

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOVITO LLAVORE Y BARRIENTOS, JOEL LOBATON Y ORETA, RODOLFO FUENTES Y CASTILLO (AT LARGE) AND DANIEL GUILLERO Y ALVAREZ, ACCUSED.

G.R. No. 133892. August 12, 2003

Ponente: VITUG, J.

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VITUG, J.:

Jovito Llavore y Barrientos a.k.a. Boy, Joel Lobaton y Oreta a.k.a. Imbong, Rodolfo Fuentes y Castillo a.k.a. Nene, Daniel Guillero y Alvarez a.k.a. Moran and one "Galoy" Longno were charged with the crime of robbery with homicide before the Regional Trial Court, Branch 60, of Cadiz City, Negros Occidental, in an information that averred:

"That on or about 6:30 in the afternoon of May 23, 1991 at the reclamation area, Cadiz City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with treachery, evident premeditation and with intent to kill, did then and there, willfully, unlawfully and feloniously assault, attack and kill with the use of firearm and knives one Danilo Malata, a tricycle driver, in order to rob, steal and take away with intent of gain and without the consent and against the will of the owner the motor tricycle belonging to Erna Tancinco which cost more or less P53,000.00 and inflicting upon the person of Danilo Malata, the following wounds, to wit:

- Stabbed wound, immediately below the left nipple; 2 cm. in length, 7 cm. depth projecting upward;
- Stabbed wound, left subcostal area, about 4 cm. from the midline; 4 cm. in length with omentum protruding outward;
- Stabbed wound, left subcostal area, midclavicular line; 2 cm. in length with omentum protruding outward;
- Stabbed wound, through and through, deltoid area; 3 cm. in length, left upper arm;
- Stabbed wound, through and through, 2 cm. in length, left upper arm about 8 cm. below the upper wound;
- Stabbed wound, through and through, posterior chest, left postaxillary line; 4 cm. in length with exit at the left axilla;
- Stabbed wound, left elbow, superficial; 4 cm. in length;

which directly caused the death of the said victim Danilo Malata, to the damage and prejudice of the heirs of said victim in the amount, to wit:

- P30,000.00 - as indemnity for the death of the victim;
- P144,000.00 - as indemnity for the loss of earning capacity, or such amount to be fixed by the court."

Jovito Llavore and his co-accused, Joel Lobaton and Rodolfo Fuentes, entered a plea of not guilty at their

arraignment. Fuentes thereafter escaped from prison. Daniel Guillero was later arrested and, when arraigned, also pleaded not guilty. "Galoy" Longno remained at large.

The case for the prosecution. -

On 23 May 1991, about six-thirty in the afternoon, Danilo Malata was found dead in a reclamation area along Hitalon Bridge in Cadiz City. Malata was last seen alive driving a tricycle^[4] belonging to his sister Erna Malata-Tancinco and her husband Hernani Tancinco. At around five-fifteen on the afternoon of 30 July 1991, a unit of the Cadiz City Philippine National Police (PNP) apprehended Joel Lobaton and Perlito Pastrano in connection with another attempted robbery case involving a tricycle owned by a certain Francisco Gerongan. During the investigation conducted by SPO3 Jerry Montecino and SPO3 Sofronio Neri, Lobaton confessed that he, along with Jovito Llavore, Daniel Guillero, Rodolfo Fuentes, and "Galoy" Longno, had killed Danilo Malata and took away the latter's tricycle which they then brought it to the house of Llavore.

