the identification of the perpetrators thereof.[23] A witness is not expected to remember an occurrence with perfect recollection of minor and minute details.[24] Moreover, even the most truthful witnesses often err and issue confused statements. What is important is that Genosa described in detail their plan to kill and "hold-up" Marilyn Manubag and her son, as well as the manner in which they carried out such plan, which resulted in the killing of Mark Michael Lazaro Zulueta and the asportation of his belongings.

According to Genosa, the plan was hatched on August 21, 1992, when Ruben Tidula, Domingo Gato and Victorio Tidula went to his house to ask him to join them in a "transaction" to kill Manubag and Zulueta. He testified as follows:

"Q: What was your answer to Domingo Gato when he asked you if you will go with them for a transaction?

A: I asked them if [sic] what was the transaction about.

Q: And what did they answer to you?

A: They answered that a transaction to kill Mark Lazaro Zulueta and Marilyn [it was] Manubag, sir."[25]

Genosa further testified that their grandmother, Salvacion Gato, ordered the killing and promised to pay them P2,000 for the job. Since that amount was too small, they decided not only to kill Marilyn Manubag and her son, but to rob them as well. The pertinent portion of his testimony reads:

"Q: Now, when you were told that it was your Lola Vacion who ordered to kill Marilyn Manubag and her son Mark, what did you do?

A: I asked Ruben Tidula if [sic] how much will Lola Vacion give to that transaction."

x x x x x x x x

Q: And what did you say when you learned that P2,000 will be given by Lola Vacion in killing Marilyn Manubag and Mark Michael Lazaro Zulueta?

A: I asked why the amount was so small.

Q: What did he answer?

A: He answered that what we will do is not only to kill but to hold them up so what we will get is plenty, sir."[26]

The motive for the killing was a quarrel between Marilyn Manubag and the daughters of Salvacion Gato.

“Q: What did you talk about?

A: I asked him if [sic] what is the reason why they wanted Marilyn Manubag and her son Mark Michael Lazaro Zulueta to be killed, sir.

Q: And what did Tony Gato answer?

A: He told us the reason for all these was x x x the quarrel between Marilyn Manubag and the daughters of Salvacion Gato...”[27]

On August 31, 1992, they went to Brgy. Trapeche, Oton, positioned themselves in the vicinity of Marilyn Manubag’s house and waited for the arrival of their intended victims.

“Q: What did you talk about?

A: Domingo Gato told me that, “You Pablo, you wait at the store near the house of Marilyn Manubag while Jose Prior will stay across the road and I and Ruben Tidula will go to the house of Marilyn Manubag,” sir.

x x x x x x x x

Q: Later on did anybody come?

A: Yes, sir.

Q: Who arrived?

A: Mark Michael Lazaro Zulueta, sir.

x x x x x x x x

Q: And as he was opening the padlock of the gate what happened?

A: Ruben Tidula and Domingo Gato approached him and pointed [at] him a single armalite and knife, sir.

x x x x x x x x

Q: What did they do?

A: They went at the side of the house and went around, sir.

x x x x x x x x

Q: After the main door was opened, what happened next?

A: Jose Prior went inside the house passing [by] the main door, sir.

x x x x x x x x

Q: When you saw them [go] out of the house what did you do?

A: I stood up and approached them, sir.

x x x x x x x x

Q: What happened when you and Victorio Tidula approached them?

A: Ruben Tidula told us, “... just go ahead because Mark is already dead...”[28]

The trial court, which had the opportunity to observe the manner and demeanor of the witness, was convinced of his credibility. We find no reason to reverse or alter its evaluation. “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.”[29]

A witness’ testimony is accorded great weight, particularly when his or her accusation is directed against a close relative. For one to prosecute a blood relative[30] -- especially when, as in this case, no ill will or evil motive is shown -- goes beyond logic and normal human experience.

The prosecution’s case is further strengthened by the fact that the appellants, with the exception of Salvacion Gato, all fled from their residences in Barangay Nanga, Guimbal, Iloilo, immediately after the crime was committed. As held by this Court in *People vs. Nell*, “flight, in jurisprudence, is a strong indication of guilt.”[31] More important, appellants were likewise found in possession of the stolen items at the time of their arrest, a fact they could not explain; much less, justify.

Alibi

Accused-appellants also interpose the defense of alibi, stating that at the time of the commission of the crime, they were in places other than Brgy. Trapeche, Oton. This claim must also be rejected. To succeed in using alibi, the accused-appellants must prove that it was physically impossible for them to have been present at the place of the crime at the time it was committed;[32] this they failed to do.

