

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTIAGO CARUGAL AND EFREN ESPINOSA, JR., ACCUSED,

G.R. No. 123299. September 29, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision,[1] dated July 21, 1995, of the Regional Trial Court, Branch 72, Malabon, Metro Manila, convicting Santiago Carugal and Efren Espinosa, Jr. of the crime of robbery with homicide under an amended information which reads as follows:

That on or about the 27th day of December 1994, in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a (sic) bladed weapons, conspiring, confederating and mutually helping with (sic) one another, with intent to gain, did then and there willfully, unlawfully and feloniously by means of violence and intimidation of person of one PO1 Fernando Salao y Liwanag, and forcibly take, robe (sic) and carry away from the said victim one (1) Super 38 caliber Pistol marked Llama, loaded with bullets with Serial No. 120928 worth P8,000.00 belonging to said PO1 Fernando Salao, and in the course thereof on the occasion of the said robbery said accused, with intent to kill, did then and there willfully, unlawfully and feloniously stab with the said weapon PO1 Fernando Salao, hitting the victim on his body, thereby inflicting upon the victim stab wounds which caused his immediate death.

CONTRARY TO LAW.[2]

Only appellant Santiago Carugal and his co-accused Efren Espinosa, Jr. were arrested. The two John Does remained unknown and at large up to the present. Accused Carugal and Espinosa, Jr. entered a plea of "not guilty" to the charge against them.[3] Thereupon, trial ensued.

The prosecution relied heavily on the testimony of Leonilo Apostol, driver of the passenger jeepney held up by four of its passengers. Apostol testified that at about 7:30 in the evening of December 27, 1994, he was driving a loaded passenger jeepney along North Bay Boulevard, Navotas. Apostol came from Divisoria and was heading for Malabon.[4]

Upon reaching the North Bay Boulevard Branch of Metrobank, one of its passengers announced a holdup. There were four hold-uppers who were armed with bladed weapons. One was seated behind the driver, the second in the middle part of the jeepney while the other two were on the rear end. Apostol later identified the person seated behind him as appellant Santiago Carugal and the person seated in the middle as Efren Espinosa, Jr. Upon the announcement, Apostol turned his head towards the back portion of the jeepney and saw one of the passengers being stabbed. He overheard one of the hold-uppers say, "pare may pulis dito." Espinosa, Jr. snatched the gun tucked from the victim's waistline, poked it on Apostol's head and said, "pare bilisan mo." Apostol cursed the hold-upper and asked where they were going. The hold-upper seated behind him poked a knife at Apostol and ordered him to speed up.[5]

With the victim slumped on the jeepney's floor, the hold-upper poked the gun at the other passengers who started to jump out of the jeepney. The holduppers finally alighted at Bypel C-3 Road. Apostol subsequently brought the victim to the Tondo General Hospital where he died despite prompt medical attention. An identity check from the victim's wallet at the hospital revealed that the deceased policeman was PO1 Fernando Salao from Camp Crame. Apostol later proceeded to the policeman's address but failed to get in touch with anyone.[6] On December 28, 1994, Apostol executed a sworn statement[7] regarding the incident before the Navotas police.

On February 3, 1995, following a phone call from the police headquarters, Apostol identified Carugal and Espinosa, Jr. from a police line-up at the Navotas Police Station as among the hold-uppers who held them up on the night of December 27, 1994. He executed a second sworn statement[8] regarding his identification of the accused herein from the line-up.

Accused-appellant Santiago Carugal and Efren Espinosa, Jr. banked on the defense of alibi and denial.

Santiago Carugal testified that at about 6:00 in the evening of December 27, 1994, he was with his co-porters Nilo Miscala and Virgilio Villegas at the Navotas Fishport. They were watching the parking space for their employer, Mr. Omar Tobias. When the latter arrived from Santa Cruz, Laguna at about 6:30 that evening, he bought sixty (60) tubs of fish which accused-appellant and his co-porters loaded into their employer's jeep until 2:30 the next morning.[9]

In the early morning of January 30, 1995, Santiago Carugal was in the company of Allan Galang, Bong Esponilla and Efren Espinosa, Jr. Carugal had just met his co-accused Espinosa, Jr. the previous day when the latter was introduced by Esponilla on the occasion of the town fiesta in Sto. Niño, Navotas, Manila.[10] They were walking along Smokey Mountain to fetch Lilia, sister of appellant's wife at the Badges Restaurant in Pritil, Tondo when they were interrupted and arrested for vagrancy by the barangay tanod. From the San Rafael Detachment where the group was brought, they were transferred to Precinct 1, Pritil, Tondo and then finally to the Navotas Police Headquarters where they were allegedly forced to admit the killing of PO1 Fernando Salao.[11]

