PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.JOSE CASTILLON III AND JOHN DOE, ACCUSED, JOSE CASTILLON III, ACCUSED-APPELLANT.

G.R. No. 132718. October 05, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Iloilo City, Branch 23, in Criminal Case No. 46966, finding accused-appellant Jose Castillon III guilty beyond reasonable doubt of the crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua.

The information against accused-appellant alleges:

> That on or about the 5[th] day of September, 1996, in the City of Iloilo, Philippines and within the jurisdiction of this Court the above-named accused armed with unlicensed firearm, conspiring and confederating with his companion whose identity is not yet known, working together and helping one another, did, then and there, wilfully, unlawfully and criminally with violence against or intimidation of person, with intent to gain, take and carry away one (1) knapsack containing cash amounting to P105,000.00 belonging to Felipe Caro, and by reason or on occasion thereof, the said accused, with the unlicensed firearm with which he was provided at the time, with deliberate intent to kill, shot to death the said Felipe Caro.
>
> CONTRARY TO LAW.[2]

Upon arraignment on November 4, 1996, accused-appellant pleaded not guilty.[3] Thereafter, trial ensued.

The facts are as follows:

In the morning of September 5, 1996, the victim, Felipe Caro, a deliveryman of L. Santos General Services, a forwarding agency engaged in door to door delivery, with office at 76 Commission Civil Street, Jaro, Iloilo City, prepared to deliver money of various amounts, totaling to P119,466.57, separately contained in envelopes addressed to different consignees and securely packed inside a knapsack. A minute after the victim left, his sister, Sally Caro who happened to be his officemate, heard a gunshot followed by the screams of a certain Jerry Badana.[4] Alarmed, Sally immediately went outside and saw her brother lying on the ground.[5] The knapsack containing the money was no longer with the victim. Sally rushed him to the West Visayas State University Hospital, where he died due to gunshot wound on his left arm, exiting on the inner portion thereof and penetrating the thoracic cavity below the left armpit.[6]

At around 8:00 o'clock that morning, Melchor Latuna, a tricycle driver, was transporting a passenger from Dungon A. to Mara Travels, located along the intersection of Commission Civil and M. Jayme Streets. While he was plying the stretch of Commission Civil, and travelling at 20 to 30 kilometers per hour, he saw accused-appellant and the victim grappling at the other lane of the road. He came closest to them at a distance of five arms length enabling him to see their faces. Shortly after he passed by them and before reaching Mara

Travels, he heard a gunshot. Looking back, he saw the victim fall to the ground; while accused-appellant, who was wearing a long sleeved-shirt, was tucking a gun at his waist.[7]

The gunshot likewise caught the attention of Francisco Martinez, a trisikad driver who was then along the corner of Commission Civil and M. Jayme Streets. When he turned left to Commission Civil Street, he saw accused-appellant wearing a blue long-sleeved shirt with a small black bag slung on his shoulder, and standing very near the body of the victim lying on the ground. Martinez observed that the accused-appellant tucked a gun at his waist and attempted to board a passenger jeepney but failed. Accused-appellant ran toward the intersection where Martinez was, and came closest to him at a distance of 4 to 5 meters before turning to M. Jayme Street. Martinez lost sight of the accused-appellant as the latter further turned to E. Lopez Street.[8]

Meanwhile, another trisikad, driver, Renato Deraco testified that while he was waiting for passengers near the corner of E. Lopez and Jalandoni Streets, accused-appellant boarded his pedicab and asked to be brought to the Sports Complex. While cruising along Jalandoni Street, Decaro noticed that accused-appellant transferred a thick bundle of money from a black bag to a belt bag, and thereafter threw away the said black bag somewhere along Jalandoni Street. Accused-appellant wanted him to drive faster but the chain of his bicycle disengaged several times. In his ire, accused-appellant slapped Decaro before getting off the pedicab. He further threatened Decaro not to tell anyone about him otherwise he would kill him.[9]

