PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY A. CAPCO, ERWIN T. PANES, CHARLIE M. PANES AND RENATO D. AGPOON, ACCUSED,

G.R. No. 124640. November 29, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

JERRY ABAHO CAPCO, ERWIN TUAZON PANES, CHARLIE MANILA PANES and RENATO DE GUIA AGPOON were charged in Crim. Case No. 94062 of the Regional Trial Court of Pasig City with the special complex crime of robbery with homicide and physical injuries for robbing one Alberto S. Flores of P30,000.00 in cash and, on the occasion thereof, shot him to death as well as inflicted physical injuries on his son Bolivar J. Flores.[1]

On 12 October 1992 counsel for accused Erwin T. Panes filed a motion to quash the Information on the ground that it charged two (2) distinct offenses.[2] On 19 January 1993, after considering the motion to quash, the opposition thereto, the reply to the opposition and opposition/comment on the motion, the trial court ordered the amendment of the Information. Accordingly, on 20 January 1993 the Information was amended charging all four (4) accused with robbery with homicide but dropping physical injuries.[3]

On 8 August 1992 at around 11 o'clock in the evening, four (4) armed men barged into a grocery store located in Kalawaan, Pasig City, owned by Alberto S. Flores, and announced, "dapa dapa, hold-up ito." Bolivar Flores was then leisurely watching television while his father Alberto Flores had already retired for the night. Bolivar identified in court the intruders as Jerry Capco, Erwin Panes, Charlie Panes and Renato Agpoon. He, however, clarified later that only Jerry Capco, Erwin Panes and one Eduardo Padawan came in their store while Charlie Panes and Renato Agpoon stood outside. Bolivar easily recognized Jerry Capco despite his partially covered face because he used to work for them as a houseboy. He was also able to identify the companions of Jerry Capco as they were not wearing any mask. He claimed that the accused were armed with .38 caliber revolvers and kitchen knives. According to him, Erwin struck him on the head with a gun; he fell and hit the folding bed where his father was sleeping thus waking him up; without saying a word, Erwin aimed his gun at his father Alberto S. Flores and mercilessly shot him twice hitting him on the lower left portion of his chest while one of the accused took the clutch bag containing the day's sales of the store amounting to P30,000.00, more or less. Fearing that he would also be shot, Bolivar immediately stood up, ran behind stocks of merchandise, turned off the lights, and screamed for help. Alarmed by the confusion that ensued the robbers scampered away. Some fifteen (15) minutes later, Bolivar went out the store and sought the help of a barangay tanod. It was then, according to Bolivar, that he saw from a distance of one (1) meter Charlie Panes and Renato Agpoon standing outside the store.[4]

Bolivar went to Antonio T. Flores, his grandfather, to inform him of the incident and went back with him to the store. They noticed a lot of people outside. When they got inside they saw Antonio sprawled on the floor soaked in his own blood. Bolivar rushed his father to the Rizal Medical Center where he was later pronounced dead.[5]

The autopsy conducted by Medico Legal Officer and Chief of the NCR-PNP-PCCL Dr. Dario L. Gajardo revealed that Alberto Flores succumbed to cardio-respiratory arrest due to shock and hemorrhage secondary to gunshot wounds in the trunk.[6]

Victoriano G. Evangelista, barangay executive officer of Bambang, Pasig, testified that shortly after 11 o'clock in the evening of 8 August 1992, while he was at his post, a tricycle driver named Bernie informed him about the robbery in the store of Alberto Flores. He summoned two (2) of his barangay tanods to accompany him to the place. There they heard someone shouting that he was hit. Immediately upon entering they saw Alberto lying on the ground bathed in his own blood. Victoriano instructed Bernie to call the police as no one yet had arrived at the crime scene. Alberto was already being carried out of the store to be brought to the hospital when the police and the relatives of the victim arrived.[7]

The following day, 9 August 1992, at around 8 o'clock in the morning, accused Jerry Capco was arrested by SPO1 Leneal T. Matias and SPO1 Ernesto Mones on the strength of the testimony of Bolivar identifying him as one of those who barged into their store. Charlie Panes, Erwin Panes and Renato Agpoon were also arrested and subsequently charged with Jerry Capco for the crime of robbery with homicide. Eduardo Padawan was not apprehended and to this day has remained at large.

