

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD RAMIREZ Y ESPLANA, ACCUSED-APPELLANT.

G.R. No. 136094. April 20, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For automatic review is the decision[1] of the Regional Trial Court of Makati City, Branch 66, in Criminal Case No. 98-1541, convicting accused-appellant of the crime of robbery with homicide and sentencing him to suffer the supreme penalty of death.

The information against accused-appellant reads:

That on or about the 8th day of September, 1997 in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and violence and with intent of (sic) gain and without the consent of the owners thereof, did then and there wilfully, unlawfully and feloniously take, steal and divest from MYRA PASOBILLO, SONIA DAGDAGAN and another unknown female companion undetermined amount/value of cash money and jewelries (sic), to the damage and prejudice of said owners; and that on the occasion or by reason of said robbery the accused did then and there wilfully, unlawfully and feloniously shoot with a handgun said Myra Pasobillo in the back thereby causing serious wound on the latter which directly caused her death.

CONTRARY TO LAW.[2]

Arraigned on July 9, 1998, accused-appellant, assisted by counsel de officio, entered a negative plea.[3] At the trial, the prosecution presented Elmer Morales, PO2 Rio Sacliwan Bucalan, and Felicidad Manrique as witnesses.

The facts, as synthesized by the Solicitor General in the Appellee's Brief, are as follows:

On September 8, 1997, around 11:00 in the evening, Elmer Morales, Myra Pasobillo, Sonia Dagdagan and a certain Nida were walking along Guadalupe Bridge in Makati City. They came from Mandaluyong City and were on their way home to Makati City. As they were about to cross the bridge, appellant called them. Thinking that he was an acquaintance, Elmer and the group stopped. Appellant then casually walked and approached them (TSN, August 6, 1998, pp. 6-7).

When only about an arm's length away, appellant suddenly pulled out his gun, leveled it towards the group and announced a hold-up. Stunned and trembling, everyone could do nothing but watch appellant search and divest them of their money and pieces of jewelry.

After ensuring that nothing of value was left, appellant told his victims to slowly and silently walk away from the bridge. And so they did (Ibid., pp. 8-10).

But before the group could move any farther, Nida turned hysterical and repeatedly screamed for help. Irrked and alarmed, appellant fired upon the group and ran away immediately. The shot hit Myra on the back which sent her slumping to the ground (Ibid., p. 11).

Hoping to save Myra, Elmer and Sonia rushed her to the Ospital ng Makati. However, she did not survive the gunshot wound. She was declared dead on arrival (Ibid.).

The incident was reported to SPO2 Rio Bucalan of the Makati Police who immediately proceeded to the hospital. There, Elmer Morales narrated what happened including appellant's description. As there were several warrants of arrest standing against appellant, he was immediately arrested. At the Makati City Hall, Elmer Morales positively identified appellant as the same person who robbed them and killed Myra Pasobillo (TSN, August 20, 1998, pp. 70-87).

Medico-legal findings disclosed that Myra died of a gunshot wound on the back (Record, p. 11).[4]

Accused-appellant vehemently denied the charge against him, claiming that at around 11:00 o'clock in the evening of September 8, 1997, he was in their residence together with relatives at 8641 San Jose Street, Guadalupe, Makati City.[5] His story was corroborated by his mother, Normita Ramirez, his live-in partner, Imelda Taplacido and his sister Araceli Castro, who all claimed that in the evening of September 8, 1997, accused-appellant arrived from work at around 6:00 o'clock in the evening, went to bed at about 9:00 o'clock, and never left the house till the following morning.[6] After trial, the court rendered a judgment of conviction, the dispositive portion of which states:

IN VIEW OF THE FOREGOING, the Court finds Arnold Ramirez y Esplana guilty beyond reasonable doubt of robbery with homicide and taking into consideration the aggravating circumstances of treachery and nighttime, hereby sentences Arnold Ramirez y Esplana to suffer the penalty of death and to pay the heirs of Myra Pasobillo the sum of P50,000.00 as moral damages, the sum of P67,742.30 as liquidated damages and the sum of One Peso (P1.00) to the heirs of Myra Pasobillo and Sonia Dagdagan.

Let the entire records of this case be forwarded to the Supreme Court for review.

SO ORDERED.[7]

In this automatic review, accused-appellant contends that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT HAS BEEN POSITIVELY IDENTIFIED.

