

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIVENCIO LABUGUEN @ DENCIO, ACCUSED-APPELLANT.

G.R. No. 127849. August 09, 2000

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PER CURIAM:

For automatic review is the Decision[1] dated October 7, 1996, of the Regional Trial Court of Cauayan, Isabela, Branch 20, finding appellant Vivencio Labuguen @ Dencio guilty of the crime of Robbery With Homicide in Criminal Case No. 20-738, and sentencing him thus:

"WHEREFORE, finding the accused VIVENCIO LABUGUEN @ DENCIO GUILTY beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE as alleged in the information and considering the presence of the aggravating circumstances of fraud and craft without any mitigating circumstance, the Court, considering the provision of Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act 7659, hereby sentences said accused VIVENCIO LABUGUEN the penalty of DEATH. The accused Vivencio Labuguen is hereby ordered to pay the heirs of Bonifacio Angeles P40, 000.00 for the money taken, P55,100.00 for the expenses incurred during the wake and burial of the deceased Bonifacio Angeles and P50,000.00 indemnification. Cost against the accused.

SO ORDERED."[2]

Filed on February 3, 1995, the information indicting appellant alleges:

"That on or about the 27th day of October, 1994, in the municipality of Angadanan, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force violence and intimidation against person and with intent to gain, did then and there, willfully, unlawfully and feloniously, take, steal and carry away cash money in the amount of P40,000.00 and belonging to Bonifacio Angeles @ Asiong, against his will and consent, to the damage and prejudice of the said Bonifacio Angeles @ Asiong, in the aforesaid amount of P40,000.00; that on the occasion and by reason of said robbery, and for the purpose of enabling him to take, steal and bring away the said money, the accused, did then and there, willfully, unlawfully and feloniously, with intent to kill and without any just motive, assault, attack and shoot for several times with a firearm and stab for several times with a pointed/bladed instrument the said Bonifacio Angeles @ Asiong, inflicting upon him multiple gunshot wounds and multiple stab wounds on the different parts of his body, which directly caused his death.

CONTRARY TO LAW."[3]

With the appellant, assisted by Atty. Dionisio E. Bala, Jr., pleading not guilty upon arraignment[4] on April 5, 1995, trial ensued with the prosecution presenting Marilou Dabo, Tomas Pabigayan, Romeo (Romy) Bariza, Pantaleon Tagora, Elpidio Rivera, SPO2 Joselito Apalisoc, SPO1 Elmo Bungag, Edgar Valle, Geronimo Rivera, Dr. Inocencio R. Agpaoa and Federico Angeles, as its witnesses.

The defense called on Victoriano Dy, Romeo Estacio, Precila Labuguen, Lt. David Palaganas, Tranquilino Cagurangan, Jessie Cabbab and Orlando Ramos and the appellant himself to testify.

The facts that matter are synthesized in the decision of the trial court as follows:

"xxx Bonifacio Angeles, 56, (Bonifacio) was engaged in the business of buying cows which he sold at the public market. Although he was married to Damasa Gante with whom he had nine (9) children, he lived with another woman, Marilou Dabo, 28, at Coloma Village, San Fermin, Cauayan, Isabela. They begot two (2) children during their ten (10) years of coverture.

Early in the morning of October 27, 1994, Tomas Pagbigayan (sic) (Tomas) went to the house of Bonifacio at San Fermin. Tomas offered two cows to sell to Bonifacio. Bonifacio said that when he has time, he will go and see the cows. After their talk Bonifacio gave Tomas a lift on his Honda Sports XL100 motorcycle and accompanied him to the crossing where he could take a ride home. Tomas sat on the backseat of the motorcycle.

Marilou Dabo declared that when Bonifacio returned home, the accused Vivencio (Dencio) Labuguen was with him. The accused sat behind Bonifacio who drove the motorcycle.

The accused stayed on the porch of the house. Marilou Dabo served him coffee. The accused told Bonifacio that he knows of three big cows for sale and that the place where they are is near. Bonifacio said that he will go and see the cows, after breakfast.

Marilou Dabo declared in her testimony that the accused had a handkerchief tied around his forehead as a headband. He was wearing dark sunglasses, dark jacket and a faded maong pants. He wore rubber slippers. Marilou Dabo recognized him as the accused Vivencio Labuguen because before October 27, 1994, the accused had already come to their house and offered to sell a lot to Bonifacio. After Bonifacio finished his breakfast, he went to the porch and talked to the accused for about fifteen (15) minutes. Marilou Dabo was in the kitchen three meters away from them.

