PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL BRAGAT Y ABAQUITA (A.K.A."TOTO"), ACCUSED-APPELLANT.

G.R. No. 134490. September 04, 2001

Ponente: VITUG, J.

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VITUG, J.:

Accused Joel Bragat y Abaquita was indicted before the Regional Trial Court, Branch 4, of Panabo, Davao, for the crime of robbery with homicide. The information, docketed Criminal Case No. 96-94 in that court, was to the following effect; viz:

> "That on or about April 21, 1996, in the Municipality of Kaputian, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, armed with a handgun, and by means of force and intimidation of persons, did then and there willfully, unlawfully and feloniously take and rob cash money in the amount of P200.00 belonging to the spouses Jose Mamac and Lucia Mamac, and on the occasion of the said robbery, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Jose Mamac y Garbo, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damage to the heirs of the victim."[1]

The accused, when arraigned, pled "not guilty" to the crime charged; trial thusly ensued.

The factual antecedents submitted to the trial court by the prosecution were summed up by the Office of the Solicitor General in the People's Brief.

> "In the evening of April 21, 1996, prosecution witness Lucia Mamac and her husband, Jose Mamac (herein deceased victim), were alone inside their house situated at Sitio Guadalupe, Barangay San Remigio, Kaputian, Province of Davao (TSN 12 December 1996, p. 6, Testimony of Lucia Mamac). Between the hours of 6:30 and 7:00 o'clock that same evening, Lucia and Jose were in the kitchen on the first floor of the house. Lucia was washing the dishes while Jose was slicing tobacco (pp. 7, 10, 22, id.). All of a sudden, Joel Bragat (herein appellant), who was wearing a black bath robe, entered the house through an open door in the kitchen, and immediately put off the light by stepping on the improvised kerosene lamps (pp. 7, 9, 16, 20, id.).
>
> "Thereafter, appellant pointed a flashlight on the eyes of Lucia and Jose, and then poked a gun at Jose, and at the same time announced a robbery, saying `way lihok, tulis ni' (`Don't move, this is a robbery') (pp, 9, 10, 20-21, id.). Appellant repeatedly told the couple to lie down on a prone position and demanded money from them. While lying down, Lucia heard her husband Jose who kept on uttering `Help me, Sing. Help me, Sing.' The couple pleaded to appellant, telling him that they did not have any money. But, appellant did not heed their cries, and instead he reiterated his demand of money. Lucia and Jose went to the second floor of the house to get the money kept inside a cabinet. Appellant followed them (pp. 9-11, id.). Lucia took the money worth P200.00 from a cabinet and gave it to appellant. Appellant grudgingly received the money, complaining `Is this the only proceeds of your sale of the copra?' (pp. 11-12, id.). Incidentally, Lucia and Jose Mamac were able to sell their copra in the amount of more or less P10,000.00 [a] few days before the incident, which, apparently, appellant knew about. Appellant again ordered the victims to lie down on the floor. Jose still kept on asking

> help from his wife. At this juncture, Lucia helped her husband by pulling the bathrobe at the back of appellant in order to separate him from Jose. Then, Lucia heard appellant fire three (3) successive shots at her husband who got hit on the right portion of the abdomen, right arm, and left leg. After the shooting, appellant went down the stairs and left, bringing with him the P200.00 he earlier got from the victims (pp. 12-14, id.).
>
> "On the other hand, Lucia tried to move her wounded husband, already unconscious and appeared to be dead at that time. She went downstairs to shout for help from their neighbors. Some neighbors came to help but her husband was already dead. So, the neighbors went to the police authorities to report the incident (pp. 14-15, id.).
>
> "The post-mortem examination conducted on the body of victim Jose Mamac revealed that the immediate cause of his death was cardio-respiratory arrest due to hemorrhage or massive bleeding brought about by the three (3) gunshot wounds (TSN dated 12 February 1997, pp. 7-8, Testimony of Dr. Carlos Flores; Exhibit B, Certificate of Death)."[2]

The accused proffered the defense of denial and alibi; he contended that the evidence given by the prosecution was inadequate to satisfy the required proof of guilt beyond reasonable doubt.

