

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROBERTO MILLIAM ALIAS "DIOTAY"; AND RICKY MILLIAM ALIAS "BUROT"; ACCUSED-APPELLANTS.

G.R. No. 129071. January 31, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

His fatigue uniform, M-16 assault rifle and military insignia were not enough to deter his tragic fate. Felix Demarayo, a member of the 15th Infantry Battalion, Philippine Army, was leisurely pacing along Quezon Street, Iloilo City, on the night of 18 November 1994 when two (2) men blocked his path and gunned him down in cold blood. The fallen soldier succumbed from three (3) bullet wounds as two (2) of the three (3) slugs pierced his chest. After the brutal slaying, the assailants nonchalantly walked away with Demarayo's M-16 like a "trophy" collected by hunters after a successful kill.

On 23 November 1994 Roberto Milliam alias "Diotay" and Ricky Milliam alias "Burot" were charged with the crime of Robbery with Homicide before the Regional Trial Court of Iloilo.[1] The Information alleged that the two (2) accused conspiring with one another shot Felix Demarayo after which they carried away with intent to gain his M-16 rifle valued at P10,000.00 belonging to the Government and entrusted to him as member of its armed forces. He died on the spot from the three (3) gunshot wounds sustained from his assailants.[2]

Rolando Santos, testifying for the prosecution, narrated that on the night of 18 November 1994, at around 7:30 o'clock, he was driving his tricycle along Quezon Street when he saw a soldier, Felix Demarayo, walking.[3] Then two (2) men obstructed his path, one was tall with fair complexion, later identified as Ricky Milliam, while the other was short, stocky and a bit bald, later identified as Roberto Milliam.[4] Without any provocation coming from the soldier, Ricky drew his firearm and fired at him, hitting his left hand. A brief struggle among the three (3) men ensued which caused the victim to fall down. As Roberto pulled away he ward off Demarayo by kicking him on the waist. While the victim was sprawled on the ground Roberto aimed his rifle at Demarayo's chest and pulled the trigger. Roberto fired another shot hitting Demarayo on the same spot.[5] According to witness Santos, despite being startled by the appalling occurrence, he clearly saw the faces of the assailants as they were only five (5) or six (6) meters away from him and the street was amply lighted by a PLDT lamp-post.[6] He continued driving his tricycle and as he passed by, he heard the victim beg for assistance. But overcome by extreme fright he ignored his plea and drove on.[7]

Around twenty-five (25) meters away from the victim, the two (2) malefactors flagged him down. Fearing for his own safety he allowed them to board his tricycle.[8] They directed him to drive towards the University of Iloilo where they picked up two (2) companions of theirs along the way. Upon reaching Soccoro Drug Store at JM Basa St. the two (2) men they picked up alighted. Then he was told to proceed to the Iglesia ni Kristo Church where they paid him P20.00 and left.[9]

On his way home Santos chanced upon his friend Oscar Hiñola, a policeman, and immediately narrated to him

what he had just seen. Aware of the potential dangers, Hiñola advised him to stay home and thereafter the former reported the incident at the Iloilo police station. A few hours later, Hiñola fetched Santos and brought the latter to the police station where he was investigated by Lt. Wilfredo Brillantes.[10] After answering the questions propounded to him and giving a description of the assailants, Santos assured Lt. Brillantes he would cooperate in the prosecution of the case.

Early the next day Santos was again invited to the police station to identify a suspect. At the detention center Lt. Brillantes asked Santos to peek through a small window where he saw several men inside.[11] After taking a good look, he singled out one of them and positively identified him as the short, stocky man with the semi-bald head who shot Demarayo.