That same morning, SPO4 Danilo de los Santos received information that accused-appellant was in Calumpang, Iloilo City. After a survey of the exact location of the latter's house, they effected a warrantless arrest of accused-appellant who was subsequently identified by Melchor Latuna in a police line up.[10]

The defense interposed denial and alibi. Defense witnesses Cornelia Maprangala, Prayles Bergantino and Oferio Villamis, barangay mates of accused-appellant, all testified to the effect that accused-appellant was in their barangay the whole day of September 5, 1996. According to them, they saw him on several occasions in his house, and at the barangay plaza, from 7:00 o'clock a.m. to 6:30-7:00 o'clock p.m. The defense also presented Police Inspector Angela Baldevieso, a forensic Chemist who declared that the paraffin examination conducted on accused-appellant yielded negative results for the presence of gun powder nitrates.

On October 23, 1997, the trial court rendered the assailed decision. The dispositive portion thereof reads:

> WHEREFORE, premises considered, JUDGMENT is hereby rendered finding the accused Jose Castillon III GUILTY BEYOND REASONABLE DOUBT for the crime of Robbery with Homicide and there being no mitigating nor aggravating circumstances attendant thereof (sic), hereby sentences the said accused to the penalty of Reclusion Perpetua pursuant to Article 294 of the Revised Penal Code as amended by Republic Act 7659, further condemning the said accused to indemnify the surviving heirs of Felipe Caro actual damages in the amount of P142,787.14, moral damages in the amount of P30,000.00 and P50,000.00 by way of death compensation.
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> SO ORDERED.[11]

Hence, accused-appellant appealed to this Court, contending that:

> I
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> THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE COCK-AND-BULL STORY OF TRICYCLE DRIVER MELCHOR LATUNA AND TRISIKAD DRIVER FRANCISCO MARTINEZ THAT THEY SAW ACCUSED RUNNING AWAY FROM THE FALLEN VICTIM FELIPE CARO AFTER THEY HEARD A SHOT;
>
> II

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THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE LOOSE, UNCORROBORATED, AND CIRCUMSTANTIAL EVIDENCE BY WAY OF THE TESTIMONIES OF THREE WITNESSES BECAUSE DEFENSE OF ACCUSED IS ONLY ALIBI WHICH IS INHERENTLY A WEAK DEFENSE;

III

THE TRIAL COURT ERRED IN NOT CONSIDERING THE NEGATIVE RESULT OF THE PARAFFIN TEST ON BOTH HANDS OF ACCUSED-APPELLANT AS TO ESTABLISH DOUBT TO (sic) HIS CULPABILITY;

IV

THE TRIAL COURT ERRED IN RULING THAT THE WARRANTLESS ARREST OF ACCUSED-APPELLANT WHICH HE QUESTIONED BEFORE THE COURT IS VALID UNDER THE RULES; and

V

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT WITHOUT EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[12]

The appeal lacks merit. We affirm accused-appellant's conviction.

In People v. Casingal,[13] we held that in instances where the witness did not actually see the very act of committing the offense, the accused can still be identified as the perpetrator, as when the latter is the person or one of the persons last seen with the victim immediately before and right after the perpetration of the crime. In this case, the positive identification forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to a fair and reasonable conclusion that the accused is the author of the crime to the exclusion of all others. Otherwise, if circumstantial evidence could not be resorted to in proving the identity of the accused when direct evidence is not available, then felons would go scot-free and the community would be denied proper protection.

