

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCOS MUCAM Y BANDAYANON AND ALDRIN TINOY Y BANTAYAN, ACCUSED MARCOS MUCAM Y BANDAYANON, APPELLANT.

G.R. No. 137276. July 13, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

As a rule, the trial court's assessment of the credibility of witnesses and their testimonies is binding on appellate courts, absent any fact or circumstance of weight and substance that may have been overlooked, misapprehended or misapplied. In this case, the court a quo committed serious lapses which warrant the acquittal of the appellant.

Statement of the Case

Marcos Mucam y Bandayanon appeals the September 18, 1998 Decision[1] of the Regional Trial Court of Davao City (Branch 15) in Criminal Case No. 35,357-95, in which he was convicted of robbery with homicide and sentenced to reclusion perpetua.

In an Amended[2] Information dated September 14, 1995, Prosecutor 1 Romeo C. Albarracin charged appellant and Aldrin Tinoy y Bantayan with robbery with homicide allegedly committed as follows:[3]

"That on or about April 8, 1995, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together and helping one another, armed with [a] cal. 38 revolver, with intent to gain, willfully, unlawfully and feloniously took, stole and carried away the amount of P105,000.00 belonging to Elmo Fernandez and after divesting the said amount on the occasion of the robbery, conspiring, confederating together and helping one another, with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and shot said Elmo Fernandez thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter."

During the arraignment on October 4, 1995, the Amended Information was read and translated into the Cebuano-Visayan dialect, with which the two accused were conversant. Assisted by Counsel Rufino Ferraris Jr., both pleaded not guilty.[4] Trial proceeded in due course. Thereafter, the court a quo rendered its Decision convicting herein appellant and acquitting Aldrin Tinoy. The dispositive portion of the Decision reads as follows:

"WHEREFORE, judgment is rendered as follows:

- 1) Aldrin Tinoy is acquitted since his guilt has not been proven [beyond] reasonable doubt. The City Jail Warden shall release Aldrin Tinoy unless [the latter] is facing other cases.
- 2) Marcos Mucam is hereby sentenced to reclusion perpetua; shall indemnify Vizmindia Fernandez, the widow, [o]ne [h]undred [t]housand [p]esos for the death of Elmo Fernandez and [e]ighteen [t]housand [p]esos for the burial and funeral expenses.
- 3) The instruments used in the commission of the crime are hereby forfeited in favor of the state.

4) The accused who had undergone preventive imprisonment shall be credited in the service of his sentence if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rule imposed upon a convicted prisoner under Article 29 of the Revised Penal Code as amended.

SO ORDERED."[5]

Hence, this appeal interposed by Marcos Mucam.[6]

The Facts

Version of the Prosecution

In its Brief,[7] the Office of the Solicitor General presents the following narration of facts:[8]

"On August 8, 1995, Elmo Fernandez boarded a tricycle in Buhangin bound for his workplace in Cabantuan,[9] Davao City.

"Earlier that morning, Fernandez, a sub-contractor with Villarosa Housing, met with Mrs. Imelda Villarosa. Mrs. Villarosa gave Fernandez P63,000.00 as wages for the workers of the Villarosa's housing project. Fernandez kept the money in his bag.

"The tricycle boarded by Fernandez was the type wherein the motorcycle is installed in the middle of the carriage instead of its side. It could seat ten passengers and among those was Abad Gille who sat beside the driver.

"A few minutes after the tricycle left Buhangin, one of the passengers seated at the rear announced a hold-up and ordered the driver to pull over. A commotion stirred as three men, among whom was accused-appellant Marcos Mucam y Bandayanon, tried to grab the bag from Fernandez. Fernandez refused to give the bag, pleading that it contain[ed] the wages of the workers. The plea of Fernandez, however, fell on deaf ears as he was shot in the head while the three men grabbed the bag and ran.

"Gille witnessed the robbery and killing by viewing them from the "front mirror of the tricycle." Elmo Fernandez died due to severe hemorrhage secondary to [the] gunshot wound. Three metallic fragments were recovered from his brain."

Version of the Defense

On the other hand, appellant presents in his Brief[10] the following version of the facts:

"The defense presented Genes Cahilog who testified that accused Tinoy was his housemate and that on April 8, 1995 at around 7:00-8:00 o'clock a.m., accused Tinoy was [in] their house, cooking food. He also testified that accused Tinoy stayed at home while he left at 9:00 o'clock a.m.