Bonifacio entered their room and took P40,000.00 from the cabinet. Bonifacio got P40,000.00 because the accused told him the cows are big. He counted the money and placed it inside his pocket. Marilou Dabo was beside him. She saw Bonifacio count the P40,000.00 in P1,000.00, P500.00 and P100.00 bills.

Then Bonifacio and the accused rode on the motorcycle. Bonifacio drove the motorcycle. The accused was seated behind Bonifacio. This was past 8:00 o'clock in the morning of October 27, 1994.

Bonifacio and accused Vivencio Labuguen passed by the house of Romeo Bariza, 47, farmer, who resided in San Fermin, Cauayan. His house was 120 meters away from the house of Bonifacio. Bariza was the planting 'kahoy' when he saw at a distance of 20 meters Bonifacio and the accused pass by riding on a motorcycle color (sic) red and black, running slowly because the road was full of potholes. Bariza declared that Bonifacio and the accused glanced at him. He recognized Bonifacio because he is his compadre and the accused because he had known him months before that date. Accused was wearing sunglasses and a cloth on his forehead. In Court, Bariza identified the accused Vivencio Labuguen as the same person he saw riding with Bonifacio that morning of October 27, 1994, while he was planting 'kahoy.'

Tomas declared that he was not able to get immediately a ride going home. While at the crossing waiting for a ride, he saw Bonifacio and the accused Vivencio Labuguen. They rode on a motorcycle driven by Bonifacio. The accused sat on the backseat of the motorcycle. They glanced at Tomas. Tomas saw the face of the accused who was wearing sunglasses with a handkerchief tied around his forehead. Tomas recognized the accused Vivencio Labuguen because on October 22, 1994, he saw him talking to Romy Bariza on the road in front of the latter's house in San Fermin. When the accused left, he (Tomas) asked Romy Bariza who was the person he talked with and he answered, 'Dencio.' Dencio is the nickname of the accused Vivencio Labuguen. Accused then left driving a tricycle.

At about 10:00 o'clock that morning of October 27, 1994, Pantaleon Tagora, 55, farmer and a resident of Ramona, Angadanan, was on his way home. He had just come from his cornfield. He was walking on top of

the irrigation canal near the service drop when he met two (2) male persons. One was younger than the other. The young one wore a jacket which was quite yellow. His face was quite round. He was not wearing sunglasses or headband. In Court, Tagora identified the younger person as Vivencio Labuguen. (TSN p. 10, Tagora, July 5, 1995). The older one wore a faded maong pants. His face was quite elongated. They were seated four (4) meters apart. Tagora first met the older male person. This place where Tagora met them was one and a half kilometers from his house.

Tagora passed by the two persons without talking to them. After walking 200 meters away from them, he saw a motorcycle parked on the way.

The top of the irrigation canal was used as an exit road to the National Highway between Alicia on the South and Cauayan on the North. (TSN - Dr Agpaoa, p. 13, October 31, 1995)

Elpidio Rivera, 31, farmer and a resident of Barangay Viga, Angadanan, one (1) kilometer West of Ramona, was sundrying (sic) his corn on the concrete edge of the road near his house at about 10:30 o'clock that morning of October 27, 1994. This road goes to Angadanan and then to Cauayan (TSN p. 7, Elpidio Rivera, August 16, 1995). His attention was attracted by a loud roar of a motorcycle coming towards his place. Elpidio stopped working. At a distance he saw a person riding on a red motorcycle (sports type). He came from the West from Ramona and going towards the East. When it was near the place where Elpidio was drying corn, the motorcycle slowed down because it was a curve. Elpidio declared in court that he saw the face of the motorcycle rider: quite round, wearing a light yellow jacket with a handkerchief around his forehead. The handkerchief was black with red dots. He was 6 to 7 meters from Elpidio when he passed by. In Court, Elpidio readily identified the accused Vivencio Labuguen as the person he saw riding on the motorcycle. (TSN - Rivera, p. 8, August 16, 1995)

Between 11:00 to 12:00 o'clock noon on October 27, 1994, Geronimo Rivera, 45, was driving a Challenger, a passenger mini-bus (sic), at Barangay Nappaccu Grande (Nappaccu), Reina Mercedes, Isabela. His conductor was Eduardo Valle, 20. They came from Santiago, Isabela, bound for Tuguegarao, Cagayan. There were passengers in the bus.

At Nappaccu, Geromino Rivera (Rivera) saw at a distance of 200 meters, a person behind some talahibs near the National Highway. When the mini-bus (sic) came near to a distance of 50 meters from the person, Rivera noticed that he was wiping something on his right hand and right face. When the mini-bus (sic) was near, the person flagged it down. The bus stopped. Rivera saw a Honda XL100 motorcycle three (3) meters from the person near the edge of the highway.