Under Section 4, Rule 133, of the Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur:

(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 present case, though the prosecution witnesses did not actually see the very act of shooting the victim and divesting him of his personal property, the following circumstantial evidences established by the prosecution are sufficient to prove the guilt of accused-appellant beyond moral certainty, to wit:

1) The victim was standing in front of their office holding a knapsack containing money totaling to P119,466.57;

2) Accused-appellant was seen grappling with the deceased immediately before the latter was shot;

3) The testimony of prosecution witnesses Melchor Latuna and Francisco Martinez that right after they heard a gunshot they saw the victim fall to the ground in front of accused-appellant who was tucking a gun on his waist;

4) Accused-appellant ran toward Jalandoni Street with a black bag slung on his shoulder;

5) Accused-appellant boarded a trisikad at the corner of Jalandoni and E. Lopez Streets;

6) While inside the trisikad, accused-appellant was seen transferring a thick bundle of money from a black bag to a belt bag;

7) Accused-appellant threatened to kill the trisikad driver if he would tell anybody about him;

8) Right after hearing the gunfire, Sally Caro rushed to the victim's succor and found out that the knapsack containing the money was gone.

Clearly, the foregoing circumstances form an unbroken chain of events sufficient to establish beyond reasonable doubt the elements of the crime of robbery with homicide, viz: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus 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, which is therein used in a generic sense, was committed.[14]

The victim who was then carrying a large sum of money was last seen alive grappling with accused-appellant immediately before the shooting incident. Right after the victim's sister heard the gunshot, the bag containing the money of the deceased was gone and so was accused-appellant. These circumstances, added with the circumstance that accused-appellant was seen escaping from the scene of the crime carrying a bag containing bundles of money, all boil down to the inevitable conclusion that accused-appellant robbed the victim and shot him by reason or on occasion thereof.

Similarly, in People v. Labuguen,[15] the appellant therein was the last person seen in the company of the victim before his lifeless body was found. Minutes later, said appellant was seen escaping from the scene of the crime with bloodstains on his jacket and bundles of money in his pocket. Noting that the P40,000.00 of the victim was no longer recovered from his cadaver, the Court held that appellant should be held liable for the crime of robbery with homicide.

The trial court correctly rejected the denial and alibi raised by accused-appellant. Not only are these defenses inherently weak, accused-appellant likewise failed to prove the physical impossibility of his presence at the locus criminis at the time of the perpetration of the felonious acts. As found by the trial court, Commission Civil Street, Iloilo City, where the shooting incident happened, was only about "eight but less than ten (10) kilometers"[16] away from Barangay Calumpang, Iloilo City, where accused-appellant claimed to be at the time of the commission of the crime. Furthermore, the circumstantial evidence at bar evidently negate the defense of alibi interposed by accused-appellant and overcome his constitutional presumption of innocence.

Neither could the negative result of the paraffin test on accused-appellant exculpate him from liability. Time and again we ruled that a finding that the paraffin test yielded negative results is not conclusive evidence that an accused had not fired a gun. It is possible for a person to fire a gun and yet be negative for the presence of nitrates, as when he wore gloves or washed his hands afterwards.[17]

Capitalizing on the statement of prosecution witness Melchor Latuna that "[t]he person was facing his back to me and the person who was shot was facing me,"[18] accused-appellant contends that said witness did not in fact see the face of the person who shot the victim.

The contention is without merit. The aforecited statement of Latuna was actually descriptive of the relative positions of the victim and accused-appellant during the incident, and was not the only instance that could have given the witness a chance to recognize them. As categorically stated by Latuna, he was able to see the face of accused-appellant and the victim.

Even granting that Melchor Latuna did not see the face of accused-appellant, the latter's identity can still be

established by the testimony of prosecution witness Francisco Martinez, who likewise saw accused-appellant fleeing from the crime scene immediately after tucking a gun at his waist. Hence, accused-appellant cannot successfully claim that the prosecution witnesses failed to recognize him.

So also, the defense highlighted the failure of prosecution witness Melchor Latuna to state the color of accused-appellant's shirt. He likewise made an issue as to the color of the bag he was carrying. Moreover, the defense branded as incredible the testimony of Melchor Latuna that it was 2 minutes after he passed by the victim and accused-appellant that he heard the gunshot. If this is true, accused-appellant contends, the witness would already be 1 kilometer away from the locus criminis, precluding him from witnessing the alleged crime.