On 31 July 1991, police officers saw Llavore driving a tricycle along Gustilo Boulevard in Cadiz City. When confronted, Llavore voluntarily went with the officers to the police station using the tricycle.^[5] While Llavore was being interrogated by SPO3 Neri, SPO3 Montecino, and SPO3 Tayco in the presence of Hernani Tancinco, the latter observed that the top cover of the tricycle was identical with the top cover of his tricycle which Malata was driving at the time he was killed. Llavore admitted his involvement in the crime. SPO3 Belcezar Javier and Tancinco thereupon proceeded to the house of Llavore in Crossing, Cadiz City. At the backyard of the house, they saw a maroon-colored tricycle without its top cover.^[6] Tancinco immediately recognized the same to be his tricycle based on its windshield, cover of the side wheel, and its decorations. When the maroon paint of the tricycle's sidecar was scraped, the vehicle showed an orange paint which was its original paint. Tancinco identified the markings he placed on the top cover of his tricycle like the hole where he inserted a wire and a brace of 3/8 steel bar. Some parts of the tricycle had been removed. The tricycle's motorcycle was still painted red, although the motor and chassis number had been defaced. Tancinco pointed to other distinguishing marks on the motorcycle of his tricycle such as the welding marks on the hub, the two uneven holes on the fender where he had attached a break light, the spline of the original transmission which was replaced with a shorter one, the epoxy steel on the leaking tank, and the cut steel on the fork.

SPO3 Javier repaired to Talisay and invited Rodolfo Fuentes for questioning. Fuentes executed an affidavit, dated 5 August 1991,^[7] at the police precinct. In a sworn confession, dated 12 August 1991,^[8] taken by SPO3 Sofronio Neri in the presence of one SPO3 Melzasar Tayco, Fuentes, with the assistance of Atty. Reginaldo Conol, admitted his participation in stabbing Malata to death and then bringing the tricycle to the house of Llavore. SPO3 Javier said Fuentes tagged Lobaton, Guillero, and Longno as being his companions.

Dr. Joy Gladys T. Guanzon conducted a postmortem examination on the body of Danilo Malata. The autopsy report, dated 24 May 1991, contained the following findings:

- Stabbed wound, immediately below the left nipple; 2 cm. in length, 7 cm. in depth projecting upward;
- Stabbed wound, left subcostal area, about 4 cm. from the midline; 4 cm. in length with omentum protruding outward;
- Stabbed wound, left subcostal area, midclavicular line; 2 cm. in length with omentum protruding outward;
- Stabbed wound, through and through, deltoid area; 3 cm. in length, left upper arm;
- Stabbed wound, through and through, 2 cm. in length, left upper arm about 8 cm. below the upper wound;
- Stabbed wound, through and through, posterior chest, left postaxillary line; 4 cm. in length with exit at the left

axilla;

-Stabbed wound, left elbow, superficial; 4 cm. in length.

"CAUSE OF DEATH: Cardiac Tamponade and pneumo-hemothorax secondary to multiple stabbed wounds.[9]

Dr. Guanzon testified that the stabbed wounds were caused by a sharp bladed instrument. The stabbed wound immediately below the left nipple, "2 cm. in length and 7 cm. in depth projecting upward," was fatal.

The version of the defense. -

In seeking an exoneration of those indicted for the crime, the defense anchored itself on denial and alibi.

Jovito Llavore, a tricycle driver by occupation, testified that he was the owner of a tricycle which Rodolfo Fuentes borrowed sometime during the first week of July 1991. When Fuentes returned the tricycle, its top cover had been damaged. At about six o'clock on the morning of 23 July 1991, Llavore was in Cadiz City plying his usual route when Fuentes went to his house and left a tricycle with his wife. Llavore presumed that the tricycle belonged to Fuentes and that it was intended to secure the latter's debt of P2,400.00. At noontime of 28 July 1991, when he and his wife were not home, Fuentes came to their house and took back the tricycle. When the tricycle was returned to him later in the day, he noticed that the top cover of his tricycle had been replaced with the top cover of the tricycle earlier brought by Fuentes. The tricycle which he thought belonged to Fuentes happened to be the same tricycle recovered from his house by the police officers on 31 July 1991. Llavore denied knowing at that time Daniel Guillero and "Galoy" Longno but admitted being acquainted with Rodolfo Fuentes, who used to borrow his tricycle in transporting lumber, and with Joel Lobaton, a former student in Hiyang-Hiyang Elementary School in 1984, who worked in the lumber business of Nestor Lobaton. Llavore disclaimed any participation in the killing of Danilo Malata when he, together with Fuentes and Lobaton, underwent an investigation conducted on 31 July 1991 by the police. He claimed that at around five o'clock on the afternoon of 23 May 1991, he and his wife were buying some goods at the public market in Cadiz City from where, about an hour later, they went back home and stayed in the house up to seven o'clock in the evening. Llavore stated that he was confined on 31 July 1991 without any warrant of arrest and was released only the following morning. He was later asked to go with police officers SPO1 Rogelino Caniedo, SPO3 Montecino, PO3 Santiago Solatorio, PO2 Mario Jarina, PO3 Remy Tio, PO3 Zaldy Esperancilla, and SPO1 Regulus Blancaflor and one "cafgu" to Hacienda El Paso. The place was about two kilometers away from his father's house where some missing parts of the tricycle, placed in a sack, were recovered. Thereupon, Llavore was again arrested.