At around 10:00 o'clock that same morning, several policemen went to his house again and requested him to return to the station to identify another suspect who was just arrested. As the police car they were riding passed the entrance of the police station, one of the policemen asked him if the other culprit was present among a group of several men standing a few meters away. Immediately he pointed out to one of them as the other malefactor, the one who was tall with fair complexion. Santos even noticed that the offender wore the same clothes he was wearing the previous night.[12] Only after pointing them out to the police was he able to know their names, the first suspect he identified as short and stocky with a semi-bald head was Roberto Milliam and the second, tall and fair complexioned, being Ricky Milliam.[13]

Another witness for the prosecution, Napoleon Torres, a trisikad driver, testified that he also passed through Quezon Street on that fateful night. He said that while he was driving his trisikad he saw someone grab an armalite rifle from a person who was lying down on the ground some thirty-five (35) meters away.[14] Then he heard a gunshot. It reverberated through the surrounding area causing him to slow down. He saw the short stocky man, Roberto Milliam, shoot the hapless victim who was lying on the road thus forcing him to stop abruptly.[15] After they accomplished their objective, the assailants casually walked away from their victim and the crime scene. He continued driving through Quezon Street and as he was about to pass by the two (2) perpetrators one of them looked back at him with a cold stare. As he nervously passed the culprits, he saw their faces as they continued gazing at him in a threatening manner.[16]

As there was a police station nearby Torres immediately reported the incident to the police. He led the officers to the crime scene where people were already milling around the lifeless body of Demarayo. The policemen then brought him to the station where he was questioned by Lt. Brillantes.[17] Before heading for home he promised to cooperate with the police in apprehending the killers.

At around 2:00 o'clock the following morning, some policemen fetched him at home and informed him that they needed his help in identifying a suspect.[18] At the station Lt. Brillantes asked Torres if he recognized any of the perpetrators from among the ten (10) persons inside the investigation room. Peeking through an open window, he readily identified Roberto Milliam as the gunman he saw shoot Demarayo.[19] Lt. Brillantes then instructed him to return later to execute his affidavit.

At 10:00 o'clock that same morning, while Torres was at the police station to execute his affidavit, Lt. Brillantes approached him and informed him that another suspect had just been apprehended. He was directed to look through the window of the investigation room and asked if he had seen anyone of them before. He easily identified Ricky Milliam as the other malefactor since he vividly recalled his features. Ricky was even wearing the same clothes he wore the night before. After identifying this particular assailant, Torres executed his affidavit. Only then did he find out that the person he just identified was Ricky Milliam.[20]

Police Officer Brillantes testified that on the night of 18 November 1994 he was at Precinct I at General Luna St.,

Iloilo City, when he received the report of a shooting at Quezon Street. After questioning witnesses Napoleon Torres and Rolando Santos, a search for the suspects was conducted at Brgy. Roxas resulting in the apprehension of Roberto Milliam.[21] At the station, Torres identified Roberto Milliam as one of the gunmen. The next morning, the suspect's nephew, Ricky, visited him at the detention cell. Santos, the other witness, who was present at that time, then pointed to Ricky Milliam as the other perpetrator.[22] After both suspects were taken into custody Lt. Brillantes ordered them to undergo a paraffin test.[23]

According to Dr. Zenaida Santiago, Regional Chief of the Forensic Section of the PNP Crime laboratory, the separate paraffin tests performed on both suspects yielded traces of gunpowder nitrates on their hands.[24]

In his defense, Roberto Milliam denied complicity in the killing and asserted that although he was near the crime scene when the incident transpired, he was merely an innocent bystander and not the culprit. He claimed that when the shooting occurred he was at the store of Josefa San Juan taking some snacks with his nephew, Ricky Milliam.[25] Suddenly, Imelda Alar, the niece of the storeowner, rushed to the store and informed them that there were some men fighting outside.[26] Upon hearing Imelda, Roberto stepped out of the store to take a look. Outside, he saw two (2) individuals take an armalite from a man lying on the road. He recognized one of them as Excel Maravilla, his long-time neighbor.[27] After witnessing everything, he and his companions transferred to another store to continue drinking. At 2:00 o'clock a.m., while attending a vigil in Barangay Roxas, some policemen arrived and invited him to the police station for questioning. According to him, to his surprise he was accused of killing a soldier at Quezon Street. However, upon hearing the charges, he did not mention Excel Maravilla as the culprit since the policemen never asked about him. It was only four (4) hours later when he revealed that Maravilla was the real killer.[28]

The testimony of Roberto Milliam was corroborated by his nephew, Ricky Milliam, who confirmed that he was at Josefa's store with Roberto when the shooting occurred. He came to know of the incident only when Imelda Alar announced that there was an altercation going on outside the store,[29] and when he looked outside, he saw a man lying on the street. Thereafter, he went with Roberto to another store where they resumed their drinking.