Accused-appellant Renato Agpoon vehemently denied the charges against him and interposed alibi as his defense. He testified that at around 7 o'clock in the evening of 8 August 1992 he was with Erwin Panes at the Megamall when the latter invited him to visit Charlie Panes whose wife had just given birth. When they arrived in Kalawaan, Charlie was drinking with Jerry Capco and Eduardo Padawan in front of the store across Charlie's house. After introductions were made, Renato and Erwin joined Charlie and his companions who were drinking beer. They drank for about three (3) hours. While drinking Renato came to know that Eduardo Padawan needed money as he was trying to borrow some money from Jerry Capco. Jerry could not lend him any but assured him that he could borrow from his former employer by the name of Flores. At around 10 o'clock in the evening he (Renato) begged leave and proceeded to his girlfriend's house in Novaliches where he was joined by Erwin later that night.[8]

Accused Erwin Panes corroborated the testimony of Renato Agpoon that he left them at 10 o'clock in the evening. According to Erwin he accompanied Jerry Capco and Eduardo Padawan to the store of Alberto Flores. When they arrived there he was left behind in front of the store while Jerry and Eduardo entered the grocery store. After a few moments he heard some cursing, followed by two (2) shots which prompted him to run away. He accidentally shoved Bolivar Flores in the process, causing the latter to fall down. He proceeded to the house of Renato in Novaliches and told him what happened. The next morning the Pasig Police accompanied by Charlie Panes and Jerry Capco apprehended him and Renato. They were taken to the police station where he was allegedly mauled and forced to admit the crime. The police then brought him to Camp Crame were he was tested for gunpowder traces.[9]

Jerry Capco, for his part, testified that at around 11 o'clock in the evening of 8 August 1992 he went with Eduardo Padawan and Erwin Panes to the place of Alberto Flores to borrow money. According to him instead of lending him money Alberto got mad and cursed him so he replied, "Mang Boy, do not curse me because I am no longer your employee." Alberto answered, "P - t - ng ina mo, umalis ka na," and he suddenly took a gun under his pillow. Jerry claimed that when Eduardo Padawan saw this, he grappled for the possession of the gun. Then he heard a shot and saw Alberto fall on the floor. Then he (Jerry) went home.[10]

The next morning some barangay officials together with the Pasig Police went to Jerry's house and invited him to go with them. Thereafter, they went to Charlie Panes' house and also invited him to go with them to the Kalawaan

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Barangay Headquarters. Jerry claimed that they were asked about their companions at the drinking binge the night before; they named Eduardo Padawan, Renato Agpoon and Erwin Panes.[11]

Accused Charlie Panes denied any participation in the crime and maintained that although Eduardo Padawan and Jerry Capco tried to convince him to accompany them to the house of Alberto Flores, he declined because he had to take care of his newborn child. He also claimed that Eduardo awakened him in the early morning of the following day. Eduardo was in a hurry. He requested that his gun be pawned so he could have money to take his sick mother to the hospital. Charlie accompanied Eduardo to Jose Bacedonia and pawned the gun for P500.00. Later that morning the Pasig Police together with Jerry Capco arrived and arrested him.[12]

On 14 December 1995 the court a quo rendered its decision holding all four (4) accused guilty as charged and sentenced them to reclusion perpetua with all the accessories provided by law, and ordered them to indemnify the heirs of Alberto Flores jointly and severally in the amount of P50,000.00 and to pay them P30,000.00 representing the amount taken in the robbery without subsidiary imprisonment in case of insolvency.[13]