Conductor Eduardo Valle, went down the minibus (sic) to allow the person to get inside the bus. He observed that his clothes, particularly the right side of his jacket and the right side of his pants, was soaked with blood. He was wearing a cream jacket, maong pants, sunglasses and a handkerchief tied around his forehead. Eduardo Valle thought he met an accident but when he looked at the Honda XL100 motorcycle parked behind the person, it was not damaged and that he had no injuries.

The person sat on the 5th row seat, a 3-seater, on the left. He was alone there. The 4th, 3rd, 2nd and 1st row of seats were vacant. He placed the palm of his hands behind his head. He acted as if he was looking for something which he could not find. Rivera could see him clearly on the big rear view mirror (1 foot by 1/2) above him.

Conductor Eduardo Valle went to him and asked him where he was going but the person did not answer, instead, without saying anything, he gave a P10.00 bill to Eduardo Valle. He asked the person where he was going to alight so he could give him his change, but the person did not answer. Eduardo Valle declared in Court that he saw the breast pocket of the jacket of the person full of money, two inches thick P100.00 bills. One bill was falling, so Eduardo Valle told the person, 'Brod, your money is falling.'

In Court, Geronimo Rivera and Eduardo Valle positively identified the person who rode on the mini-bus (sic) with blood-soaked clothes and plenty of money on the breast pocket of his jacket as the accused Vivencio Labuguen. They also positively identified the Honda XL100 (Exhibit 'G') as the same motorcycle behind the accused which was left when he boarded the mini-bus (sic) at Nappaccu.

When some passengers alighted at the junction of the road in Naguillan going to San Mariano, Isabela, the accused suddenly stoop up and alighted from the mini-bus (sic). He did not even get his change.

Going back to Pantaleon Tagora at Ramona, Angadanan. Between 1:00 to 2:00 o'clock in the afternoon of October 27, 1994 while he was in his house at Ramona, he heard that a dead person was found near the irrigation canal. He and his neighbors went to see the dead person. He was surprised to see that the dead person was the same older person who was the companion of the younger one he met that morning. He identified the younger person as the accused. The body of the deceased was on the middle of a ricefield (sic), 50 meters from the service drop of the irrigation canal.

At about 5:00 o'clock that afternoon of October 27, 1994, Dr. Agpaoa in the presence of Mayor Ong and Chief of Police Redentor Garcia of Angadanan, Isabela, conducted an examination of the body of the deceased person at the middle of a ricefield (sic) in Barangay Ramona, Angadanan. The dead person was identified as Bonifacio Angeles by his brother Federico Angeles. Dr. Agpaoa wrote his findings while on the ricefield (sic). Later, after examining again the body at the Funeraria, he put his findings into final form in his Autopsy Report marked Exhibit 'K'. In his Autopsy Report, Dr. Agpaoa found the following wounds on the body of the deceased Bonifacio Angeles, thus:

'Postmortem Findings

1. Gunshot wound, entrance left, inferior margin of left clavicle, slightly outside the left midclavicular line, directed slightly downward, backward and medially.
2. Gunshot wound, entrance, right side of the thoracic cage, along slight anterior axillary line, between 6th & 5th costal interspace, directed medially.
3. Stab wound, left temporal area, above the left ear.
4. Stab wound, supra sternal notch (deep) penetrating chest cavity.
5. Stab wound, supra clavicular area, downwards, penetrating chest cavity.
6. Multiple superficial stab wound over anterior chest wall and abdominal wall.
7. Stab wound on both thighs, anterior surface. Cause of death - Internal Hemorrhage.'

xxx xxx xxx

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The heirs of Bonifacio Angeles spent P55,000.00 for his burial (Exhibit 'L')."[5]

Appellant placed reliance on his defense of denial and alibi. Vehemently denying the charge against him, he asseverated that he could not have committed the crime on October 27, 1994 because he left for Maconacon, Isabela on October 17, 1994, to manage the logging operation of a certain Orlando Ramos and stayed there until December 20, 1994.[6]

On October 7, 1996, the trial court handed down its decision under review. The defense theorized that:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF SURMISES,

SPECULATIONS, INSUFFICIENT AND INCREDIBLE CIRCUMSTANTIAL EVIDENCE;

II

THE TRIAL COURT ERRED IN TOTALLY DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE; and

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.[7]