"The second witness presented was the accused-appellant himself, Marcos Mucam. On April 8, 1995, he was at the store of Lydia Pangandaman from 6:30 o'clock in the morning until 10:00 o'clock a.m. having drinks with Lydia and her husband. He also denied having any firearm. He also alleged that from the time he surrendered, he was continuously mauled by the police.

"Lydia Panga[n]daman corroborated the accused's alibi that he was at her store from 6:30 a.m. to 10:00 a.m. of April 8, 1995, having some drinks with her husband. x x x"[11]

Ruling of the Trial Court

In convicting appellant and acquitting Aldrin Tinoy, the trial court ratiocinated as follows:[12]

"x x x After hearing the witnesses and analyzing the exhibits and after considering the arguments of counsel, the court is satisfied:

1)

That on April 8, 1995 at about 7:00 A.M. Elmo Fernandez boarded a tricycle in Buhangin bound for Cabantian, carrying a bag containing P63,000 pesos which he got earlier that morning from Mrs. Imelda Villarosa

2)

That the P63,000 [was] the salary[y] of the laborers in a housing project in Cabantian

3)

That the victim sat on one of the seats behind the driver

4)

That Abad Gille also rode the tricycle and sat [o]n the front seat beside the driver

5)

That while the tricycle was running, one of the passengers seated at the back told the driver to stop the tricycle, saying "This is a holdup!"

6)

That Abad Gille managed to look at the scene at the back of the tricycle when the holdup was announced and clearly saw the incident

7)

That there was a commotion as the three grabbed the bag from the victim who refused to give it saying it [was] the salary of the laborers and there was [a] struggle for the bag

8)

That the victim was shot in the head and the three got the bag and ran away

9)

That Elmo Fernandez was brought to the hospital but died on arrival as evidenced by a necropsy report marked[,] leaving a grieving widow and 5 children

10)

That accused Mucam on April 9, 1995 invited Alvin Lumosad to drink saying he got a lot of money from a holdup

11)

That Alvin Lumosad met a [p]oliceman and by chance, the Buhangin robbery killing was mentioned and Alvin Lumosad said accused Mucam mentioned the holdup and had lots of money

12)

That the Sta. Ana Police Team went to the house of accused Mucam but was told Mucam left for his hometown Caraga

13)

That a [p]olice team with the help of the Caraga Police caught accused Mucam, Diuyan and the brother of

Mucam whom they brought to Davao City

14)

That the [p]olice went to a boarding [house] in Magallanes Street and caught Aldrin Tinoy who said he [was] not Jabillo Tinoy

15)

That despite his protest, Aldrin Tinoy was arrested and charged with this crime

1[6])

That Aldrin Tinoy is not the same person identified as Jabillo alias Rasboy. The defense of Mucam is based on denial and an alibi that he was drinking in Lydia Pangandaman's store on April 8, 1995 from 7:00 A.M. up to 10:00 A.M. However, eyewitness Abad Gille positively identified accused Mucam and Aldrin Tinoy as [among] the robbers.

"Denial is a weak defense when the prosecution's evidence is strong. Positive identification of the accused by prosecution witnesses as to his participation in the crime cannot be overcome by his denial. P v. Chaves 117 SCRA 221, P v. Mancio G.R. 93035-36 Jan. 24, 1992

"Alibi is the weakest of all defenses x x x [and] should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime. P v. Sambangan 125 SCRA 726, P v. Regala 127 SCRA 287

"The accused did not impute any malice [to] the policeman who testified against him[;] thus [the] `Police Officers' testimony as to the narration of [the] commission of [a] crime [was] credible. P v. Ganayon 121 SCRA 642. `Lack of motive to make fake accusations strengthens credibility of witnesses. P v. Salcedo 122 SCRA 54."

The Issues

Appellant submits for the consideration of this Court the following alleged errors:[13]

"I

The Court a quo erred in convicting the accused on the basis of the weakness of the defense evidence.

II

The lower court's decision [was] patently erroneous for it failed to explain the basis for its findings.

III

The court a quo erred in convicting the accused notwithstanding its failure to prove his guilt beyond reasonable doubt."

In the main, the Court will determine the sufficiency of the prosecution evidence.

The Court's Ruling

The appeal is meritorious.

Main Issue:

Sufficiency of Prosecution Evidence

In convicting appellant, the trial court relied mainly on two witnesses: Prosecution Eyewitness Abad Gille, who had identified appellant as one of the three malefactors; and Albin[14] Lumosad, who had allegedly been told by

appellant that the latter "got a lot of money from a holdup." [15] Ordinarily, the trial court's assessment of the credibility of witnesses and their testimonies is binding on appellate courts, absent any fact or circumstance of weight and substance that may have been overlooked, misapprehended or misapplied. [16] After examining the records of this case, the Court is convinced that the trial court had committed serious lapses in evaluating the evidence presented during the trial.

