

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL MATIC Y BACTAD AND NORBERTO SOTELO Y SORIANO, ACCUSED.

G.R. No. 133650. February 19, 2002

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court, Branch 160, Pasig City convicting appellant Ramil Matic y Bactad of the crime of Robbery with Homicide and sentencing him to suffer the penalty of reclusion perpetua.

The Information reads:

That on or about the 12[th] day of October, 1994, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one Norberto Sotelo y Soriano who is still at large and two (2) unidentified male persons whose true identities and present whereabouts are still unknown and mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, rob and divest one Rolando Villamin y Mutas of his cash money amounting to P50.00, to the damage and prejudice of the latter in the aforesaid amount of P50.00; and that by reason and on the occasion of the robbery, Norberto Sotelo y Soriano, with intent to kill, did then and there willfully, unlawfully and feloniously stab said Rolando Villamin y Mutas on his chest, thereby inflicting upon him a stab wound which directly caused his death.[2]

When arraigned on November 9, 1994, appellant Ramil Matic, assisted by counsel, pleaded not guilty.[3] Trial on the merits ensued.

On November 17, 1994, after prosecution witness PO1 Ricardo delos Santos has testified, appellant manifested his desire to plead guilty to the offense charged. Considering that the appellant is charged with a capital offense, the trial court proceeded to receive further evidence for the prosecution.[4]

On December 7, 1994, the prosecution's motion to admit Amended Information relative to accused Norberto Sotelo was granted.[5] A warrant of arrest[6] was accordingly issued against Sotelo, who is at large.

The version of the prosecution:

Jimmy Escala, 20 years old, a tricycle driver and a resident of Camachile, Magpayo, Pinagbuhatan, Pasig, Metro Manila, testified that at about 3:00 o'clock in the morning of October 12, 1994, he was driving his tricycle following the tricycle driven by Rolando Villamin, who was driving at a slow speed. Then he saw appellant Ramil Matic, together with three (3) companions, stop and hold up Villamin along Market Avenue, Pasig, Metro Manila. One of appellant's companions took the amount of Fifty Pesos (P50.00) from Villamin, then the appellant stabbed Villamin on the chest with a fan knife while his three (3) companions were holding the latter. At that time, Escala was only one arm's length away from the appellant and the victim. Escala was able to recognize the appellant because the light of his tricycle was directed at the assailants for a few seconds, and he knew the appellant who

was a friend of his brother. After Escala saw the stabbing incident, he drove away because he was scared. He reported the incident to the barangay captain, and identified appellant Ramil Matic when he was arrested by PO1 Ricardo delos Santos. Escala said that he was not able to recognize the three (3) companions of Ramil Matic. He denied that he testified against appellant due to ill-feelings, and he also identified his sworn statement[7] regarding the incident.[8]

PO1 Ricardo delos Santos, an investigator of the Station Investigation Unit of Pasig Police Station, testified that in the evening of October 12, 1996, Senior Inspector Felix Balita ordered him to accompany Barangay Chairman Rodrigo Anito, Jimmy Escala, and other security men of Barangay Pinagbuhatan since Jimmy Escala who had witnessed a crime reported that the suspect was at Imelda Park in Pasig, Metro Manila. Upon arriving at Imelda Park, Escala pointed at the appellant who was then lying on an improvised vegetable stall inside the park. Then PO1 delos Santos introduced himself as a police officer to appellant Matic and apprised him of his constitutional rights after which they brought him to the Pasig Police Station and turned him over to SPO1 Crispin Pio for investigation. PO1 delos Santos executed an affidavit[9] of arrest.[10]

Dr. Emmanuel L. Aranas, PNP medico-legal officer, testified that he conducted the autopsy of the victim, Rolando Villamin, and prepared the Medico-Legal Report.[11] The victim sustained three (3) abrasions on the head, and one stab wound at the right side of the chest, which was caused by a sharp, blunt, pointed instrument. The cause of death was the stab wound on the chest.[12]