After assessing the evidence submitted to it, the trial court gave a verdict of guilt in its decision of 02 April 1998; the court concluded:

> "WHEREFORE, the court finds the accused guilty beyond reasonable doubt of the crime charged and there being no aggravating nor mitigating circumstance to the commission thereof, said accused is hereby sentenced to suffer the penalty of reclusion perpetua and indemnify the next of kin of the victim in the amount of P50,000.00 as moral damages, P200.00 as actual damages, and P15,000.00 as attorney's fees, with subsidiary imprisonment in case of insolvency. No further costs."[3]

On 13 April 1998, the trial court issued an order deleting the subsidiary imprisonment imposed in its above sentence in view of paragraph 3 of Article 39[4] of the Revised Penal Code; hence:

> "WHEREFORE, the court finds the accused guilty beyond reasonable doubt of the crime charged and there being no aggravating nor mitigating circumstance to the commission thereof, said accused is hereby sentenced to suffer the penalty of reclusion perpetua and indemnify the next of kin of the victim in the amount of P50,000.00 as moral damages, P200.00 as actual damages and P15,000.00 as attorney's fees. No further costs."[5]

Assailing his conviction, appellant in the instant appeal would now claim that -

> "1. The court a quo gravely erred in giving weight and credence to the testimony of alleged lone eyewitness Lucia Mamac.
>
> "2. The court a quo erred in finding accused-appellant guilty of the crime charged despite failure of the prosecution to prove positive identification."[6]

Pointed out by appellant were supposed inconsistencies in the eyewitness account of Lucia Mamac. Initially, according to appellant, Lucia claimed that as the malefactor had entered the house, he immediately put off the lamp; on cross-examination, however, she said that before extinguishing the light, the malefactor first focused a flashlight and poked a gun. Lucia's failure to mention the "flashlight" in her direct examination, he averred, was a fatal omission in her testimony.

The asseveration is hardly persuasive.

In countless instances, the Court has counseled that minor lapses in the testimony of a witness are to be expected when the person is made to recount in detail a traumatic experience.[7] Quite often, the most candid witnesses

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make mistakes and fall into confused and inconsistent statements[8] but, as long as the mass of testimony jibes on material points, slight clashing statements dilute neither their credibility nor the truthfulness of the testimony.[9]

The Court sees no cogent reasons to doubt the identification unhesitatingly made by Lucia of the accused. Indeed, the evident effort to mislead her on cross-examination has but provided the prosecution with a rare opportunity to elicit added details for a positive identification. Verily, the most natural reaction of victims of criminal violence would be to strive to see the looks and the faces of the malefactors.[10] The stressful condition of the witness, not infrequently, can even serve to be a catalyst to memory.[11] Lucia could not have erred in identifying Bragat as her husband's killer. No ill-motive is shown that could have urged her to falsely point an accusing finger at the accused.[12] In People vs. Penillos,[13] the Court has observed that an illumination produced by kerosene lamps (gasera) is sufficient to permit identification of persons. Where conditions of visibility are favorable, coupled with the fact that the eyewitness does not appear to be biased, the assertion on the identity of the malefactor can very well be accepted.[14] The courts do take judicial notice that people generally know one another quite well in the barrios.[15]

It was not inapt at all for the court a quo to give this observation -

> "x x x Her identification of the accused as the perpetrator of the crime is unassailable; she knows the accused because he is a co-resident of the same barangay; she knows the accused because she knows even his wife Tessie and the latter's mother is even her `comare;' she knows the accused because 3 to 4 weeks before the incident said accused came to her at her house to ask for herbal medicine (matan-og leaves) to treat his baby; she knows the accused because she saw him, by the light of kerosene lamps, enter her dwelling in the fateful night of April 21, 1996, announce a hold-up, poke a gun, heard him order them to lie down, demand money and to whom she gave P200.00 and not satisfied, demanded for more money and in the course of the hold-up, also saw and hear him fire three gunshots to her husband which caused the latter's death."[16]

Appellant broadly assails the findings of fact made by the trial court. It is a vain proposition. Engraved in our jurisprudence is the doctrine that findings of fact of the trial court are entitled to great weight on appeal. The matter of assigning values to the declarations given at the stand by a witness is best performed by the trial judge who, unlike appellate magistrates, can gauge such testimony in the light of the declarant's demeanor, conduct and attitude at the trial.[17]

The narration made by Lucia was straightforward.

> "Court:
>
> "Q
>
> Who is this Joel Bragat that entered your house?
>
> "A
>
> He is a long time acquaintance for he is also a resident in our barangay.
>
> "Atty. Sunga:
>
> "Q
>
> If the said Joel Bragat, the accused in this case, is in court, will you please identify him?
>
> (Witness pointing to a person and when asked of his name answered Joel Bragat).
>
> "x x x x x x x x x
>
> "Q

Since you said that your door was opened when he arrived, who first saw him when he arrived you or your husband on the night of April 21, 1996?

"A

I was the one who first saw him.

"Q

Why? Did you have a light inside your house?

"A

Yes, there were two improvised lamps.

"x x x x x x x x x

"Q

Now, were you able to recognize immediately the accused when he entered your house?

"A

Yes.

"Q

What was his attire when you saw him upon entering your door?

"A

He was wearing a bath robe.

"Q

What color was the bath robe?

"A

It was black because it was nighttime as I saw him and he immediately put off the lamp.

"Q

You mean, when he entered the house he went directly to the lamp and put off the lamp?