Circumstantial evidence is that which indirectly proves a fact in issue. The fact-finder must draw an inference from such evidence. It is at times essential to resort to circumstantial evidence since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to society. An accused can be convicted on the basis of circumstantial evidence where the circumstances constitute an unbroken chain leading to one fair reasonable conclusion and pointing to the accused, to the exclusion of all others, as the guilty person.[8] Under Section 4, Rule 134 of the Rules on Evidence, circumstantial evidence is sufficient for conviction if:

- a) There is more than one circumstance;
- b) The facts from which the inferences are derived are proven; and
- c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In the case under consideration, the testimonies of the prosecution witnesses spawn and generate the following facts which constitute an unbroken chain of events leading to the inevitable conclusion of guilt on the part of the appellant, to wit:

1. In the early morning of October 27, 1994, appellant went to the house of the victim to convince him to purchase the cows offered for sale.
2. The victim agreed to see the cows, bringing along with him - P40,000.00. Thus, at around 8:00 in the morning of the same day, the victim and the appellant rode on the motorcycle of the victim with the latter as the driver.
3. At past 8:00 in the morning of October 27, 1994, prosecution witness Romeo Bariza saw the victim and appellant riding on a motorcycle.
4. At about 10:00 of the same day, the victim and the appellant were seen sitting on top of an irrigation canal at Barangay Ramona, Angadanan, Isabela.
5. Around 10:30 in the morning of October 27, 1994, appellant was seen alone on the motorcycle of the victim, speeding away from Barangay Ramona.
6. Between 11:00 to 12:00 noon of October 27, 1994, appellant rode a minibus leaving the motorcycle of the victim on the shoulder of the road.
7. The bus conductor noticed that the right side of appellant's jacket and pants were soaked with blood, and there were two inches-thick of one hundred peso bills tucked in the breast pocket of appellant's jacket.
8. Between 1:00 to 2:00 in the afternoon of the same day, the dead body of the victim with gunshot and stab wounds was found by the residents of Barangay Ramona, 150 meters from the irrigation canal.
9. Around 5:00 o'clock in the afternoon also of the same day, the municipal health officer, the chief of police, the mayor, and some peace officers of Angadanan, Isabela, proceeded to the place where the body of the

unidentified victim was found (Exhibit "J", O.R., p. 156; and TSN, p. 4, October 31, 1995, direct exam. of Dr. Agpaoa).

10. Federico Angeles identified the deceased as his brother Bonifacio Angeles (Exhibit "K", O.R., p. 157.).

After a careful study, the Court is of the ineluctable finding and conclusion that the aforementioned circumstantial evidence has established the guilt of appellant beyond reasonable doubt. The time element of the circumstances thus proven link each chain of circumstances to another pointing to a reasonable conclusion and no other but the guilt of appellant. From the early morning of October 27, 1994 to 10:00 o'clock in the morning of the same day, the prosecution has sufficiently shown that the appellant was the last person seen with the victim before the latter was killed. About thirty minutes later, appellant was seen speeding away from Barangay Ramona where he and the victim were previously spotted by one of the prosecution witnesses. And, escaping from the consequences of his felonious act, appellant, boarded a minibus, leaving the motorcycle of the victim on the side of the road. All the foregoing circumstances, coupled with the fact that appellant had two inches thick of one hundred peso bills in his possession when he rode on the minibus with his jacket and pants splattered with blood, suffice to prove beyond reasonable doubt the guilt of appellant of the crime of robo con homicidio perpetrated in the morning of October 27, 1994.

In *People vs. Asis*,^[9] the Court affirmed the conviction of the accused of the crime of homicide on the basis of circumstantial evidence, holding thus:

"xxx We find that all these requisites have been successfully met by the prosecution. The evidence showed that appellant was one of two persons last seen in the company of the victim before he was killed. On the morning that the victim's body was found, the appellant was observed with his clothes smeared with blood. Witness dela Cruz saw his left shoulder with bite marks and his right hand swollen. When asked about the injuries, he admitted engaging in a fight in Bgy. Pinakpinakan. On the same morning, some CAGU soldiers spotted the appellant with co-accused Mendoza while walking by the road in Bgy. Caingin. They had blood-stained clothes. The two ran away, when pursued. Their flight evinces guilt. These circumstances taken together lead to no other conclusion but that the appellant is guilty as charged."^[10]

Appellant's intention to rob the victim can be gleaned unerringly from the attendant circumstances. Obviously, robbery was the motive that impelled appellant to convince the victim to go with him. Under the pretext of selling cows to him, appellant cajoled the victim to bring a large sum of money and thereafter, lured him to a route where appellant could divest him of his money with the least danger of being caught. As aptly surmised by the trial court, the two inches thick of one hundred peso bills in appellant's pocket and the blood smeared on his clothes are two vital chains of circumstances that undoubtedly bespeak of the robbery with homicide appellant committed.