On the other hand, appellant Ramil Matic, 23 years old, married, construction worker and a resident of 116 Tipas, Taguig, Metro Manila, denied that he killed Rolando Villamin. He testified that in the early morning of October 12, 1994, he was at Imelda Park awaiting the arrival of merchandise because he was employed by one Yolanda Palacio, owner of a fruit stall at Gate 5, Pasig Public Market. He admitted that he knew prosecution witness Jimmy Escala because they had worked together at the market as baggage boys and also as construction workers. Appellant, however, alleged that before the incident of October 12, 1994, he had a simple altercation with Jimmy Escala after he caught Escala stealing an egg at a nearby stall where he worked. He did not tell the store owner that Escala stole the egg but just returned it.[13]

On May 2, 1997, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, foregoing considered, the court finds accused RAMIL MATIC y BACTAD GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, punishable under Art. 294 par. (1) of the Revised Penal Code and hereby sentences said accused to suffer a penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P50,000.00 and an additional amount of P50.00 representing the amount forcibly taken from the victim by accused, moral damages of P50,000.00, exemplary damages of P30,000.00 and to pay the costs.

SO ORDERED.[14]

Appellant ascribes to the trial court the following errors:

I

THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE FACT THAT THE TESTIMONY OF JIMMY ESCALA IS TAINTED WITH DOUBTS AND CONTRADICTIONS.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED OF THE CRIME OF ROBBERY WITH HOMICIDE.[15]

Appellant assails the credibility of prosecution witness Jimmy Escala because the material portions of his testimony are allegedly inconsistent with his sworn statement, thus: (1) Escala stated in his sworn statement that it was Norberto S. Sotelo who stabbed Rolando Villamin, but he testified on direct-examination that it was appellant who stabbed Villamin; (2) Escala stated in his sworn statement that appellant took the victim's money after he was stabbed, but he testified on direct-examination that it was the appellant's companion who took the victim's money before he was stabbed; (3) Escala stated in his sworn statement that he did not know how much money was taken from the victim, but he testified that the victim was robbed of Fifty Pesos (P50.00); (4) Escala also stated in his sworn statement that while passing through Market Avenue on board his tricycle, he saw a parked tricycle and also the victim being stabbed by four (4) men, but he testified that before the stabbing incident, he was driving his tricycle and following the tricycle being driven by Villamin when the latter was held-up by four (4) men; (5) Escala stated in his sworn statement that after the assailants ran away, he approached the victim whom he recognized to be his neighbor so he rushed him to the hospital, but the victim died on the way; however, Escala testified that after he saw the stabbing incident, he drove away because he was scared. Appellant contends that the said inconsistencies cast serious doubt that he committed the crime charged, and hence prays for his acquittal.

The appellant's contention is devoid of merit. We agree with the Solicitor General that the divergence of Escala's testimony from his sworn statement did not impair his credibility. The infirmity of affidavits as a species of evidence is a common occurrence in judicial experience.[16] Being ex parte, they are almost always incomplete and often inaccurate, but these factors do not denigrate the credibility of witnesses.[17] As such, affidavits are generally considered to be inferior to testimony given in the court.[18]

Moreover, as the Solicitor General noted, the appellant did not present evidence disputing Jimmy Escala's presence at the crime scene. Escala, who was just an arm's length away from the victim, Rolando Villamin, at the time of the incident, positively identified the appellant as one of the assailants and confirmed the fact of robbery and the stabbing incident in both his sworn statement and testimony in court. Assuming, arguendo, that it was not Ramil Matic who stabbed the victim, it has been held that whenever a homicide has been committed as a consequence of or on the occasion of a robbery, all those who took part as principals in the robbery will also be held guilty as principals in the special complex crime of robbery with homicide, even if they did not all actually take part in the homicide, unless it appears that those who did not do so endeavored to prevent the homicide.[19]

We agree with the trial court that conspiracy was proven and evident in the commission of the crime. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[20] Proof of the conspiracy need not be based on direct evidence because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of a crime.[21] The conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[22] In the instant case, appellant and his three (3) companions stopped and held up the victim, Rolando Villamin, while he was driving his tricycle, and took his money. Then appellant stabbed the victim on the chest with a fan knife while his companions were holding the victim, thus showing concerted action and common design or understanding among themselves to commit the crime charged. Where conspiracy is established, the act of one is the act of all.[23] All the conspirators are liable as co-principals.[24]

Appellant also argues that assuming that he was with the group that stabbed the victim, still, the crime committed was not robbery with homicide but only homicide because the taking of the victim's money was not proven, by convincing evidence considering that prosecution witness Escala's testimony contradicted his sworn statement; and that the testimony of Escala that he saw something was taken from the victim was doubtful since he admitted

that it was very dark and that he was able to recognize the appellant only because the light of the tricycle happened to be directed at the appellant for a few seconds. In addition, Escala alleged in his sworn statement that the victim was stabbed before the taking of money which is contrary to ordinary human experience wherein the killing or stabbing usually comes only after the victim shall have refused to part with his valuables. Finally, Fifty Pesos (P50.00) was a small amount to be the motive for appellant to rob the victim.