Nilda Llavore, the wife of Jovito Llavore, corroborated the latter's testimony. She added that her husband did not leave the house after dinner and that they went to bed soon thereafter.

Daniel Guillero stated that he, his wife and the latter's parents were residing at Hacienda Lau-ang, Barangay Luna, in Cadiz City. He denied any involvement in the crime with which he was charged and said that, on 23 May 1991, he was a watchman at the hacienda of one Dr. Diez where he reported for work from six o'clock to eleven o'clock in the morning and then from one o'clock to five o'clock in the afternoon. From work, he went home, had dinner at seven o'clock in the evening and did not leave the house. Guillero denied knowing Rodolfo Fuentes, Joel Lobaton, and "Galoy" Longno.

Joel Lobaton testified that during the months of May and July 1991, he was staying in Villa Barbas, Cadiz City, and working in the lumber business of his brother Nestor Lobaton in Sto. Niño Village, Cadiz City. At about five-fifteen on the morning of 31 July 1991, he was with one Perlito Pastrana when they were arrested somewhere in Crossing, Cadiz City, in connection with the attempted robbery of a tricycle belonging to one Francisco

Gerongan. The police officers recovered from each of them a knife. Lobaton denied having been acquainted with "Galoy" Longno or Daniel Guillero but knew LLavore, his former teacher in Hiyang-Hiyang Elementary School, and Rodolfo Fuentes who used to deliver lumber in Sto. Niño Village. He negated any involvement in the crime and asserted that between seven o'clock to eleven o'clock on the morning of 23 May 1991, he and Perlito Pastrana were busy cutting coconut trees in Barangay Mabini, Cadiz City. After partaking of lunch, they resumed their work up to six o'clock that afternoon.

The decision under review. -

On 27 February 1997, the court a quo rendered its decision[10] finding Jovito Llavore y Barrientos and his co-accused guilty of robbery with homicide. The trial court held:

"WHEREFORE, in view of all the foregoing, this Court finds accused, JOVITO LLAVORE Y BARRIENTOS alias 'Boy' (detained), JOEL LOBATON Y ORETA alias 'Imbong' (detained), RODOLFO FUENTES Y CASTILLO alias 'Nene' (Escapee and in absentia), and DANIEL GUILLERO Y ALVAREZ (detained) all GUILTY beyond reasonable doubt of the crime of 'Robbery with Homicide' as charged in the Information, and hereby sentences them to suffer the penalty of RECLUSION PERPETUA including its accessory penalties as provided for by law.

"With respect to accused alias 'Galoy Longno' (at-large) not having been arrested and arraigned, the case against him is hereby ordered ARCHIVED and shall be automatically revived upon his arrest.

"The accused are further ordered jointly and severally to pay the heirs of Danilo Malata the sum of P50,000.00 as indemnity for the death of the latter, and in addition to pay jointly and severally Hernani Tancinco the sum of P53,000.00 as indemnity for the value of the motorcycle without subsidiary imprisonment in case of insolvency in accordance with paragraph 3 of Article 39 of the Revised Penal Code of the Philippines.

"The accused being detained are entitled to the full credit of their preventive detention as per R.A. No. 6127.

"The Jail Warden of the BJMP, Silay City, PNP in the case of accused Jovito Llavore and the Jail Warden of the BJMP, Cadiz City PNP for accused Joel Lobaton y Oreta alias 'Imbong' and accused Daniel Guillero y Alvarez are all hereby ordered to commit all the said accused to the National Penitentiary for Service of their sentence as per Supreme Court Circular No. 4-92-A dated April 20, 1992.