All four (4) accused elevated their case to this Court through a notice of appeal. However, on 18 August 1998 accused Jerry Capco, Erwin Panes and Charlie Panes wrote this Court requesting for assistance in the withdrawal of their appeal.[14] On 12 October 1998 the Court directed counsel for accused-appellants, Atty. Alfredo U. Malabaguio, to confer with his clients to determine the voluntariness of the withdrawal of their appeal and to submit a report thereon.[15] On 23 November 1998 Atty. Malabaguio submitted a letter of compliance and motion stating that after conferring with his clients as directed by the Court he was able to determine that the withdrawal of their appeal was voluntary. Atty. Malabaguio even attached a handwritten note from Jerry Capco, Erwin Panes and Charlie Panes confirming the voluntary withdrawal of their appeal.[16] On 3 February 1999 the Court granted the Motion to Withdraw Appeal of Jerry Capco, Erwin Panes and Charlie Panes and declared the case closed and terminated as to them.[17] Consequently, this case is now limited to the appeal of accused Renato Agpoon.

After a scrutiny of the records this Court cannot avoid entertaining serious doubts on accused-appellant's supposed participation in the crime. Apparently, he was implicated as one of the culprits by the lone testimony of Bolivar Flores, which could fairly be expected considering the circumstance which made possible accused-appellant's arrest, i.e., when Jerry Capco was asked who his companions were when they drank at the store across Charlie Panes' house Jerry mentioned accused-appellant's name. This, we could fairly surmise, was what prompted Bolivar to point a finger at accused-appellant as one of the malefactors. In fact, in Bolivar's Sinumpaang Salaysay he stated that he only saw accused-appellant for the first time at the police headquarters. Of course he repudiated this in his testimony in court. But, while it is settled that affidavits are generally subordinate in importance to open court declarations because the former are executed when an affiant's mental faculties are not in such a state to afford him a fair opportunity of narrating in full the incident which has transpired,[18] we cannot help questioning Bolivar's reason for changing his version. In other words, that accused-appellant was posted as "lookout" while the other accused entered the store of Alberto Flores and then robbed and killed him was a mere presumption or conjecture of Bolivar without any basis in fact.

Also worthy of note were Bolivar's declarations in court: first, he claimed that Renato Agpoon was one of the four (4) persons who barged into their store that evening of 8 August 1992. Thus -

> Q:
>
> And what happened?
>
> A:

At 11:00 p.m., they entered our grocery.

Q:

When you stated they, to whom are you referring (to)?

INTERPRETER: Witness pointing to the 4 accused who gave their names as Charlie Panes, Jerry Capco, Renato Agpoon and Erwin Panes.[19]

Then, in another breath, Bolivar contradicted himself by saying that only three (3) entered the store not one of whom was Renato Agpoon.

Q:

Who among the four accused entered your grocery?

A:

Jerry Capco, Erwin Panes and one who is still at large.

Q:

How did you come to know that they were the ones who entered your grocery?

A:

Because the two did not cover their faces and Jerry Capco, even though his face was partially covered, I can (sic) recognize him because he worked for us for three months.[20]

Bolivar further testified that he saw Renato Agpoon with Charlie Panes outside the store some fifteen (15) minutes after Jerry Capco, Erwin Panes and the one who was still at large had already ran away.[21] The one who was at large (and who still is) was Eduardo Padawan.

From the foregoing, the uncertainty with which Bolivar identified accused-appellant can easily be gleaned even with the clarification made by Bolivar in the course of his testimony as to who among the accused actually went inside their store and announced the robbery, and who stayed outside as lookouts, if any. We however consider incredible Bolivar's testimony that he saw accused-appellant outside their store fifteen (15) minutes after three (3) of the accused were already gone. Well-settled is the rule that for evidence to be believed it must not only proceed from the mouth of a credible witness but it must be credible itself.[22] Accused Erwin, Jerry and Eduardo exited from the store through the same entry point they took in getting in - where they supposedly posted accused-appellant as "lookout" before entering the store. Indeed, it is contrary to human experience that someone, who is allegedly part of a group that conspired to rob a store and kill its owner, would choose to remain at the crime scene within a considerable period of time when from his vantage point he could naturally see his companions escape. One logical explanation is that he was not there at all when the other accused committed the crime and that Bolivar, obviously, was telling a lie. Our doubt heightens when we carefully consider the testimonies of the three (3) repentant accused who have voluntarily withdrawn their appeal that Renato Agpoon was no longer with them when they entered the store of Alberto Flores as the former left them earlier at 10 o'clock that evening.