Abad Gille's Testimony

Abad Gille alleged that he was on board a tricycle, together with the victim, when the crime was committed. Because he was seated just beside the driver, he was able to witness, by looking at the front mirror, the incident that happened inside the vehicle. After someone announced a holdup, there was a commotion followed by a gunshot. He saw someone grab a bag from the victim, after which three men alighted from the tricycle and ran away. In open court, Gille identified appellant and Aldrin Tinoy as two of the culprits. Pertinent portions of his testimony are reproduced hereunder: [17]

"Q.

You said that you saw Elmo Fernandez at the tricycle[:] please explain at the tricycle?

A.

Both of us boarded the tricycle going to our workplace.

Q.

Where is that workplace that you are referring to?

A.

At Villa Park motor pool.

x x x x x x x x

Q.

Where were you seated?

A.

Just [at the] right side next to the driver.

Q.

What about Elmo Fernandez, where [was] he seated?

A.

At the back also at the right side.

ATTY. BASA:

Q.

While on board that tricycle and while going towards Villa [P]ark[,] what, if any, happened, Mr. Gille?

A.

One of the passengers flagged down the tricycle and told the driver to stop.

Q.

Then what happened after that?

A.

Then another passenger said x x x do not move this is [a] hold-up.

Q.

After the announcement was made `ayaw mog lihok kay holdap kini,' what happened after that?

A.

There was a commotion inside.

Q.

Inside what?

A.

Inside the tricycle.

Q.

What part of the tricycle, the front or back portion of the tricycle?

A.

At the back, sir.

Q.

You said that `Nagkagulo sa likod ng tricycle,' explain what do you mean by that?

A.

They started to grab the bag of Elmo Fernandez.

Q.

You said `they'[;] to whom are you referring x x x?

A.

The hold-uppers, sir.

Q.

How many were they?

A.

Three of them, sir.

Q.

Now you said that the bag of Elmo Fernandez was being grabbed by the hold-uppers, what, if any, did Elmo Fernandez do or say?

x x x x x x x x

A.

He beg[ged;], he said, `do not get this bag because this contains the salary of the workers'.

ATTY. BASA:

Q.

After Elmo Fernandez said that and pleaded to the hold-uppers not to take the bag because it contained the salary of the workers, what happened next?

A.

After [that], there was a shot fired.

Q.

You said that there was a shot, what kind of sound x x x [did you hear]?

A.

Sound of a gunfire.

ATTY. BASA:

Q.

After that gunshot that you heard, what transpired next?

A.

They got the bag.

Q.

Then after they got the bag?

A.

They ran away.

x x x x x x x x

Q.

You said that there were three hold-uppers that held-up the tricycle on April 8, 1995[;] could you recognize this hold-uppers who held-up the tricycle?

A.

Yes, sir.

Q.

Are they in court?

A.

Yes, sir.

Q.

Three of them?

A.

I only know two.

ATTY. BASA:

Q.

Who are they?

A.

(the witness pointed to two persons seated on the bench and when asked their names, one said he [was] Marcos Mucam and the other Aldrin Tinoy)"

The foregoing testimony of Abad Gille did not, however, establish with certainty that appellant was one of the three holdup men. Gille merely averred that appellant was one of the malefactors, but did not impute any specific act to him. He failed to identify who announced the holdup, who grabbed the bag, and who shot the victim. Verily, his testimony was bereft of any showing that appellant committed any act indicating participation in the criminal enterprise.

If at all, Gille merely established that appellant was inside the tricycle at the time. Mere presence, however, does not amount to conspiracy.[18] It must also be shown that the accused performed an overt act in furtherance of the conspiracy.[19] Indeed, it is axiomatic that conspiracy must be established beyond reasonable doubt.[20] It must be founded on facts, not on mere surmises or conjectures.

Furthermore, the witness himself admitted that he did not turn his head to look at the commotion at the back of the tricycle, but relied instead on the mirror.[21] Thus, according to him, he was able to see the incident. But his testimony was contrary to his earlier Sworn Statement, pertinent portions of which are reproduced hereunder:[22]

"That to my surpris[e] when a commotion inside the tricycle occurred and I [felt] as if a fierce struggle had happened, and at that juncture I heard a voice pleading for mercy not to get on what on [sic] him and I heard that he said in [V]isayan dialect "AYAW UG KUHA-A NI, KAY AKO NING PANUWELDO SA AKONG MGA TAMO," then after that a single gunburst erupted and as I looked back I saw three persons who quickly r[a]n away from us.