"Let an alias Warrant of Arrest be immediately issued against accused Rodolfo Fuentes (Escapee) for his immediate arrest, and the officer-in-charge of the Warrant and Subpoena Section of the PNP, Cadiz City is hereby directed to explain within ten (10) days from receipt of a copy of this decision why up to the present the said two (2) accused have not been arrested despite the lapse of more than six (6) months after the issuance of the alias Warrant of Arrest against alias 'Galoy' Longno (at-large) and the accused Rodolfo Fuentes from the time of the latter's escape from jail.

"Let copies of this Decision be furnished the officer-in-charge of the Warrant and Subpoena Section of the PNP, Cadiz City and the private complainant in accordance with Supreme Court Circular No. 7-92 dated October 12, 1992." [11]

Jovito Llavore, along with his co-accused Joel Lobaton and Daniel Guillero, appealed from the decision; Lobaton and Guillero, however, later withdrew their respective appeals.

Appellant Llavore contends that the trial court has erred (1) in convicting him of robbery with homicide despite the inadmissibility of the extrajudicial confession of his co-accused Rodolfo Fuentes; (2) in not declaring the arrest of appellant as illegal and the seizure of the tricycle by the police officers as a ground for its inadmissibility in evidence; and (3) in rejecting the claim of appellant that he did not know the identity of his co-accused.

Llavore maintains that the extrajudicial confession of Fuentes implicating him (Llavore) and his co-accused should not be made the basis for his conviction as being merely hearsay. The Office of the Solicitor General, echoing the argument of appellant, explains that indeed the trial court should not have considered against Llavore the extrajudicial confession of Fuentes. The Court agrees. Fuentes has not been presented to the witness stand, and there can be no way of being assured on the veracity of his statements. Most importantly, Llavore has not been accorded an opportunity to conduct a cross-examination; the law grants him that right.

A review of the evidence on record, nevertheless, would still warrant an affirmance of the trial court's judgment of conviction. The crime of robbery with homicide, penalized under Article 294(1) of the Revised Penal Code, requires proof that (a) the taking of personal property is done through violence or intimidation against persons or force upon things; (b) the property taken belongs to another; (c) the taking is done with *animus lucrandi* (intent to gain); and (d) the commission of homicide (in its generic sense) occurs on the occasion of the robbery or by reason thereof.[12] There must be an intimate connection between the robbery and the killing but, once shown, it matters not whether both crimes be committed at the same time or one be prior or subsequent to the other.[13]

Admittedly, there is no eyewitness to the commission of the crime; a conviction can thus only rest on circumstantial evidence. Rule 133, Section 4, of the Rules of Court provides that circumstantial evidence is sufficient to sustain a 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 circumstances is such as to produce conviction beyond reasonable doubt. Indeed, direct evidence of the commission of the crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt,[14] and facts and circumstances consistent with guilt and inconsistent with innocence can well constitute evidence which, in weight and probative force, may not too infrequently even surpass direct evidence in its effect upon the court.[15]

In this case, the circumstances established, in the considered view of the Court, would adequately support the finding of guilt pronounced by the trial court. (1) On 23 May 1991, the tricycle belonging to Hernani Tancinco was stolen; (2) the tricycle was later found in the house of appellant Llavore, and no satisfactory reason was given to explain his possession thereof;[16] (3) some parts of the vehicle had been removed, changed, or replaced and the motor and chassis number had been defaced; (4) on the occasion of the unlawful taking of the property, Danilo Malata, then driving the tricycle, was stabbed to death; (5) the postmortem examination conducted by Dr. Guanzon on 24 May 1991 showed seven stabbed wounds on different parts of the victim's body; and (6) a sack containing the missing parts of the tricycle were found about two kilometers away from the house of appellant's father in Hacienda El Paso.