III

THE COURT A QUO GRAVELY ERRED IN AWARDING MORAL DAMAGES AND LIQUIDATED DAMAGES TO THE HEIRS OF MYRA PASOBILLO AND SONIA DAGDAGAN.[8]

In sum, accused-appellant disputes his positive identification by defense witness Elmer Morales as the author of the malefaction sued upon. As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected on the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch - these can reveal if the witness is telling the truth or lying through his teeth.[9] In the case at bar, the court a quo, which had the opportunity to observe the witnesses, gave full credence

to the declarations of the prosecution eyewitness, Elmer Morales. Time and again, this Court has ruled that findings of the trial court on matters of credibility are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[10] As accused-appellant proffered no cogent facts or circumstances that would convince this Court to depart from this settled doctrine, affirmance of the findings of the trial court is in order.

The Court has carefully reviewed the testimony of Elmer Morales and found his positive identification of accused-appellant to be straightforward and worthy of belief. In fact, right after the incident when he was investigated by PO2 Bucalan at the Ospital ng Makati, Elmer Morales was able to describe accused-appellant as having "white complexion, good-looking, little curly hair." [11] This description fitted accused-appellant, who happened to have several standing warrants of arrest for other offenses. When shown a picture of accused-appellant three days after the incident, Morales readily identified him as the culprit.[12] He affirmed said identification in a police line-up at the Makati City Jail where accused-appellant, together with nine others, were presented to him.[13] On cross-examination, Morales remained steadfast and unyielding as to the surrounding circumstances that enabled him to remember the face of accused-appellant. Thus:

Atty. Odronia:

But you, you were not facing the holdupper when he allegedly pointed a gun to you, is that correct?

Witness:

No, sir, I was not facing him but I was on my side and I saw him.

Atty. Odronia:

So do you mean to tell this Honorable Court that the first time ... I withdraw that, Your Honor. You were ... your back ... you were not facing the holdupper allegedly pointing the gun at first to you?

Witness:

Yes, sir.

Atty. Odronia:

And that according to you he ordered you to move forward? Is that correct?

Witness:

He ordered me to step aside. "Patagilid."

Atty. Odronia:

Step aside. So when the holdupper allegedly ordered you to move in the vernacular, you mentioned "Patagilid," you were facing then the Pasig River, in the direction of Pasig?

Witness:

No sir, when I stepped aside I was facing the holdupper, sir.[14] xxx xxx xxx.

Atty. Odronia:

Where were your companions at that time? In what specific position of the bridge were your companions at that time?

Witness:

At the same place where we were held-up only that my companions were standing ahead of me.

Atty. Odronia:

Between your companions and you, who were nearest the place where the holdupper was?

Witness:

My three companions, sir.

xxx xxx xxx.

Atty. Odronia:

Who in particular among the three (3) was the nearest to the place where the holdupper was?

Witness:

Because they were standing side by side, it was Sonia...

Atty. Odronia:

My question is who were the nearest?

Witness:

It was Sonia Dagdagan. Si Sonia ang tinapatan.[15] xxx xxx xxx.

Atty. Odronia:

Who was beside Sonia?

Witness:

On her left side was Myra Pasobillo and on her right side was Nida.

Atty. Odronia:

How far was Sonia Dagdagan to the holdupper?

Witness:

Tutukan lang po, sir.

Atty. Odronia:

So when you mentioned "tutukan" can you approximate in inches how far is it?

Witness:

Twelve (12) inches, more or less.

Atty. Odronia:

How about the distance of Myra Pasobillo in relation to Sonia Dagdagan, the person nearest to the holdupper?
How far?

Witness:

Almost the same in my estimate because they were standing side by side.

Atty. Odronia:

So you mean to tell us that Nida who among the three (3) was the farthest to the holdupper was likewise approximately 12 inches far from Myra Pasobillo?

Witness:

Yes, because they were standing side by side.

Atty. Odronia:

And how far were you in relation to the place where Nida was?

Witness:

One (1) arm's length, sir, away from Nida.

Atty. Odronia:

Is it not, Mr. Witness, ... you mentioned Mr. Witness, that the holdupper pointed the gun first to you, is that correct?

Witness:

Yes, sir.