That before I forget, before the scuffle happened inside the tricycle I heard that one of them announce[d] a HOLD-UP saying in [V]isayan dialect ["JAYAM MO UG LIHOK KAY HOLD-UP NI";] for fear I did what they ordered, until I noticed that [a] grappling inside happened for I [felt] that the tricycle was swaying.

That as we [felt] that they were not around anymore, we immediately help[ed] the wounded person x x x.

That last April 22, 1995, I learned that the suspects [i]n robbing and killing ELMO FERNANDEZ were arrested by the members of Police Precinct No. 1 (Sta. Ana) and there as I went to see them I positively identified the two of the three who r[a]n after the incident through their faces as MARCOS MUCAM alias ALLAN and the other one as ALDRIN TINOY alias BEBOY."

The foregoing reveals that Gille did not see the commotion at the back of the tricycle; he did not see the victim plead with the holduppers; and he did not see who fired the gun. Rather, he merely felt a "fierce struggle" at the back and heard a plea for mercy, which was answered with a gunshot. Moreover, he and the others began to help the wounded only when "we f[elt] that [the robbers] were not around anymore." More significant, he was able to identify the appellant and the accused at the police station, because they were "two of the three who ran after the incident."

The lack of specific acts imputed to any of the three alleged robbers confirm that Gille did not witness the incident, but merely heard and felt the commotion at the back of the tricycle. Thus, he did not see appellant (or any of the other accused) grab the bag, fire the gun, or assist the malefactors. He merely saw the latter run away after the incident. To repeat, this act by itself did not prove that he was a conspirator. Verily, appellant's conduct may be explained by the natural tendency to run away from the source of one's fear.

Just as damning to the prosecution was the acquittal of Aldrin Tinoy, who had similarly been identified by Gille as one of the perpetrators. The trial court did not explain why it granted credence to Gille's identification of

appellant, but not of Aldrin. Indeed, we have examined the records, and we find no justification for such discrimination in the ruling.

The solicitor general argues that Gille's identification of Aldrin Tinoy was "less than categorical and positive" because his involvement was allegedly denied by appellant himself, who instead implicated one Rasboy Tinoy.[23] This argument is utterly bereft of merit because it misunderstands the context in which appellant allegedly implicated Rasboy. It overlooks the fact that the appellant made the assertion while under police custody, subject to physical violence, and without the assistance of counsel. It is scarcely necessary to point out that such statement deserves no consideration at all.[24]

Thus, we find no justification for the acceptance by the trial court of Gille's testimony in regard to appellant whom it convicted, but not in regard to Tinoy whom it acquitted. Under the circumstances, we hold that Gille's testimony did not prove the guilt of either Tinoy or Mucam.

Lumosad's Testimony

The conclusion of the trial court was based also on two crucial factual findings, viz:[25]

"10) That accused Mucam on April 9, 1995 invited Alvin Lumosad to drink saying he got a lot of money from a holdup

11) That Alvin Lumosad met [a] [p]oliceman and by chance, the Buhangin robbery killing was mentioned and Alvin Lumosad said accused Mucam mentioned the holdup and had lots of money"

These findings, however, are erroneous. First, Lumosad testified that he was invited to drink, not by Appellant Mucam, but by Rickylito Diuyan who allegedly admitted to him his participation in the crime.[26] There was no basis, therefore, for the crucial finding of the trial court that it was appellant himself who had admitted his role in the robbery.

Furthermore, no credence should be given to the testimony of Lumosad, in which he alleged that Diuyan told him that appellant had conspired in committing the crime. It was hearsay evidence insofar as it sought to prove that appellant participated in the crime.[27]

In any event, it should be observed that Diuyan was originally charged in this case, but his name was subsequently dropped by the prosecution because "complainant and witnesses did not name accused-movant as one of the authors of [the] crime for which he stands charged." [28]

Police Officer's Testimony

The trial court further held that the testimony of the police officer was credible, because appellant did not impute any malice to him.