The bare denial of appellant and his defense of alibi cannot overcome the evidence adduced by the prosecution. Denial by itself is an intrinsically weak defense.[17] Neither can the claim of alibi be given weight. For alibi to prosper, not only must the person invoking it prove being in another place at the time of the commission of the crime, but also that it would have been impossible for him to be at the crime scene at the appointed time.[18] Appellant himself has confirmed that the public market in Cadiz City where he claims to have been with his wife is only about five meters away from the scene of the crime, i.e., the reclamation area in Hitalon Bridge, Cadiz City. The house of appellant, upon the other hand, is within the same barangay where the killing has occurred.

Appellant would assail the legality of his arrest and the consequent seizure of the subject tricycle solely on the basis of the inadmissible extrajudicial confession of Fuentes. The argument would be non sequitur. In any event, any objection, defect, or irregularity attending an arrest or its consequences should be made before an entry of plea in the arraignment; otherwise, the objection would be deemed waived.[19] The records would show that on 01 October 1991, appellant and the other accused, Lobaton and Fuentes, entered a plea of not guilty[20] without assailing the validity of his arrest.[21] Indeed, on 25 November 1991, appellant filed a "Motion to Admit Accused

to Bail"[22] setting the hearing of the motion on 29 November 1991. The trial court required the prosecution to file its comment on the motion.[23] After the prosecution submitted its opposition,[24] the trial court later granted the motion of appellant and required him to post a bail bond in the amount of P80,000.00 for his provisional liberty.[25] Appellant posted a property bond amounting to P80,000.00, secured by two parcels of land[26] which the trial court approved.[27] Appellant filed an "Entry of Appearance with Motion for Postponement." [28] After the prosecution had rested its case, appellant filed two "Motions with Express Leave of Court to file Demurrer to Evidence," one by the Public Attorney's Office and the other by his private counsel.[29] He even opposed the prosecution's formal offer of exhibits.[30] After the trial court had denied his earlier motion,[31] appellant participated in the trial of the case by testifying in his own behalf and by presenting other witnesses as evidence for the defense. It would, therefore, be much too late in the day to complain about the warrantless arrest after the accused was arraigned, trial commenced and completed, and a judgment of conviction rendered against him.[32]

Appellant contends that he has been falsely implicated by persons who are not even known to him. Given the circumstances heretofore narrated, that, too, would be hard to believe. In any case, it is not necessary in crimes of this nature that the co-perpetrators have known each other. What should instead matter would be the evidence of his participation in the commission of the crime and the weight that is aptly due to it.

The trial court ordered appellant, together with the two other accused, Joel Lobaton and Daniel Guillero, to jointly and severally pay P50,000.00 civil indemnity to the heirs of the victim Danilo Malata and awarded P53,000 to Hernani Tancinco for the value of the tricycle. The award of P50,000.00 by way of civil indemnity to the heirs of the victim is in keeping with the prevailing jurisprudence.[33] In addition to the indemnity, appellant Llavore should now also be ordered to pay P50,000.00 moral damages pursuant to Article 2219 of the Civil Code.[34] The award of P53,000.00 to Hernani Tancinco representing the value of the stolen tricycle cannot be sustained; the records would show that in a receipt, dated 31 July 1991,[35] Erna M. Tancinco, wife of Hernani Tancinco, executed a receipt in the presence of two witnesses[36] which acknowledged the return of the vehicle from the Office of the I & I Section of the Cadiz City Police Station.

WHEREFORE, the decision of the Regional Trial Court, Branch 60, Cadiz City, Negros Occidental, finding appellant Jovito Llavore y Barrientos guilty beyond reasonable doubt of the crime of robbery with homicide and imposing upon him the penalty of reclusion perpetua, with its accessory penalties, is **AFFIRMED** with **MODIFICATIONS** in that in addition to the civil indemnity of P50,000.00, said appellant is ordered to pay the heirs of the victim Danilo Malata the amount of P50,000.00 moral damages. The award by the trial court of P53,000.00 to Hernani Tancinco insofar as appellant is concerned must be, as it is hereby, **DELETED** for lack of basis. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] His appeal was dismissed per resolution dated 05 April 2000 (Rollo, p. 210). Entry of Judgment was made on 27 June 2001 (Rollo, p. 234).

[2] His appeal was dismissed per resolution dated 10 September 2001 (Rollo, p. 232). Entry of Judgment was made on 26 October 2001 (Rollo, p. 235).