Atty. Odronia:

And the gun was pointed at you when you were not facing the holdupper?

Witness:

Yes, sir, when he first pointed a gun at me I was not facing him but later on I turned around.

Atty. Odronia:

So when you turned around, do you mean to tell this Honorable Court that the gun was alternately pointed to the four of you?

Witness:

Yes, sir.[16] xxx xxx xxx.

Atty. Odronia:

So throughout the time when you and your companions were allegedly held-up, your sight was focused on the gun which the holdupper was pointing alternately to the four of you for fear that at anytime he might squeeze the trigger and kill anyone of you?

Witness:

I was looking at his gun and his face.[17]

Moreover, this Court finds no doubt in the positive identification made by the prosecution eyewitness considering that the bridge where they were held up was illuminated by lights coming from the passing vehicles,[18] not to mention the fact that Morales had ample time to take a good look at and remember the face of accused-appellant. As testified to by Morales, it took around five minutes before accused-appellant was able to divest his companions of their jewelry because of the resistance put up by Sonia Dagdagan.[19] The fact that the place where the victims were accosted was illuminated by lights from the vehicles coming from behind them renders the positive identification of accused-appellant more reliable. Notably, Morales was facing accused-appellant, who was

alternately pointing his gun at Morales and his companions, thus giving Morales a full unobstructed view of accused-appellant's face and enabling him to commit it to memory. Visibility is indeed a vital factor in the determination of whether or not an eyewitness could have identified the perpetrator of a crime. However, it is settled that when conditions of visibility are favorable, and when the witnesses do not appear to be biased, their assertion as to the identity of the malefactor should normally be accepted. Illumination produced by a kerosene lamp or flashlight is sufficient to allow identification of persons. Wicklamps, flashlights, even moonlight or starlight may, in proper situations, be considered sufficient illumination, making the attack on the credibility of witnesses solely on that ground unmeritorious.[20]

In the case at bar, the defense has not shown any improper motive on the part of the prosecution eyewitness that would impel him to testify falsely against accused-appellant. Hence, the testimony of Elmer Morales is entitled to full faith and credit.[21]

The defense of alibi set up by accused-appellant cannot prevail over his positive identification by Elmer Morales as the culprit. Moreover, accused-appellant failed to prove the physical impossibility of his presence at the scene of the crime during the commission thereof, considering that accused-appellant's residence where he was allegedly sleeping at the time of the perpetration of the crime is only 150 meters from Guadalupe Bridge, the place where the crime was committed.[22] The rule is that, for alibi to prosper, it is not enough that the accused was somewhere else when the crime was committed, but he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[23] Failing to prove the physical impossibility required by law, accused-appellant's defense of alibi must fail.

In imposing the supreme penalty of death, the trial court appreciated the aggravating circumstances of nighttime and treachery which, however, were not alleged in the information. In *People v. Gano*,[24] it was held that pursuant to the amended provisions of Rule 110, Sections 8 and 9,[25] of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, aggravating as well as qualifying circumstances, affecting the commission of the crime, must be alleged in the information, otherwise, they cannot be considered against the accused even if proven at the trial. Being favorable to the accused, the foregoing rule should be applied retroactively in this case. Accordingly, the aggravating circumstances of nighttime and treachery should not be appreciated against accused-appellant as they were not alleged in the information filed against him.

Under Article 294, paragraph 1 of the Revised Penal Code, any person found 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. There being neither aggravating nor mitigating circumstance, the lesser penalty of reclusion perpetua should be imposed on accused-appellant.[26]

As to accused-appellant's civil liability, Article 100 of the Revised Penal Code provides: "Every person criminally liable for a felony is also civilly liable." In line with prevailing jurisprudence, accused-appellant is liable to indemnify the heirs of the deceased, Myra Pasobillo, the amount of P50,000.00 as indemnity *ex delicto*. [27]