It should be stressed that PO3 Ariel Embalsado, one of the policemen who arrested appellant, had no personal knowledge that the latter committed the crime. According to Embalsado, the police acted only on the information given to them by Lumosad.[29] But as discussed earlier, Lumosad himself had no personal knowledge that appellant was one of the malefactors, as the former merely received the information from one of the alleged robbers, Diuyan, who was however subsequently discharged by the prosecution. Thus, even assuming that the testimony of the police officer was credible, it did not contain anything that would implicate appellant in the crime.

Denial and Alibi

Denial, which was invoked by appellant, is a weak defense. Conviction, however, rests on the strength of the

prosecution's own evidence, never on the weakness or even absence of that for the defense.[30]

In the present case, none of the prosecution witnesses convincingly established that appellant was one of the malefactors. Once again, we stress that the prosecution had the burden of proof. This it failed to discharge. Accordingly, appellant must be acquitted.

WHEREFORE, the appeal is hereby GRANTED and the Decision of the court a quo REVERSED and VACATED. Appellant Marcos Mucam y Bandayanon is ACQUITTED on reasonable doubt. The director of the Bureau of Corrections is hereby directed to cause the release of appellant forthwith, unless the latter is being lawfully held for another cause; and to inform the Court of his release, or the reasons for his continued confinement, within ten days from notice. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Written by Judge Jesus V. Quitain.

[2] Under the amendment, Rickylito Diuyan y Cane was excluded as one of the accused.

[3] Rollo, p. 8; records, p. 28.

[4] Records, p. 30.

[5] Assailed Decision, p. 7; rollo, p. 26.

[6] The case was deemed submitted for resolution on May 24, 2000, upon receipt by this Court of the Manifestation of appellant that he would not file a reply brief. Rollo, pp. 98-99.

[7] Signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Carlos N. Ortega and Associate Sol. Norman R. Bueno.

[8] Appellee's Brief, pp. 3-4; rollo, pp. 88-89

[9] Spelled "Cabantian" in the RTC Decision.

[10] The Appellant's Brief was signed by Attys. Arceli A. Rubin, Amelia C. Garchitorena and Ferdinand C. Baylon of the Public Attorney's Office.

[11] Appellant's Brief, pp. 6-7; rollo, pp. 63-64.

[12] Assailed Decision, pp. 5-7; rollo, pp. 24-26..

[13] Appellant's Brief, pp. 1-2; rollo, pp. 58-59.

[14] Spelled "Alvin" in the TSNs.

[15] Assailed Decision, p. 6; rollo, p. 76.

[16] People v. Sumbillo, 271 SCRA 428, April 18, 1997; People v. Quinao, 269 SCRA 495, March 13, 1997; People v. Nuestro, 240 SCRA 221, January 18, 1995.

[17] TSN, July 16, 1996, pp. 5-10.

[18] People v. Campos, 202 SCRA 387, October 3, 1991; People v. Saavedra, 149 SCRA 610; May 18, 1987;

People v. Madera, 57 SCRA 349, May 31, 1974.

[19] People v. De Roxas, 241 SCRA 369, February 15, 1995.

[20] People v. Magallano, 266 SCRA 305, 314, January 16, 1997; People v. Albao, 287 SCRA 129, March 6, 1998; People v. Obello, 284 SCRA 79, January 14, 1998; People v. Sumalpong, 284 SCRA 464, January 20, 1998; People v. Timple, 237 SCRA 52, September 26, 1994; People v. Orehuela, 232 SCRA 82, 93, April 29, 1994; People v. Villagonzalo, 238 SCRA 215, 230-231, November 18, 1994; Fonacier v. Sandiganbayan, 238 SCRA 655, 695, December 5, 1994.

[21] During cross-examination, he testified that "[w]hen I saw their faces in the mirror, I was able to recognize them." TSN, July 16, 1996, p. 16.

[22] Records, p. 7.

[23] Appellee's Brief, p. 9; rollo, p. 94; citing appellant's testimony, TSN, pp. 128-129, June 4, 1997.

[24] People v. Deniega, 251 SCRA 626, December 29, 1995; People v. Pinlac, 165 SCRA 674, September 26, 1988;

[25] Assailed Decision, p. 6; rollo, p. 25.

[26] TSN, August 8, 1996, pp. 56-65.

[27] Section 36, Rule 130, Rules of Court.

[28] Prosecution's Omnibus Motion to Admit Amended Information and to Dismiss Case Against Rickylito Diuyan; records, p. 26.

[29] TSN, July 17, 1996, p. 27.

[30] People v. Llaguno, GR No. 91262, January 28, 1998; People v. Paguntalan, 242 SCRA 753, March 27, 1995.

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