The next day, upon hearing that Roberto was detained at the police station, Ricky decided to visit him.[30] Lt. Brillantes saw him there and immediately ordered him to undergo a paraffin test. After he was found to be positive of nitrates, he was then detained and prevented from going home.

Another defense witness, 13-year old Hylene Hurtada, testified that at 6:30 o'clock in the evening of 18 November 1994 she went to Josefa's store to buy bread. There she saw her neighbors, Roberto and Ricky Milliam, having some snacks.[31] Thirty (30) minutes later, she proceeded to Quezon Street to wait for her brother who earlier instructed her to meet him there after coming from school at 8:00 o'clock in the evening. As she was waiting, she saw Demarayo brutally gunned down barely ten (10) meters away.[32] She was able to describe the two (2) men but she had no idea who they were.[33]

Josefa San Juan corroborated the versions of the Milliams. She said that at the time of the shooting Roberto and Ricky Milliam were at her store taking some snacks.[34] Suddenly Imelda Alar, her niece, rushed in and informed her that there was a fight outside.[35] As she (Josefa) was about to go out to see for herself, she heard a burst of gunfire. Outside she saw a wounded man lying on the street. She then went back inside and noticed that the accused were still standing, curiously observing the shooting incident from her store.[36]

The defense was also affirmed by Imelda Alar who testified that when she heard the first gunshot she went out of her house and saw three (3) persons grappling for possession of a gun. She then rushed to her aunt's store to look for her children.[37] There she saw Roberto and Ricky Milliam eating.[38] Hence they could not have been the killers of Felix Demarayo.

The court a quo was unpersuaded. On 10 September 1996 the court convicted both accused Roberto and Ricky Milliam of Robbery with Homicide and sentenced each to reclusion perpetua with the accessories provided by law, and ordered to pay the family of the victim P50,000.00 as death indemnity, P20,920.75 for the wake and burial expenses and to pay the government P10,000.00 representing the value of the service firearm they took from Demarayo.[39]

Accused-appellants now allege that the trial court erred in holding them guilty of Robbery with Homicide describing as inconsistent and highly improbable the testimonies of the prosecution witnesses.[40] They point out that the affidavits executed by Rolando Santos and Lt. Wilfredo Brillantes directly clashed with their testimonies in open court.

According to accused-appellants, Rolando Santos stated in his affidavit that accused-appellants hailed his tricycle at Quezon Street, and after bringing them to their destination he passed through the same street where he saw a crowd gathered around the victim's body. Upon seeing this, he concluded that his passengers must have been the killers as they were carrying firearms.[41] However, in his testimony in court, he clearly stated that he saw the actual shooting and that thereafter the killers boarded his tricycle thus enabling him to identify them. As regards Lt. Brillantes, he stated in his affidavit that he arrested Ricky Milliam at around 1:00 o'clock in the afternoon, but when he testified in court he said that Ricky was arrested earlier at around 9:00 o'clock in the morning when the latter visited his uncle Roberto at the police precinct.

Accused-appellants therefore argue that these inconsistencies between the affidavits of the prosecution witnesses and their testimonies in court are enough to discredit them and to cast a reasonable doubt on their guilt.

We do not agree. We have repeatedly held that when there is an inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight.[42] For, oftentimes, affidavits taken ex parte are considered inaccurate as they are prepared by other persons who use their own language in writing the affiant's statements. Omissions and misunderstandings by the writer are not infrequent, particularly under circumstances of haste or impatience.[43] Thus, more often than not, affidavits do not reflect precisely what the declarant wants to impart. Worse, after the affidavit is mechanically read to the affiant, such document is merely signed even though the affiant does not fully agree with what has been written. Rolando Santos testified -

Q:

Do you know who prepared this affidavit of yours?