Accused Charlie Panes testified that accused-appellant was the first to leave their drinking session at 10 o'clock in the evening.[23] He was corroborated by his co-accused Erwin Panes and Jerry Capco. Erwin testified -

Q:

x x x x what time did you leave the place where you and Charlie Panes together with his companions were

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drinking?

A:

We left there at 11:00 o'clock in the evening, sir.

Q:

What about this Renato Agpoon, your companion?

A:

Renato Agpoon left earlier around 10:00 in the evening, sir.[24]

Jerry also testified -

Q:

You stated that after you decided to go to the store of Alberto Flores, all of those companions of yours in the drinking spree accompanied you to the store of Alberto Flores?

A:

No, sir.

Q:

It was only you, Eddie Padawan, and Erwin Panes who went to the store of Alberto Flores?

A:

Yes, sir.[25]

Charlie, Erwin and Jerry have no reason not to implicate accused-appellant Renato Agpoon if indeed he was part of their group that went to the victim's store to stage the robbery. Neither do they have any reason to protect him as only Erwin was established to be his friend while Jerry and Charlie were new acquaintances whom accused-appellant only met for the first time that night.

As reasonable doubt is cast on the guilt of accused-appellant Renato Agpoon, he must be set free as conviction in criminal cases must rest on nothing less than a moral certainty of guilt, nay, proof beyond reasonable doubt.

WHEREFORE, the Decision of the Regional Trial Court, Branch 151, of Pasig City in Crim. Case No. 94062 is MODIFIED. The conviction of Jerry Abaho Capco, Erwin Tuazon Panes and Charlie Manila Panes for robbery with homicide stands by reason of the withdrawal of their appeal; hence, it has become final. However, accused-appellant Renato De Guia Agpoon is ACQUITTED of robbery with homicide on reasonable doubt. His immediate release from confinement is ORDERED unless he is detained for some other lawful cause.

The Director of Prisons is DIRECTED to implement this Decision and to report to this Court immediately the action taken hereon within three (3) days from receipt hereof.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Information, 11 August 1992, pp. 1-2; Records, pp. 1-2.

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[2] Records, pp. 34-35.

[3] Records, p. 46.

[4] TSN, 23 June 1993, pp. 1-27.

[5] Ibid.

[6] TSN, 9 March 1994, p. 3; Records, p. 168.

[7] TSN, 12 April 1994, pp. 1-12.

[8] TSN, 15 March 1995, pp. 2-18.

[9] TSN, 31 August 1995, pp. 2-11.

[10] TSN, 3 May 1995, pp. 1-15.

[11] Ibid.

[12] TSN, 22 June 1994, pp. 2-18.

[13] Decision penned by Judge Deogracias O. Felizardo, RTC-Br. 151, Pasig City.

[14] Rollo, pp. 126-127.

[15] Id., p. 129.

[16] Id., p. 132.

[17] Id., p. 135.

[18] People v. Empleo, G.R. No. 96009, 15 September 1993, 226 SCRA 454.

[19] See Note 4, p. 3.

[20] Id., p. 22.

[21] Id., pp. 6 and 10.

[22] People v. Sinatao, G.R. Nos. 110815-16, 25 October 1995, 249 SCRA 554, citing Moore on Facts, Vol. I, 134, p. 181; Tuason v. Court of Appeals, et al., G.R. Nos. 116779-80, 23 February 1995, 241 SCRA 695; People vs. Escalante, G.R. No. 106633, 1 December 1994, 238 SCRA 554; People v. Lim, G.R. No. 86454, 18 October 1990, 190 SCRA 706; People v. Maspil, Jr., G.R. No. 85177, 20 August 1990, 188 SCRA 751; People v. Maribung, No. L-47500, 29 April 1987, 149 SCRA 292.

[23] See Note 10, p. 6.

[24] See Note 8, pp. 4-5.

[25] See Note 9, p. 11.

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