While in detention, a jeepney driver by the name of Leonilo Apostol, came over the station. A line-up of seven (7) persons was formed. A detainee by the name of Ariel Alinsunurin and appellant's co-accused Efren Espinosa, Jr. were singled out by Apostol.[12]

Nilo Miscala, co-porter of Carugal at the Navotas Fishport, corroborated appellant's alibi. He affirmed that Carugal was in their company at around 6:00 in the evening of December 27, 1994 watching the parking space for Mr. Omar Tobias, their employer of six (6) years. They completed loading the sixty (60) fish tubs bought by their employer at around 2:30 to 3:00 the following morning.[13]

The defense also presented SPO2 Augusto Mateo who testified that Carugal and Espinosa, Jr. were fall guys, innocent in the charge imputed to them. According to Mateo, he was the investigator on duty when a robbery holdup in front of Sulpicio Lines, Navotas transpired on March 27, 1995. He recovered a .9 mm caliber Llama with Serial No. 120928 belonging to PO1 Fernando Salao together with two spent shells from the same firearm. One of the holduppers was identified as Jaime Nablo y Abarquez, also of Sitio Sto. Niño, Navotas, Manila who was killed in a gun battle with the police.[14] The firearm was later referred to the National Bureau of Investigation (NBI) for ballistic examination.[15]

Accused Efren Espinosa, Jr., for his part, testified that he could not have committed the crime alluded to him because he was in Sumaraga, Samar from September 15, 1994 until his return to Manila in the morning of January 29, 1995. That same afternoon, he proceeded to a fiesta celebration at Sitio Sto. Niño, Navotas, Manila, in the house of a certain "Bong." It was there that he was introduced to appellant Santiago Carugal. At around 2:00 in

the morning of January 30, 1995, he was arrested with appellant Carugal while walking along Smokey Mountain. They were initially charged with vagrancy but were later accused of robbery with homicide for the killing of PO1 Fernando Salao.[16]

On July 21, 1995, the trial court rendered judgment against the accused, to wit:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Santiago Carugal and Efren Espinosa, Jr. guilty beyond reasonable doubt of the crime of robbery with homicide and they are each hereby sentenced to the prison term of reclusion perpetua, together with all the accessory penalties thereof.

Accused Carugal and Espinosa are also ordered to indemnify the heirs of their victim the following amounts.

a.)

P50,000.00 for the loss of the victim's life;

b.)

P95,000.00 for the funeral and burial expenses of the victim;

c.)

P50,000.00 by way of moral damages for the pain and anguish they suffered for his untimely death.

Costs against the two (2) accused.

Only accused-appellant Santiago Carugal interposed an appeal to this Court. In his brief, accused-appellant raised the following errors allegedly committed by the trial court:

1. In relying mainly on the testimony of the driver, Leonilo Apostol, which is riddled with inconsistencies, not worthy and credible in itself, nor easy to believe, considered (sic) that he was able to identify herein appellant in that line-up after several attempts, possibly coached by the policemen, as the slain PO1 Fernando Salao is a member of the Navotas Police Force and the said incident happened almost three months ago.

2. In failing to appreciate the fact that a series of reports as published in the newspapers that the killer of the late PO1 Salao was a certain Joey Abarquez, a member of the Estribo Gang, who was shot by the responding Navotas Policemen and recovered from him was the service firearm of the late Salao.

Appellant's contentions have no merit.

The guilt of appellant was proven beyond reasonable doubt. Prosecution witness Leonilo Apostol positively identified Carugal and Espinosa, Jr. as the culprits.

On appellant's contention that Apostol identified him from the line-up only after several attempts or that he was possibly coached by the policemen from the Navotas Police Station, the same is not borne out by the records. The testimony of Apostol on appellant's identification is explicit, thus:

Q.

And what happened after when you called up considering two of the accused were already apprehended?

A.

A line-up was formed and I was asked any of the form each.

Q.

How many composed the line-up?

A.

Seven (7), sir.

Q.

Who prepared the line-up?

A.

Police Navotas, sir.

Q

And where was the line-up conducted, is it in the investigation or inside the cell?

A.

At the office of the desk officer.

Q.

And you were able to identify any of the seven?

A

Yes, sir.

Q

Whom you were able to identify?

A

I was able to identify the two (2), sir.

Q

You are referring to the two (2) accused now arrested, Santiago Carugal and Efren Espinosa?

A.

Yes, sir.

Q.

Why, what made you to identify them, three (3) months had past (sic) already, what made you to recognize their faces?

A.

This kind of extra ordinary one in my life and for this reason, I cannot forget the faces of the holduppers.

FISCAL SISON:

Your Honor, may I move for the translation in Tagalog.

A

At hindi ko makakalimutan ang mga mukha nila sapagkat [di] pangkaraniwan ang nangyari sa akin.[17]

The sworn statement of Apostol, executed the day following the incident, sufficiently bolsters his identification of the accused. Apostol stated that his jeepney was well-lighted when the incident occurred. He gave a detailed description of the suspects' appearances to the police and was quick to add that he would be able to recognize their faces should he be able to see them again since he was able to take a closer look at them from his rear view mirror.