A:

A policeman, Sir.

Q:

Do you know his name?

A:

A certain Nathaniel, Sir.

COURT:

Were there matters you know in the incident that were not included in the affidavit?

A:

Yes, your Honor x x x x

ATTY. SALMON:

And what were those things that you considered not in your affidavit already marked as Exhibit "1"?

A:

Matters like my personally having witnessed what had taken place including the shooting and my driving, Sir.

Q:

Before this affidavit was taken from you by a certain Nathaniel did he ask you to narrate all matters regarding the incident?

A:

I was narrating the incident when he was typing, Sir.

Court:

You mean he asks (sic) you questions (and) you answered and he will (sic) type?

A:

Yes, Your Honor x x x x

ATTY. SALMON:

In the course of the investigation did he also ask you whether you saw these (2) persons who shot the victim?

A:

No, Sir.[44]

Apparently, the affidavit failed to state what witness Santos wanted to convey. The policeman who drafted the affidavit merely typed Santos' answers to his questions. Such a mechanical manner of making an affidavit could have caused the inaccuracies and omissions, if any.

Still, the fact remains that Santos testified that he saw the actual shooting. Such positive declaration outweighs the affidavit which, as previously mentioned, could have been tainted with inaccuracies and ambiguities. Besides, assuming that Santos could be discredited, it is undisputed that Torres, the other witness, also positively identified accused-appellants as the assailants.

The credibility of Santos and Torres is strengthened by the fact that no reason was given why they would falsely implicate accused-appellants. As a matter of fact, only after Santos and Torres identified the Milliams at the police station were they able to know their names. It is well settled that where there is no evidence that the principal witnesses of the prosecution were actuated by ill motive their testimony is entitled to full faith and credit.[45]

To overcome this positive identification by the two (2) witnesses, the defense offered the alibi that they were drinking at Josefa San Juan's store when the incident happened. Alibi as a defense is inherently weak, more so when the defense fails to satisfy its requirements, namely: (a) that the accused were not at the scene of the crime; and, (b) that it was physically impossible for them to have been there when the crime was committed.[46] Accused-appellants themselves admitted that they were only around forty (40) meters away when the crime occurred thus failing to satisfy the requisites of a solid alibi.

Although their alibi was supported by three (3) defense witnesses who all testified that accused-appellants were at

Josefa's store when the shooting took place, the trial court found their testimonies unreliable and biased.[47] Unlike prosecution witnesses Santos and Torres who had no reason to testify against accused-appellants, all the defense witnesses were long-time neighbors who most likely wanted to help them.[48] Furthermore, Hylene Hurtada's testimony was contrary to human experience. The lower court was extremely baffled as to why she was at the corner of Quezon Street before 7:00 o'clock in the evening of the incident purportedly to meet her brother when she very well knew that he would not come out of school until 8:00 o'clock that evening. Even if indeed Hylene wanted to meet her older brother so that they could have supper together, it was extremely unnatural for this young girl of thirteen (13) to wait for her eighteen (18) year old brother at the street corner when their house was just thirty (30) meters away from the designated meeting place. The natural thing for her to do was to wait for him in the confines and safety of their own home.[49]

Time and again this Court has ruled that the credibility of witnesses is a matter best left to the determination of the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude.[50] Thus, unless there is a strong and valid reason for overturning the factual assessment by the trial court, this Court will not disturb its findings.[51]

Aside from the testimony of the two (2) principal witnesses, there are other factors which clearly indicate the guilt of accused-appellants. The paraffin test conducted on them soon after they were arrested yielded positive results thus showing that each one fired a gun.[52].] This fact alone, together with the positive identification by the prosecution witnesses, strongly indicates that they were Demarayo's assailants.[53].] Roberto Milliam's claim that the real killer was Excel Maravilla[54] appears to be only an afterthought since Roberto never imputed the killing to Maravilla when the policemen first informed him that he was being tagged as the assassin of a certain military man. If indeed it was true that this Excel Maravilla was the killer, Roberto would have, at the first opportunity, referred to Maravilla as the culprit. But he chose to keep quiet about it and only disclosed the name of Maravilla several hours after his arrest. The only reason he gave - although obviously flimsy - for not immediately revealing the name of Excel Maravilla as the killer of Demarayo was that the investigators never asked him.[55] Such excuse is lame and was apparently fabricated to save himself from prosecution. His reaction after hearing that he was named as the gunman was highly unnatural and unbelievable, for surely, no innocent man would remain silent if he was wrongfully accused of a crime; more so, if he knew the identity of the real killer.