We disagree. The elements of the special complex crime of robbery with homicide are the following: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animo lucrandi*, and (d) by reason of the robbery or on the occasion thereof, homicide (used in its generic sense) is committed.[25] The phrase “by reason” covers homicide committed before or after the taking of personal property of another, as long as the motive of the offender in killing a person before the robbery is to deprive the victim of his personal property which is sought to be accomplished by eliminating an obstacle or opposition, or in killing a person after the robbery to do away with a witness or to defend the possession of the stolen property.[26] The testimony of prosecution witness Jimmy Escala who was only an armslength away from the victim, Rolando Villamin, at the time of the incident, established the special complex crime of robbery with homicide, thus:

Q:

When the accused Ramil Matic stabbed Rolando Villamin (sic) what did the other three do?

A:

The three were holding him, sir.

Q:

You mentioned about a hold up earlier, why do you say that it was a hold up?

A:

They were able to take the money.

Q:

Who in particular took the money?

A:

His companion, sir.

Q:

And how much money was taken from the victim?

A:

P50.00, sir.

xxx xxx xxx

Q:

Now, which happened first, the stabbing or the taking of the P50.00 money?

A:

The getting of the money.[27]

The above testimony of Escala shows that the motive of the appellant was robbery. The trial court also observed that the victim initially resisted the taking of his money as evidenced by the three (3) abrasions he sustained on the head, particularly on the nose, upper lip and frontal region.[28] Apparently, the culprits held the arms of the victim to be able to take his money, then he was stabbed on the chest to forestall any further resistance.[29] Moreover, since Escala was following behind the victim's tricycle, and he was only an armslength away from the victim when the incident happened, the light of his tricycle which was directed at what lay in front of him made it possible for him to see the robbery and stabbing incident. Escala testified that he recognized the appellant as one of the assailants because the light of his tricycle was focused on them for a few seconds. Besides, in robbery with homicide, it does not matter whether the victim was killed prior to or after the taking of his personal property. What is essential is that there be a direct relation and intimate connection between the robbery and the killing, whether or not both crimes were committed at the same time.[30] The fact that only Fifty Pesos (P50.00) was taken from the victim only shows that robbers are usually uncertain of the amount they could get from the victim before the robbery, but it does not negate the commission of the special complex crime of robbery with homicide for the reason that the essential elements of the crime are present in this case, namely: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animo lucrandi*, and (d) by reason of the robbery or on the occasion thereof, homicide (used in its generic sense) is committed.[31]

The defense put up by the appellant is alibi. For the defense of alibi to prosper, the accused must not only prove his presence at another place at the time of the commission of the offense, but he must also demonstrate that it would be physically impossible for him to be at the locus criminis at the time of the commission of the crime.[32] In the instant case, appellant was within the vicinity of the locus criminis when the crime was committed. Although he claimed that he was at his employer's stall waiting for the delivery of goods when the incident took place, he did not present his employer to corroborate his statement. Alibi is a weak defense and becomes even weaker by reason of the failure of the defense to present any corroboration.[33] More importantly, the defense of denial and alibi cannot prevail over the positive identification by prosecution witness Jimmy Escala that it was appellant Ramil Matic who stabbed the victim.[34]

Hence, the trial court correctly found appellant Ramil Matic guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide. Under Article 294, paragraph I of the Revised Penal Code, "[a]ny person guilty of robbery with the use of violence against or intimidation of any person shall suffer the penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been

committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.”

