PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO OLITA Y GALO, ACCUSED-APPELLANT.

G.R. No. 140347. August 09, 2001

Ponente: MELO, J.

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MELO, J.:

In an Information dated June 17, 1997, Rolando G. Olita was charged with the crime of Robbery with Homicide, thusly:

> That on or about the 7th day of June, 1997, in Quezon City, Philippines, the said accused, conspiring, confederating with three (3) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, armed with firearms with intent to gain and by means of force, violence and intimidation against persons, to wit: while said complainant Isagani Tongco and his security escort, Romeo A. Pacle, were waiting for a ride infront of Placido Del Mundo Elementary School located at Quirino Highway, Bgy. Talipapa, Quezon City, accused suddenly appeared and did then and there wilfully, unlawfully and feloniously take, steal and carry away cash money in the amount of P53,927.88, Philippine Currency, representing Meralco collections of Isagani Tongco against his will, and one .38 cal. Revolver with Serial Number 29945 worth P9,000.00, Philippine Currency, owned by the security agency where Romeo R. Pacle was employed, to the damage and prejudice of the said offended party in the amount aforementioned.
>
> That on the occasion of the said offense of robbery for the purpose of enabling the said accused to take, steal and carry away the aforesaid cash money and firearm and in pursuant to their conspiracy, the said accused with intent to kill and taking advantage of their superior strength, did then and there treacherously attack, assault and employ personal violence upon security escort, Romeo R. Pacle, by then and there shooting the latter several times with a gun thereby inflicting upon said Romeo R. Pacle mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said victim.
>
> CONTRARY TO LAW.
>
> (p. 4, Rollo.)

Upon arraignment, accused-appellant entered a plea of not guilty. Trial, thereafter, ensued.

The evidence for the prosecution was summarized by the trial court as follows:

> Isagani Tongco, 27 years sold, Meralco collector, and residing at 39 Libis, Pasong Tamo, Makati City, testified that he has been a collector of Meralco since November, 1995. On June 7, 1997, he was assigned at Talipapa, Quirino Highway, Quezon City. On that date, at about 11:30 in the morning, he was with civilian escort Romeo Pacle waiting for a ride after coming from Villa Sabina Subdivision where he collected about P57,000.00. While waiting for a ride at the Quirino Highway, after crossing the highway from the subdivision, a bus passed in front of the gate of the subdivision. After the bus left the area, two motorcycles with two passengers each came out from the subdivision. The motorcycles proceeded to their direction from across the street. They were then in front of the Placido del Mundo Elementary school. His escort warned him of the approaching motorcycles, but he could not run. He hid behind a plant box face down. The motorcycle riders

> fired shots at his escort. His escort fired back. He heard many gun shots. One of the motorcycle riders went down and took his belt bag containing his collection. When he looked at his escort after his bag was taken, he saw him lying on the ground. The robber who took his belt bag approached him while he was crouching behind a plant box and demanded that he surrender his belt bag. Fearing for his life, the robber being armed, he gave his belt bag containing his collection. He pointed to accused Olita during the trial as the person who took his belt bag. While the robbers were moving towards Mindanao Avenue, they passed by his escort. His escort fired at them. One of the robbers fell from the motorcycle. The driver went back towards his direction, but he was able to run away. He went to Solville Subdivision where he made a phone call to his office and reported the incident. He removed his uniform and returned to the place of the incident. He saw people boarding his escort to a tricycle. He was told that Olita was taken by his companions. His escort Romeo Pacle was taken to a hospital where he was declared dead on arrival. Accused Olita was taken to the East Avenue Medical Center where he identified said accused as one of the robbers.
>
> (pp. 1-2, Decision; pp. 39-40, Rollo.)

Accused-appellant denied responsibility and offered his own recollection of the incident. Accused-appellant admitted having been at the scene of the crime but not as one of the robbers. He remembered coming from Villa Sabina Subdivision trying to look for work. While waiting for a ride home he heard a commotion and gunshots although he was not aware what was going on at that time. He just realized that he was hit by a stray bullet at the left side of his hip. Thereafter, he was brought to the hospital, then to the police station, but he knew nothing of any reason why he was brought there. Later, he was informed that a case for robbery with homicide was filed against him.

On September 17, 1999, the trial court promulgated its judgment of conviction and accordingly disposed:

> WHEREFORE, premises considered judgment is hereby rendered finding the accused Rolando Olita y Calo guilty beyond reasonable doubt of the crime of robbery with homicide and hereby sentences him to suffer the penalty of reclusion perpetua and to indemnify the complainant Isagani Tongco the amount of P53,927.88 as actual damages, plus legal interest from June 7, 1997 and moral damages in the amount of P20,000.00, plus costs.
>
> Accused Rolando Olita is likewise ordered to indemnify the heirs of Romeo Pacle the amount of P50,000.00 as civil indemnity and P30,000.00 as moral damages, plus costs.
>
> SO ORDERED.
>
> (pp. 18-19, Rollo.)