But while we agree with the factual findings of the lower court, we do not agree with the conclusion that the crime committed was Robbery with Homicide. Four (4) elements are necessary to constitute this complex crime: (a) the taking of personal property with the use of violence or intimidation against the person; (b) the property taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and, (d) on the occasion of the robbery or by reason thereof the crime of homicide was committed.[56] It should therefore be concretely established that robbery was the principal purpose of the accused and that homicide was committed either by reason of or on the occasion of such robbery.[57]

In *People v. Salazar*[58] accused-appellants stabbed a security guard and thereafter took away his gun. We ruled that since the prosecution failed to establish that the homicide was committed by reason or on the occasion of stealing the security guard's firearm, both of them could only be convicted of the separate crimes of Homicide and Theft.

The records are bereft of any evidence to prove that the asportation of Demarayo's service firearm was the prime motive of accused-appellants. Although it may be true that they were seen grabbing the gun from the victim as the latter was lying prone on the ground, it could be possible that it was done to prevent him from retaliating as he was still conscious after sustaining the first gunshot wound.[59] The taking of the gun might have been an

afterthought and not the real purpose of the crime. It can therefore be seen that the prosecution failed to establish convincingly that the homicide was committed for the purpose or on the occasion of robbing the victim. As such, accused-appellants should properly be convicted of the separate offenses of Homicide and Theft, which were both duly proved.

It is true that the Information specifically charged accused-appellants with the crime of Robbery with Homicide. But we have oft repeated that the nature and character of the crime charged are determined not by the designation of the specific crime but by the facts alleged in the information.^[60] Thus, accused-appellants should be held guilty of Homicide under Art. 249 and Theft under Art. 309 of the Revised Penal Code.

The penalty for Homicide is reclusion temporal while the penalty for Theft where the value of the stolen article is P10,000.00 is prision correccional medium to prision correccional maximum. Applying the Indeterminate Sentence Law in the case of Homicide, and in the absence of any modifying circumstances, the maximum penalty to be imposed shall be taken from the medium period of the imposable penalty which is reclusion temporal medium the range of which is fourteen (14) years eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is prision mayor in any of its periods, the range of which is six (6) years and one (1) day to twelve (12) years. As regards the crime of Theft, considering that the value of the M-16 rifle was P10,000.00, the maximum penalty shall be taken from the medium period of the imposable penalty, i.e., prision correccional in its medium and maximum periods or three (3) years six (6) months and twenty-one (21) days to four (4) years nine (9) months and ten (10) days, while the minimum shall be taken from the penalty next lower in degree, which is arresto mayor in its maximum to prision correccional in its minimum or four (4) months and one (1) day to two (2) years and four (4) months.

WHEREFORE, the Decision appealed from is MODIFIED. Accused-appellants Roberto Milliam alias "Diotay" and Ricky Milliam alias "Burot" are each found GUILTY of the separate crimes of HOMICIDE and THEFT. Consequently, for their conviction for Homicide, each of them is sentenced to suffer an indeterminate prison term of six (6) years four (4) months and twenty (20) days of prision mayor as minimum to sixteen (16) years two (2) months and ten (10) days of reclusion temporal medium as maximum, and to pay the heirs of Felix Demarayo P50,000.00 as indemnity for his death and P20,920.00 for burial and wake expenses. For Theft, an indeterminate prison term of one (1) year four (4) months and twenty (20) days of the medium period of arresto mayor maximum to prision correccional minimum as minimum, to four (4) years two (2) months and ten (10) days of the medium period of prision correccional medium and maximum as maximum, and to pay P10,000.00 to the Government representing the value of the M-16 rifle that was assigned to Felix Demarayo by the Armed Forces of the Philippines and taken from him by accused-appellants. Costs against accused-appellants.