At 6:45 p.m. on August 31, 1992, Ruben Tidula was seen at a sari-sari store which was near the victim’s house. Although Defense Witness Nemesio Gelito testified that Domingo Gato was in Brgy. Manokmanok, Boracay, from August 14 until his arrest on September 7, 1992, the former’s cross-examination, however, revealed that the former was sick from August 28 until September 7, 1992, during which time he stayed in his house. Thus, he could not have stated with certainty that it was impossible for Domingo Gato to have been in Brgy. Trapeche, Oton, on August 31, 1992, as revealed in this part of his testimony:

“Q: Because your illness was continuous from August 28, 1992 to September 7, 1992 you stayed in your house?

A: Yes sir.

Q: And you were not able to go out?

A: Yes sir.”[33]

Victorio Tidula and Ruben Prior were supposedly seen by Defense Witness Erab Dicham on board a ship bound for Bacolod at 7:30 a.m. of August 30, 1992, and by Defense Witness Rogelio Procia in Negros Occidental at noon on the same date. However, Erab Dicham also testified that there was a ship that could travel from Bacolod to Iloilo in the afternoon of August 30, 1992, such that a person who went from Iloilo to Bacolod in the morning could return to Iloilo on the same day by taking the afternoon trip. It was therefore not impossible for both Victorio Tidula and Ruben Prior to have been in Brgy. Trapeche, Oton, on August 31, 1992.

The Crime

Appellants were convicted under Article 294 of the Revised Penal Code, which provides:

“Art. 294. Robbery with violence against or intimidation of persons -- Penalties. -- Any person guilty of robbery with the use of violence against or intimidation of 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, x x x.”

The elements of this crime were laid down by the Court in this wise:

- “(1) the taking of personal property is committed with violence or intimidation against persons;
- (2) the property taken belongs to another;
- (3) the taking is done with animo lucrandi; and
- (4) by reason of the robbery or on the occasion thereof, homicide is committed.”[34]

In the present case, we sustain the finding of the trial court that appellants are guilty of the special complex crime of robbery with homicide. The prosecution has sufficiently proven that appellants, with intent to gain, asported one Sony cassette tape recorder worth P3,000, two jackets worth P4,000 and one Citizen wristwatch worth P1,500, and that the said items belonged to the household of Marilyn Manubag. It is also evident that homicide was committed on the same occasion.

It is clear that robbery was not a mere afterthought; it was part of the appellants’ original design. They were hired not only to kill the Manubags, but also to commit robbery, as shown in this portion of Genosa’s testimony:

“Q: And what did you say when you learned that P2,000 will be given by Lola Vacion in killing Marilyn Manubag and Mark Michael Lazaro Zulueta?

A: I asked why the amount was so small sir.

Q: What did he answer?

A: He answered that what we will do is not only to kill but to hold them up so that we will get plenty, sir.”[35]

In fact, appellants deliberately planned to carry out their attack on a Monday, the market day in Oton, in order to maximize their loot from Marilyn Manubag’s earnings from the market, as further indicated in Genosa’s testimony.

“Q: Now, you mentioned that you were told that aside from killing, you and your companions will also hold up Marilyn Manubag and Mark Michael Lazaro Zulueta, so that you can get plenty at that time[;] do you know why you expect[ed] to get plenty when you h[e]ld them up?

A: Because Ruben Tidula told me that Lola Vacion said the commission of the crime will be on August 24, 1992 because it was a market day of Oton and Marilyn Manubag will bring home plenty of money as her sale on that day, sir.”[36]

This point is confirmed by their subsequent decision to abort their planned attack on August 24, 1992, and to carry out the same on August 31, 1992, also a market day in Oton.

That the purpose of the malefactors was to kill and rob does not preclude their conviction for the special complex crime of robbery with homicide. Thus, in *People vs. Damaso*,[37] the defense counsel appealed the conviction for this special complex crime, arguing that the double homicide could not have been committed by reason or on occasion of the robbery because one of the accused had a motive to kill and not only to rob. Rejecting the argument, the Court held that “the fact that the intent of the culprit was tempered with a desire to avenge grievances against the person killed does not prevent the punishment of the accused for the complex crime.”

Conspiracy

It is also very clear that conspiracy, connivance, and unity of the accused in purpose and intention were present before and throughout the execution of the crime. All the accused participated in the planning of the crime. Although only Ruben Tidula, Domingo Gato and Jose Prior entered the house and tied, stabbed and killed Mark Michael Lazaro Zulueta, the others cannot escape liability because, in conspiracy, the act of one is the act of all.