"A

Yes and he told us `way liho, tulis ni' and he poked the gun at my husband.

"Q

When he poked the gun at your husband, did he say anything?

"A

He did not say anything.

"Q

What did he do after pointing to your husband and you his gun and after he put off the lamps?

"A

He kept on telling us to drop down.

"Q

Aside from the gun he used on you which you saw, was there anything else that he brought with him?

"A

I do not know.

"Q

In your affidavit, you have mentioned that he was also armed with a flashlight, can you recall that, Mrs. Witness?

"A

Yes, I remembered that he was [holding] a flashlight and he poked it on our eyes and at the same time poking a gun to us.

"Q

You also mentioned in your affidavit that when he pointed the gun at you and a flashlight towards your eyes he also said `tulis ni.' That appears in paragraph 5 of your affidavit, do you recall having said that he told you `tulis ni' (this is a hold up)?

"A

Yes.

"Q

After he ordered you to lie down on a prone position?

"A

He told us `hapa, kay tulis ni.'

"Q

After saying that, what else did he say?

"A

While both of us were lying down on prone position as ordered by him, I heard my husband saying `help me Sing, help me Sing.'

"x x x x x x x x x

"Q

When he demanded money from you, what, if any, did you do together with your husband?

"A

We pleaded and told him we don't have money.

"Q

What did the accused say to that remark of yours?

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"A

He did not say anything.

"Q

In your affidavit you stated that he ordered you to go upstairs to get the money, do you remember that?

"A

Yes.

"Q

Did he follow you upstairs when after ordering you to go upstairs to get your money?

"A

Yes.

"Q

What was the first thing he did to you and your husband when you went upstairs to get your money?

"A

Again, he ordered us to lie down in a prone position.

"Q

After that, what happened after you were lying down in a prone position?

"A

This is what I can remember that when my husband said `help me Sing, help me Sing.' I immediately embraced him and held his neck and shouted for help to our neighbors. He was holding the neck of the accused because it was very dark.

"Q

Again, in your affidavit you have stated in paragraph 5 thereof that before you came to the aid of your husband, you were first ordered to get the money and in fact you proffered the money that he demanded?

"A

Yes.

"Q

How much money did you keep from the `aparador'?

"A

P200.00

"Q

Did you give that money to the accused who was demanding?

"A

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Yes.

"Q

After you gave that to him, did he again order you to lie in a prone position?

"A

Yes.

"Q

Did he receive the money?

"A

Yes.

"x x x x x x x x x

"Q

What happened when you tried to help your husband by pulling the collar at the back or the bath robe of the accused, what happened?

"A

I heard a shot.

"Q

How many shots did you hear?

"A

Three (3) shots.

"Q

Did you come to know to whom these shots were directed?

"A

My husband.

"x x x x x x x x x

"Q

How did the accused put off these lamps of yours after he entered the house?

(Witness demonstrating by using her leg stepping on the lamps).

"Q

These lamps of yours are lighted by petroleum?

"A

Yes."[18]

On cross-examination, the eyewitness, still unshaken, testified in no uncertain terms.

"Q

Madam Witness, you alleged that when the accused entered your house he immediately stepped to the small kerosene lamps you have, correct?

"A

Not yet because when he entered the house, he immediately pointed the flashlight on our eyes and pointed a gun to us saying this is a hold up.

"Q

When he pointed the flashlight to your eyes, it seems that you became blinded, correct?

"A

Yes, but I saw him when he entered our house.

"Q

Without the two improvised lamps in your house, it would be very dark, correct?

"A

Yes.

"Q

After he pointed the flashlight to your eyes, you could not anymore see him, correct?

"x x x x x x x x x

"A

No, I saw him vividly when he entered our house.

"x x x x x x x x x

"Q

How many seconds from the time he entered your house until he pointed the flashlight to you?

"x x x x x x x x x

"A

When he reached us while we were sitting in the kitchen and about to smoke that was the time he [focused the] flashlight to our eyes.

"Q

In other words, when he entered your house he immediately went near you and pointed the flashlight at your eyes?

"A

Yes. When he pointed his flashlight to us, it was on the same time when he poked his gun to us.

"Q

How far in meters were you seated from the door where the alleged accused entered?

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"A

About one (1) fathom.

"Q

In other words, Mrs. Witness, if the door and the place where you were seated is only one fathom, it is very near?

"A

Yes.

"Q

And after he allegedly pointed that flashlight in your eyes, he immediately put off the two lamps, correct?

"A

Before he pointed his flashlight to us it was still lighted.

"Q

After he pointed the flashlight to your eyes, he immediately put off the lamps, correct?

"A

Yes.

"Q

And after the two lamps were put off, it became totally dark, correct?

"x x x x x x x x x

"A

Yes.

"Q

So much so that you could not anymore see the body of the alleged intruder?