On the other hand, this Court cannot sustain the trial court's award of P50,000.00 as moral damages, inasmuch as the prosecution did not adduce any evidence to substantiate the same.[28] Likewise, the award of One Peso to the heirs of Myra Pasobillo and Sonia Dagdagan is deleted for lack of basis. Finally, the award of P67,742.30 as actual damages for the expenses incurred in connection with the death of the victim, which the trial court erroneously denominated as "liquidated damages,"[29] should be reduced to P15,542.85, the total amount of hospital, funeral and burial expenses which were duly accounted for and documented by receipts.[30] We have

held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victim should be allowed.[31]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Makati City, Branch 66, in Criminal Case No. 98-1541, convicting accused-appellant Arnold Ramirez y Esplana of the crime of robbery with homicide, is AFFIRMED with the MODIFICATIONS that accused-appellant is sentenced to suffer the penalty of reclusion perpetua; and to indemnify the heirs of Myra Pasobillo the amount of P50,000.00 as death indemnity and P15,542.85 as actual damages. The awards of P1.00 to the heirs of Myra Pasobillo and Sonia Dagdagan, and of P50,000.00 as moral damages to the heirs of Myra Pasobillo, are deleted for lack of basis.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Mendoza, J., in the result.

Pardo, J., on sick leave.

[1] Penned by Judge Eriberto U. Rosario, Jr.

[2] Rollo, p. 6.

[3] Record, p. 31.

[4] Rollo, pp. 57-58.

[5] TSN, September 10, 1998, pp. 3-6.

[6] TSN, September 15, 1998, pp. 6-14; September 17, 1998, pp. 10-17.

[7] Rollo, p. 17.

[8] Ibid., pp. 29-30.

[9] *People v. Sanchez*, 302 SCRA 21, 45 [1999], citing *People v. Tacipit*, 242 SCRA 241 [1995]; *People v. Sarabia*, 266 SCRA 471 [1997]; *People v. Espinosa*, 180 SCRA 393 [1993].

[10] *People v. Jaberto*, 307 SCRA 93, 102 [1999], citing *People v. Oliano*, 287 SCRA 158 [1998]; *People v. Gaorana*, 289 SCRA 652 [1998]; *People v. Bersabe*, 289 SCRA 685 [1998]; *People v. Tulop*, 289 SCRA 316 [1998]; *People v. Castillo*, 289 SCRA 213 [1998]; *People v. Siguin*, 299 SCRA 124 [1998]; *People v. Sta. Ana*, 291 SCRA 188 [1998]; *People v. Villamor*, 284 SCRA 184 [1998]; *People v. Bahatan*, 285 SCRA 282 [1998].

[11] TSN, August 20, 1998, p. 59.

[12] Ibid., pp. 56-60.

[13] Id., pp. 53-54.

[14] Id., pp. 12-13.

[15] Id., pp. 18-20.

[16] Id., pp. 22-25.

[17] Id., p. 27.

[18] *Id.*, p. 5.

[19] *Id.*, p. 64.

[20] *People v. Adoviso*, 309 SCRA 1, 10-11 [1999], citing *People v. Cogonon*, 262 SCRA 693 [1996]; *People v. Fabrigas, Jr.*, 261 SCRA 436 [1996]; *People v. Penillos*, 205 SCRA 546 [1992]; *People v. Loste*, 210 SCRA 614 [1992]; *People v. Villaruel*, 261 SCRA 386 [1996].

[21] *People v. Estepano*, 307 SCRA 701, 707-708 [1999], citing *People v. Chavez*, 278 SCRA 230 [1997].

[22] TSN, September 10, 1998, p. 22.

[23] *People v. Alfeche*, 294 SCRA 352, 376 [1998], citing *People v. Penillos*, 205 SCRA 546 [1992]; *People v. Buka*, 205 SCRA 567 [1992]; *People v. Casinillo*, 213 SCRA 777 [1992]; *People v. Florida*, 214 SCRA 227 [1992].

[24] G.R. No. 134373, February 28, 2001.

[25] Section 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 the 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.

Section 9. Cause of the accusation. - 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 the 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.

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

[27] *People v. Cayago*, 312 SCRA 623, 638-639 [1999], citing *People v. Espanola*, 271 SCRA 689 [1997] and *People v. Ortega, Jr.*, 276 SCRA 166 [1997].

[28] *People v. Langres*, 316 SCRA 769, 788 [1999].

[29] "Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof." (Civil Code, Article 2226)

[30] Exhibits F-1 to F-4, F-6; Record, pp. 42-45, 47.

[31] *People v. Sanchez*, 308 SCRA 264, 287 [1999], citing *Fuertes, Jr. v. Court of Appeals*, 253 SCRA 430 [1996].

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