Civil Liability

Accused-appellants are liable to pay the complainants, Spouses Joselito and Marilyn Manubag, the sum of fifty thousand pesos (P50,000) as indemnity for the death of their son. They are also liable for the additional sum of four thousand five hundred pesos (P4,500), which is the total value of the items taken during the incident.

However, the award of fifty thousand pesos (P50,000) representing moral damages should be deleted, since no proof of anxiety, moral shock, wounded feelings or similar injury was shown during the trial.[38]

WHEREFORE, the assailed Decision is hereby AFFIRMED, but the award of moral damages is DELETED. Cost against appellants.

SO ORDERED.

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

[1] Presided by Judge Severino C. Aguilar.

[2] Assailed Decision, p. 2; Rollo, p. 32.

[3] The Appellee's Brief was signed by Solicitor General Romeo C. Dela Cruz, Assistant Solicitor General Mariano M. Martinez and Solicitor Edwin C. Yan.

[4] Appellants' Brief signed by Atty. Edgar P. Parker, Jr., p. 1; Rollo, p. 64.

[5] Assailed Decision, p. 6; Rollo, p. 36.

[6] The Appellants' Brief did not contain a statement of facts.

[7] Assailed Decision, p. 7; Rollo, p. 37.

[8] This case was deemed submitted for resolution on March 3, 1998 upon receipt by the Court of the Appellee's Brief. The filing of a reply brief was deemed waived upon failure of appellants to submit one within the reglementary period.

[9] Appellants' Brief, p. 6; Rollo, p. 69.

[10] Ibid.

[11] "SEC 12. x x x x x x x x

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him."

[12] People vs. Vasquez, 196 SCRA 564; People vs. Decierdo, 149 SCRA 496; People vs. Lim, 196 SCRA 809; People vs. Nulla, 153 SCRA 471; People vs. De Las Marinas, 196 SCRA 504; and People vs. Albofera, 152 SCRA 123.

[13] Sworn Statement of Pablo Genosa, p. 1; records, p. 17.

[14] Exhibit 7.

[15] Records, p. 24.

[16] The warrant for Ruben Tidula and Domingo Gato was not dated properly, while that for Salvacio Gato was issued by the judge without prior personal examination of the witnesses.

- [17] *People vs. Salvatierra*, GR No. 104663, 7, July 24, 1997, per Kapunan, J.
- [18] Appellee's Brief, p. 16; Rollo, p. 64.
- [19] Sworn Statement of Pablo Genosa, p. 1; records, p. 17.
- [20] *People vs. Espanola*, GR No. 119308, 18, April 18, 1997, per Puno, J.
- [21] Assailed Decision, p. 7; Rollo, p. 37; records, p. 340.
- [22] Appellee's Brief, p. 19; Rollo, p. 104.
- [23] *People vs. Patawaran*, GR No. 108616, 6, June 19, 1997.
- [24] *Severino Antonio vs. CA*, citing *People vs. Daen*, GR No. 100513, 10, June 13, 1997.
- [25] TSN, February 23, 1993, p. 12.
- [26] TSN, February 23, 1993, p. 14.
- [27] TSN, February 23, 1993, pp. 23-24.
- [28] TSN, testimony of Pablo Genosa, February 23, 1993, pp. 33-37.
- [29] *People vs. Romeo Nell*, GR No. 109660, 10, July 1, 1997, per Panganiban, J.
- [30] *Severino Antonio vs. CA*, GR No. 100513, 9, June 13, 1997, per Hermosisima, J.
- [31] *Ibid* at p. 12.
- [32] *People vs. Canada*, 253 SCRA 277, 286, February 6, 1996, per Bellosillo, J.
- [33] TSN, September 6, 1993, p. 8.
- [34] *People vs. Salazar*, GR No. 99355, August 11, 1997, per Panganiban, J.
- [35] TSN, testimony of Pablo Genosa, February 23, 1993, p. 14.
- [36] TSN, testimony of Pablo Genosa, February 23, 1993, p. 16.
- [37] 86 SCRA 370, 380-381, November 20, 1978, Per Curiam. See also *People vs. Veras*, 201 SCRA 551, September 13, 1991; *People vs. Ramos*, 122 SCRA 138, May 16, 1983.
- [38] *People vs. Caballes*, G.R. Nos. 102723-24, June 19, 1997.

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