In the light of this positive identification, appellant's defense of alibi and denial must fail. Positive testimony is stronger than negative testimony, and alibi becomes worthless in the face of the positive identification of the accused.[18] For alibi to prosper, it must be shown that it was physically impossible for the accused to be at the scene of the crime at the time of its commission.[19] In the instant case, appellant failed in this respect. On cross-examination, he even admitted that the Navotas Fishport, where he claimed he was working when the incident happened, was barely a five minute pedicab ride from the crime scene. It could even be reached at a much shorter time if a motorized vehicle is used.[20] There is, likewise, no showing that there could have been any motive at all for the prosecution witness to implicate appellant to the crime. In the absence of any ill motive

on the part of the prosecution witness to impute so grave a wrong against the appellant, the defense of denial hardly assumes probative value.[21]

Appellant discredits Apostol's testimony that it was he who stabbed PO1 Fernando Salao. He contends that since he was allegedly seated behind the driver of the jeepney which had a capacity of twenty (20) passengers and the late policeman was seated in the middle, he was too far from the latter to inflict the fatal wound.

Assuming that there were flaws in the testimony of Apostol as to who among the culprits, whether it was appellant or Espinosa, Jr, stabbed the victim, these were not enough to impair Apostol's credibility. Undoubtedly, conspiracy existed in the case at bar as manifested by the following circumstances: The accused masqueraded themselves as mere passengers, seating themselves strategically inside the jeepney. They pulled out their knives simultaneously, threatening bodily harm should there be any resistance. They concertedly inflicted stab wounds on the victim upon learning that he was a policeman. In conspiracy, the act of one is the act of the other co-conspirators, and therefore, it is of no moment that an accused has not taken part in the actual commission of every act constituting the crime.[22] The precise modality or extent of participation of each individual conspirator becomes secondary since the act of one is the act of all.[23]

Anent the second error, appellant argues that the trial court failed to appreciate the series of reports published in the newspapers that it was a certain Joey Abarquez, a member of the Estribo Gang, who shot SPO1 Fernando Salao. Appellant presented as evidence the news articles published in People's Tonight and Balita (March 29, 1995 issue)[24] that Joey Abarquez was a suspected hold- upper who was killed in a gun battle with the Navotas Police after a robbery attempt of a public utility vehicle. Allegedly recovered from him was the missing service firearm of PO1 Fernando Salao who was killed in the December 27, 1994 incident.

This defense is untenable. We agree with the Solicitor General that these newspaper reports were merely hearsay evidence and have no probative value at all. The authors of these newspaper reports had no personal knowledge of the identity of the perpetrators of the crime since such information was only obtained from the police investigators assigned to the case. The fact that the service firearm of the slain PO1 Salao was recovered from Abarquez is not conclusive proof that the latter was responsible for the robbery and the killing of Salao in the December 27, 1994 incident. As the trial court correctly observed:

xxx the fact that Salao's gun was recovered from another person who is not an accused in this case is of no moment. A possession thereof could have reached this person for a number of reasons. He could have purchased the same from the other holduppers who have not yet been arrested, for one. For another, he could have picked it up after the gun, which would be incriminating evidence of great value if found in the possession of the identified holduppers, had been thrown away. xxx

WHEREFORE, the appeal is DISMISSD and the decision of the trial court finding accused-appellant Santiago Carugal guilty beyond reasonable doubt of the crime of robbery with homicide is hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Penned by Judge Benjamin M. Aquino, Jr.

[2] Record, p. 16.

[3] Id., at 23.

- [4] TSN, May 15, 1995.
- [5] Ibid., pp. 5-8.
- [6] Id., at 8-14.
- [7] Record, pp. 52-53.
- [8] Id., at 54.
- [9] TSN, June 21, 1995, pp. 5-8.9
- [10] Id., at 4-5.10
- [11] Id., at 8-10.11
- [12] Id., at 10-11.12
- [13] TSN, June 7, 1995, pp. 3-8.
- [14] Record, pp. 106-108.
- [15] TSN, June 19, 1995, pp. 2-7.
- [16] TSN, June 14, 1995, pp. 6-10.
- [17] TSN, May 15, 1995, pp. 17-18.
- [18] *People v. Abangin*, 297 SCRA 655, 666 (1998).
- [19] *People v. Saberola*, 297 SCRA 733 (1998).
- [20] TSN, June 26, 1995, p .6.
- [21] *People v. Ramos*, 297 SCRA 618, 640 (1998).
- [22] *People v. Gungon*, 287 SCRA 618 (1998).
- [23] *People v. Lising*, 285 SCRA 595 (1998).
- [24] Rollo, pp. 82-83.

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