The lower court erred not in giving full weight and credence to the testimonies of the prosecution witnesses particularly identifying appellant as the person last seen in the company of the victim before the latter was found dead. The testimonies on record are clear and straightforward. And, finding the witnesses for the People not ill-motivated to testify against the appellant, the Court discerns no basis for doubting their credibility.^[11] Moreover, it is a jurisprudentially-embedded rule that on the issue of credibility of witnesses, appellate courts generally do not disturb the findings of the trial court, considering its singular opportunity to observe the deportment and manner of testifying of the witnesses.^[12]

Disowning liability for the commission of the crime complained of, appellant theorized that he was in Maconacon, Isabela, from October 17, 1994 up to December 20, 1994. The Court, however, finds no credibility in the alibi theorized upon by appellant. It bears stressing that for alibi to prosper, appellant must prove that he was somewhere else when the crime was committed and it was physically impossible for him to have been at the scene

of the crime.[13] In the present case of appellant, he failed to establish the requisite physical impossibility of his presence at the locus criminis at the approximate time of its commission. Granting *arguendo* that the appellant really went to Maconacon, Isabela on October 17, 1994, it was easy for him to go back by plane or by boat to Cauayan, Isabela, on or before October 27, 1994.

Furthermore, and more importantly, the defense of alibi of appellant cannot prevail over his positive identification by the prosecution witnesses.[14]

Though not alleged in the Information, the generic aggravating circumstances of fraud and craft were properly appreciated by the trial court.[15] Craft involves intellectual trickery and cunning on the part of the offender. When there is a direct inducement by insidious words or machinations, fraud is present.[16] By saying that he would accompany the victim to see the cows which the latter intended to buy, appellant was able to lure the victim to go with him.

Under Article 294 of the Revised Penal Code, the penalty for Robbery with Homicide is reclusion perpetua to death. Applying Article 63 of the same Code, the impossible penalty under the premises is death in view of the presence of the aggravating circumstances of craft and fraud and the absence of any mitigating circumstance.

Four members of the Court are steadfast in their adherence to the separate opinion expressed in *People vs. Echegaray* that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty. However, they bow to the majority opinion that the aforesaid law is constitutional and therefore, the penalty prescribed thereunder has to be imposed.

WHEREFORE, the Decision dated October 7, 1996 of the Regional Trial Court, Branch 20, Cauayan, Isabela, in Criminal Case No. 20-738, finding appellant VIVENCIO LABUGUEN @ DENCIO guilty beyond reasonable doubt of the crime of robbery with homicide, and imposing upon him the penalty of DEATH, is AFFIRMED.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of the case be forwarded to the Office of the President for the possible exercise of the pardoning power. Costs against the appellant.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Bellosillo, J., abroad on official business.

[1] Penned by Judge Henedino P. Eduarte.

[2] Rollo, p. 246.

[3] Original Records (O.R.) p. 50.

[4] O.R. pp. 69 and 73.

[5] Decision, Rollo, pp. 235-239.

[6] *Id.*, p. 239.

[7] Rollo, pp. 74-75.

[8] *People vs. Andal*, 279 SCRA 475, 486 citing: *People vs. Ramos*, 240 SCRA 191 and *People vs. Lorenzo*, 240

SCRA 624.

[9] 286 SCRA 64, 71.

[10] Ibid.

[11] People vs. Pija, 245 SCRA 80, 84-85 citing: People vs. Rostata, Jr. 218 SCRA 657.

[12] People vs. Laurente, 255 SCRA 543, 563 citing People vs. Enciso, 223 SCRA 675; and People vs. Lagrosa, Jr., 230 SCRA 298.

[13] People vs. Taneo, 284 SCRA 251, 271 citing: People vs. Barte, 230 SCRA 401; and People vs. Aninon, 158 SCRA 701.

[14] People vs. Taneo, supra, citing: People vs. Fernandez, 239 SCRA 174; People vs. Abapo, 239 SCRA 469; People vs. Repollo, 237 SCRA 476; People vs. Saballe, 236 SCRA 365; People vs. Jimenez, 235 SCRA 322; and People vs. Apa-ap, Jr., 235 SCRA 468.

[15] People vs. Ang 139 SCRA 115, 121 citing: People vs. Martinez y Godinez, 106 Phil. 597; People vs. Butler, 120 SCRA 281; and People vs. Roquinio, 17 SCRA 914.

[16] People vs. Manuzon, 277 SCRA 550, 562.

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