SO ORDERED.

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

[1] Presided by Judge Bartolome M. Fanuñal, RTC-Br. 25, Iloilo City, Records, p. 82.

[2] Rollo, p. 7.

[3] TSN, 27 March 1995, p. 3.

[4] Id., p. 4

[5] Id., p. 26.

[6] Id., pp. 3-4.

- [7] Id., p. 8.
- [8] Id., p. 9.
- [9] Id., p. 10.
- [10] Id., p. 11.
- [11] Id., p. 13.
- [12] Ibid.
- [13] Id., p. 38.
- [14] TSN, 10 April 1995, p. 5.
- [15] Id., p. 10.
- [16] Id., p. 12.
- [17] Id., p. 20.
- [18] Id., p. 25.
- [19] Id., p. 26.
- [20] Id., p. 33.
- [21] TSN, 3 July 1995, p. 4.
- [22] Ibid.
- [23] Id., p. 5.
- [24] TSN, 26 July 1995, p. 6.
- [25] TSN, 14 February 1996, p. 3.
- [26] Ibid.
- [27] Id., p. 6.
- [28] Id., p. 9.
- [29] Id., p. 15.
- [30] Id., p. 17.
- [31] TSN, 3 January 1995, p. 8.
- [32] TSN, 3 January 1996, p. 3.
- [33] Id., p. 10.
- [34] TSN, 18 October 1995, p. 20.
- [35] Id., p. 22.
- [36] Id., p. 29.
- [37] Id., p. 5.

[38] Id., pp. 8-9.

[39] Decision penned by Judge Bartolome M. Fanuñal; Rollo, p. 35.

[40] Id., p. 98.

[41] Records, p. 121.

[42] People v. Castro, G.R. No. 119068, 12 July 1997, 276 SCRA 1997, citing People v. Ponayo, G.R. No. 111523, 10 August 1994, 235 SCRA 226 and People v. Loveria, G.R. No. 9138, 2 July 1990, 187 SCRA 47.

[43] People v. Andaya, G.R. No. 63862, 31 July 1987, 152 SCRA 570.

[44] TSN, 27 March 1995, pp. 27-29.

[45] People v. Leoterion, G.R. Nos. 111940-06, 21 November 1996, 264 SCRA 608 .

[46] People v. Bibay, G.R. No. 118331, 3 May 1999, citing People v. Nialda, G.R. No. 115946, 24 April 1998, 289 SCRA 521.

[47] Rollo, p. 143.

[48] Ibid.

[49] Id., p. 34.

[50] People v. Teloy, G.R. No. 128147, 12 May 1999, citing People v. Oliano, G.R. No. 119013, 6 March 1998, 287 SCRA, 367.

[51] People v. Bermudez, G.R. No. 122903, 25 June 1999, citing People v. Bantasil, G.R. No. 116062, 249 SCRA 367 and People v. Abellanosa, G.R. No. 121195, 27 November 1996, 264 SCRA 722.

[52] People v. Gamboa, G.R. No. 91374, 25 February 1991, 194 SCRA 37

[53] People v. Ballabare, G.R. No. 108871, 19 November 1996, 264 SCRA 35

[54] TSN, 14 February 1996, p. 6.

[55] Ibid.

[56] People v. Nang, G.R. No. 107799, 15 April 1998, 289 SCRA 16; People v. Baccay, G.R. No. 120366, 16 January 1998, 284 SCRA 296.

[57] People v. Mendoza, G.R. No. 115809, 23 January 1998, 284 SCRA 705.

[58] G.R. No. 99355, 11 August 1997, 277 SCRA 67, People v. Ponciano; G.R. No. 86453, 5 December 1991, 204 SCRA 627.

[59] TSN, 27 March 1995, p. 8.

[60] See Note 58.

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