[3] RTC Records, pp. 1-2.

[4] Named Bembem, L-2 Yamaha 100 cc., Motor No. 17V-11763k, Chassis No. 17V-01163; RTC Records, p.

143.

[5] A photocopy of the picture of accused-appellant's tricycle (Exhibits A and A-1); RTC Records, p. 139.

[6] A photocopy of the picture of the tricycle of Hernani Tancinco (Exhibits "B" and "B-1"); RTC Records, p. 139.

[7] RTC Records, p. 7.

[8] Exhibit E; RTC Records, pp. 140-142.

[9] Exhibit D; RTC Records, p. 9.

[10] Per Judge Renato D. Muñoz.

[11] Rollo, pp. 321-323.

[12] *People v. Dinamling*, G.R. No. 134605, 12 March 2002; *People v. Faco*, G.R. No. 115215, 16 September 1999, 314 SCRA 505.

[13] *People v. Robles*, G.R. No. 101335, 08 June 2000, 333 SCRA 107; *People v. Sumallo*, G.R. No. 116737, 24 May 1999, 307 SCRA 521.

[14] *People v. Corre, Jr.*, G.R. No. 137271, 15 August 2001, 363 SCRA 165.

[15] *People v. Garcia*, G.R. No. 132915, 06 August 2002; *People v. Hermoso*, G.R. No. 130590, 18 October 2000, 343 SCRA 567; *People v. Salonga*, G.R. No. 128647, 31 March 2000, 329 SCRA 468; *People v. Salas*, G.R. No. 115192, 07 March 2000, 327 SCRA 319; *People v. Dacibar*, G.R. No. 111286, 17 February 2000, 325 SCRA 725; *People v. Payot*, G.R. No. 119352, 08 June 1999, 308 SCRA 43.

[16] *People v. Mantung*, G.R. No. 130372, 20 July 1999, 310 SCRA 819; *Marquez v. CA*, G.R. No. 116689, 03 April 2000, 329 SCRA 567.

[17] *People v. Maglente*, G.R. No. 124559-66, 30 April 1999, 306 SCRA 546.

[18] *People v. Fabre*, G.R. No. 146697, 23 July 2002; *People v. Payot*, G.R. No. 119352, 08 June 1999, 308 SCRA 43.

[19] *People v. Gallarde*, G.R. No. 133025, 17 February 2000, 325 SCRA 835; *People v. Robles*, G.R. No. 101335, 08 June 2000, 333 SCRA 107; *People v. Ereño*, G.R. No. 124706, 22 February 2000, 326 SCRA 157; *People v. Gomez*, G.R. No. 131946-47, 08 February 2000, 325 SCRA 61; *People v. Silvano*, G.R. No. 127356, 29 June 1999, 309 SCRA 362.

[20] RTC Records, pp. 22-23.

[21] *People v. Gomez*, G.R. No. 131946-47, 08 February 2000, 325 SCRA 61.

[22] RTC Order dated 01 October 1991; RTC Records, p. 19.

[23] RTC Order dated 24 December 1991; RTC Records, p. 25.

[24] RTC Records, p. 26.

[25] RTC Order dated 13 February 1992; RTC Records, p. 27.

[26] RTC Records, pp. 29-35.

[27] RTC Order dated 04 March 1992; RTC Records, p. 55.

[28] RTC Records, p. 72.

[29] RTC Records, p. 155-156, 159-160.

[30] RTC Records, pp. 157-158.

[31] Order dated 09 July 1993; RTC Records, p. 161.

[32] *People v. Emoy*, G.R. No. 109760, 27 September 2000, 341 SCRA 178; *People v. Logarto*, G.R. No. 118828 and No. 119371, 29 February 2000, 326 SCRA 693; *People v. Gallarde*, G.R. No. 133025, 17 February 2000, 325 SCRA 835; *People v. Cabiles*, G.R. No. 112035, 16 January 1998, 284 SCRA 199.

[33] *People v. Marquez*, G.R. No. 136736, 11 April 2002.

[34] *Id.*

[35] RTC Records, p. 10.

[36] *Hernani Tancinco and Nelson Labitad*.

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