The trial court correctly imposed the lesser penalty of reclusion perpetua, absent any aggravating circumstance in the commission of the crime.[35] It also correctly awarded to the heirs of the victim civil indemnity in the amount of Fifty Thousand Pesos (P50,000.00), an additional amount of Fifty Pesos (P50.00) representing the amount taken from the victim, and moral damages in the amount of Fifty Thousand Pesos (P50,000.00). The civil indemnity for the victim’s death is automatically granted without need of proof other than the commission of the crime,[36] and the award of moral damages needs no proof since the conviction of the appellant for the crime charged is sufficient to justify the award of the same.[37] However, the trial court incorrectly awarded exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00). Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages as a part of the civil liability may be imposed only when the crime was committed with one or more aggravating circumstances. Absent any aggravating circumstances in the commission of the crime charged, the award of exemplary damages in this case should be deleted.

WHEREFORE, the assailed Decision of the Regional Trial Court of Pasig City in Criminal Case No. 107080-H finding appellant Ramil Matic y Bactad guilty beyond reasonable doubt of the crime of Robbery with Homicide, and sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim, Rolando Villamin, civil indemnity in the amount of Fifty Thousand Pesos ((P50,000.00), actual damages in the amount of Fifty Pesos (P50.00), and moral damages in the amount of Fifty Thousand Pesos (P50,000.00), is hereby AFFIRMED, with the modification that the award of exemplary damages is deleted. Costs against the appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Judge Mariano M. Umali, Rollo, pp. 13-23.

[2] Records, p. 1.

[3] Records, p. 35.

[4] TSN, November 17, 1994, p. 6; Records, p. 45.

[5] Records, pp. 59-60.

[6] Records, pp. 72, 75.

[7] Exhibits “B” to “B-3”, Records, pp. 128-129.

[8] TSN, November 17, 1994, pp. 6-15.

[9] Exhibits “A” to “A-1”, Records, p. 127.

[10] TSN, November 17, 1994, pp. 2-5.

[11] Exhibits “D” to “D-1”, Records, p. 131.

[12] TSN, November 24, 1994, pp. 2-5.

[13] TSN, October 9, 1996, pp. 2-5.

[14] Rollo, p. 23.

[15] Rollo, p. 34.

[16] *People v. Lenantud, et al.*, G.R. No. 128629, February 22, 2001; citing *People v. Mores*, 311 SCRA 342, 350 (1999).

[17] *Id.*

[18] *Id.*

[19] *People v. Lago*, G.R. No. 121272, June 6, 2001.

[20] Article 8, paragraph 2, Revised Penal Code.

[21] *Supra*, *People v. Lago*.

[22] *Id.*; citing *People v. Fegidero*, G.R. No. 113446, August 4, 2000; *People v. Francisco*, G.R. Nos. 118573-74, May 31, 2000.

[23] *People v. Pablo, et al.*, G.R. Nos. 120394-97, January 16, 2001.

[24] *Id.*

[25] *Supra*, *People v. Lago*; *People v. Zinampan, et al.*, G.R. No. 126781, September 13, 2000; *People v. Salazar*, 277 SCRA 67, 85 (1997); *People v. Cabiles*, 248 SCRA 207, 219 (1995).

[26] *People v. Torres, et al.*, G.R. No. 130661, June 27, 2001; *People v. Sanchez*, 298 SCRA 48, 58 (1998).

[27] TSN, November 17, 1994, p. 8.

[28] Exhibits “D” to “D-1”, Records, p. 131.; Rollo, p. 21.

[29] Rollo, p. 21.

[30] *Supra*, *People v. Torres*; citing *People v. Cando*, G.R. No. 128114, October 25, 2000.

[31] *Supra*, *People v. Lago*; *People v. Zinampan, et al.*, G.R. No. 126781; September 13, 2000; *People v. Salazar*, 277 SCRA 67, 85 (1997); *People v. Cabiles*, 248 SCRA 207, 219 (1995).

[32] *People v. Francisco*, G.R. Nos. 134566-67, January 22, 2001; *People v. Barellano*, 316 SCRA 567, 586 (1999) citing *People v. Fuentes*, 296 SCRA 602 (1998).

[33] *People v. Del Rosario*, G.R. No. 131036, June 20, 2001.

[34] *Supra*, *People v. Francisco*.

[35] Article 63(2), The Revised Penal Code.

[36] *People v. Cortez, et al.*, G.R. No. 131924, December 26, 2000; *People v. Dimailig*, 332 SCRA 340, 354 (2000).

[37] *People v. Clarino*, G.R. No. 134634, July 31, 2001.

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