Accused-appellant's arguments are not tenable. Suffice it to say that the witness' failure to state the color of accused-appellant's shirt and bag and his error in the approximation of time, are matters too trivial to affect the veracity of his whole testimony. On the contrary, instead of weakening, these minor lapses and inconsistencies strengthen the theory of the prosecution. As consistently held by this Court, even the most honest witness may sometimes commit mistakes but such honest lapses do not necessarily impair his credibility especially when only minor details are involved.[19]

The other inconsistencies pointed out by accused-appellant are too inconsequential to merit consideration. The court treats them as badges of truth rather than indicia of falsehood. These minor inconsistencies erase suspicion of a rehearsed testimony.

In sum, the points raised in this appeal go into the issue of credibility. As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected. In the present case, we find no such facts and circumstances that would warrant a conclusion different from that arrived at by the court a quo.

Anent accused-appellant's warrantless arrest, any irregularity that may have attended the same would be of no help to accused-appellant in the present appeal. In voluntarily submitting himself to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over his person, accused-appellant is deemed to have waived his right to assail the legality of his arrest.[20]

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 lesser penalty of reclusion perpetua should be imposed on accused-appellant in view of the absence of any modifying circumstance in the present case.

Consistent with prevailing jurisprudence, the Court affirms the P50,000.00 award of the trial court as death indemnity and increases the award of moral damages to P50,000.00.

Among the receipts presented by the prosecution to prove their claim for actual damages, only the total amount of P17,925.00 appears to have been actually spent in connection with the death, burial and wake of the victim.[21] Hence, the P142,787.14 award of the trial court should accordingly be reduced to P17,925.00.[22]

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 23, in Criminal Case No. 46966, finding accused-appellant Jose Castillon III, guilty beyond reasonable doubt of the crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with the MODIFICATION that in addition to the P50,000.00 death indemnity, accused-appellant is ordered to pay the

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heirs of the deceased the amounts of P50,000.00 as moral damages and P17,925.00 as actual damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Pardo, JJ., concur.
Kapunan, J., on official leave.

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[1] Penned by Judge Tito G. Gustilo.

[2] Rollo, p. 9.

[3] Original Records, p. 14.

[4] Referred to as Jelly Badanoy in the Affidavit of Sally Caro (Exh. "1", Records, p. 14).

[5] TSN, February 18, 1987, pp. 18-26.

[6] TSN, February 7, 1997, p. 16.

[7] TSN, December 16, 1996, pp. 4-6.

[8] TSN, December 17, 1996, pp. 3-10.

[9] TSN, February 7, 1997, pp. 3-11.

[10] TSN, February 18, 1997, pp. 13-16 and December 16, 1996, p. 17.

[11] Rollo, pp. 27-28.

[12] Rollo, pp. 50-51.

[13] 337 SCRA 100, 109-110, [2000]; citing People v. Gallarde, 325 SCRA 835 [2000].

[14] People v. Gavina, 264 SCRA 450, 455 [1996], citing People v. Esperraguerra, et al., 248 SCRA 207 [1995].

[15] 337 SCRA 488, 498-499 [2000].

[16] Decision, Rollo, p. 26.

[17] People v. Abrera, 283 SCRA 1, 15 [1997]; citing People v. Hubilo, 220 SCRA 389 [1993]; People v. Pasiliao, 215 SCRA 163 [1992] and People v. Ducay, 225 SCRA 1 [1993].

[18] TSN, December 16, 1996, p. 5.

[19] People v. Villanueva, 265 SCRA 318, 323 [1996].

[20] People v. Rondero, 320 SCRA 383, 403 [1999].

[21] See Exhibits G and G-1 to G-3, Records, pp. 4-7.

[22] People v. Degoma, 209 SCRA 266, 274 [1992].

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