"A

I could see him clearly because by the time he did point his flashlight to my husband, [he] transferred it to me, I could see him. There was light from the flashlight and I saw and recognized Joel Bragat.

"Q

But, of course, the flashlight was not pointed at him but it was pointed to you and to your husband?

"A

We were on a prone position but I was still watching him and I knew that he is Joel Bragat upon his entrance in our house."[19]

Positive identification, when categorical and consistent, prevails over denial which is negative and self-serving evidence.[20] Likewise hardly deserving of weight, unless when fully substantiated by evidence, is alibi. For this defense to be seriously considered, strong proof must be presented to show that the accused is actually at some

other place where it would be physically impossible for him to be at the locus criminis or its immediate vicinity at the time of its commission.[21]

Quite unfortunately for appellant, he failed to successfully establish his whereabouts on the night of 21 April 1996. While he would insist having visited his brother in Baba, Agusan del Sur, on 13 April 1996, he, however, apparently left Baba on 19 April 1996 and returned to Kaputian. His claim of being in jail during the entire day of 21 April 1996 was not properly corroborated.

The trial court, in the view of this Court, has correctly adjudged Joel Bragat guilty of robbery with homicide. The essential elements of this special complex crime, here proven to be extant, are (1) the taking of personal property with the use of violence or intimidation; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or animus lucrandi; and (4) on the occasion of the robbery or by reason thereof, the crime of homicide is committed.

Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor. In robbery with homicide, it is an aggravating circumstance when the author thereof could have accomplished the heinous deed without having to violate the sanctity of privacy that the law accords to the human abode.[22] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[23] To be considered, however, "dwelling," like any other aggravating circumstance, must be alleged in the complaint or information.

The Revised Rules of Criminal Procedure, rendered effective on 01 December 2000, requires aggravating circumstances, whether ordinary or qualifying, to be stated in the complaint or information. Sections 8 and 9 of Rule 110 of the Rules of Court now provide:

> "Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
>
> "Sec. 9. Cause of the accusations. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment."

Courts are precluded, without an appropriate allegation in the complaint or information, from considering the attendance of "qualifying or aggravating circumstances" in their judgment. Not having been alleged in the case at bar, "dwelling" cannot be held to aggravate the offense charged.

Article 294 of the Revised Penal Code prescribes the penalty of reclusion perpetua to death when by reason or on occasion of the robbery the crime of homicide shall have been committed. The penalty of reclusion perpetua to death is composed of two indivisible penalties. Applying Article 63 of the same Code, the penalty that can be imposed in the case at bar is reclusion perpetua, the lesser penalty, absent either a mitigating circumstance or an aggravating circumstance that can be taken into account.

Following prevailing jurisprudence, a civil indemnity in the amount of P50,000.00 should be awarded in favor of the heirs of the victim Jose Mamac, proof of the fact of death and the culpability of the accused being enough to warrant it.[24] The award of P200.00 by way of actual damages, the amount given to and demanded by appellant, is likewise in order. The grant of moral damages by the court a quo, not being here disputed, will not be disturbed.

WHEREFORE, the judgment of the Regional Trial Court of Panabo, Davao, finding appellant Joel Bragat y Abaquita guilty of robbery with homicide beyond reasonable doubt and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED. Appellant is ordered to pay the heirs of the victim Jose Mamac, in addition to the actual and moral damages already awarded by the trial court, the amount of ₱50,000.00 by way of civil indemnity. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, p. 5.

[2] Rollo, pp. 94-96.

[3] Rollo, p. 74.

[4] 3. When the principal penalty imposed is higher than prision correccional no subsidiary imprisonment shall be imposed upon the culprit.

[5] Rollo, p. 75.

[6] Rollo, p. 58.

[7] People vs. Sta. Ana, 291 SCRA 188.

[8] People vs. Mendoza, 236 SCRA 666.

[9] Antonio vs. Court of Appeals, 273 SCRA 328.

[10] People vs. Dolar, 231 SCRA 414.

[11] People vs. De la Cruz, 304 SCRA 702.

[12] People vs. Amaro, 235 SCRA 8.

[13] 205 SCRA 546.

[14] People vs. Bongadillo, 234 SCRA 233.

[15] People vs. Loste, 210 SCRA 614.

[16] Rollo, pp. 16-17.

[17] People vs. Ebrada, 296 SCRA 353.

[18] TSN, 12 December 1996, pp. 7-16.

[19] Ibid., pp. 20-22.

[20] People vs. Caisip, 290 SCRA 451.

[21] People vs. Sta. Ana, 291 SCRA 188.

[22] People vs. Mesias, 199 SCRA 20.

[23] People vs. Paraiso, 319 SCRA 422.

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[24] People vs. Obello, 284 SCRA 79; People vs. Paraiso, 319 SCRA 422.

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