Aggrieved, accused-appellant comes to this Court and pleads for acquittal. He posits that the trial court convicted him solely on the basis of the identification made by prosecution witness Isagani Tongco. On the contrary, accused-appellant asserts, there is no positive identification of him in view of the fact that Tongco testified he was able to look at the robber for only a second or two. Further, Tongco admitted that he had difficulty looking at accused-appellant because he was approached from behind when the belt bag containing his collections was taken from him.

The core issue raised by accused-appellant in his appeal is surely factual and involves nothing more than the credibility of prosecution witness Isagani Tongco. It is settled doctrine, however, that with respect to the issue of credibility of a witness, the Court has always accorded the highest degree of respect to the findings of the trial court (People vs. Unarce, 270 SCRA 756 [1997]), and absent strong reasons to the contrary, are not disturbed on appeal. Accused-appellant failed to show sufficient justification to warrant a reversal.

The main argument of accused-appellant hinges on his alleged doubtful identification by Tongco as one of the

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felons. Accused-appellant claims that he has not been positively identified considering that the testimony of Tongco contains so many inconsistencies rendering the identification uncertain and open to doubt. He claims that Tongco during the police investigation made reference to the shirt the assailant was wearing. But no such description was ever presented when Tongco gave his testimony in court. Accused-appellant, thus, believes that his conviction beyond reasonable doubt is unjustified, taking into account the unreliability of the evidence proffered by the prosecution.

Accused-appellant's bid for exoneration is for naught.

The credibility of a witness is not impaired where there is consistency in relating the principal occurrence and positive identification of accused-appellant (People vs. Monfero, 308 SCRA 396 [1999]). Inconsistency on minor details is insignificant. The probative value of testimonial evidence, particularly that which relates to the identity of the culprit, will not be diminished as long as the mass of testimony jibes on material points (People s. Bihison, 308 SCRA 510 [1997]).

In his direct testimony, principal prosecution witness Tongco categorically identified accused-appellant as one of the assailants, thusly:

> x x x
>
> Q
>
> Are you trying to say that the riders on the other motorcycle and the riders of that motorcycle who took your bag were both armed with the gun?
>
> A
>
> Yes, Sir.
>
> Q
>
> And both of them were firing at your escort?
>
> A
>
> Yes, Sir.
>
> Q
>
> Do you remember the faces of these persons who robbed you and shoot at your companion Bacle?
>
> A
>
> Yes, Sir.
>
> Q
>
> If they are inside the Courtroom will you be able to identify them?
>
> A
>
> Yes, Sir.
>
> Q
>
> Kindly look around and identify them?
>
> INTERPRETER

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Witness pointing to the one who identified himself as Rolando Olita.

(January 14, 1998, p. 8, tsn)

x x x

Q

Was your escort able to shoot them?

A

My escort was able to shoot them, even when he was already lying on the ground when the motorcycle passed by my escort, my escort was able to shoot them.

Q

And after your escort was able to shoot them what happened next?

A

One of them fell because he was hit when my escort shoot them and the driver of the motorcycle went back but I was already able to run away.

Q

Where did you proceed?

A

Solville.

COURT

Do you know who was hit by your escort?

A

Rolando Olita, who is present in Court.

(January 14, 1998, pp. 9-10, tsn))

On re-cross examination, Tongco showed nothing but consistency in his testimony. In a fortright manner, he told the Court:

Q

Mr. Witness, you are telling us that on a split seconds you can immediately recognize this face of Olita?

A

Yes, Sir.

Q

Did you see him shot Bacle?

A

Yes, Sir.

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Q

Now you are telling us that when you croached back you saw Bacle shooting?

A

Because while my face was down, I was facing Bacle.

Q

And you are also telling us that when you croached back you saw Bacle shooting also, am I correct?

A

Yes, Sir.

Q

And you are also telling us that when you saw Bacle shooting, you also looked at the portion who was shot?

Q

Because I actually saw him when he went near me and he was the same person who fell from the motorcycle.

Q

But you did not personally see by your two eyes that the shot fired by Bacle was the one who hit Olita, am I correct?

A

Yes, Sir.

Q

You only assumed because according to you he fell down, am I correct?

A

Yes, Sir.

Q

Now you are telling us that at that split seconds that you saw Olita even at the hospital you can recognize him?

A

Yes, Sir.

Q

You have a good memory?

A

Yes, Sir.

Q

Can you tell us what day was June 7, 1997?

A

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Saturday.

(tsn, January 14, 1998, pp. 22-23.)

Variations in the declaration of witnesses in respect of collateral or incidental matters do not impair the weight of his testimony, taken in its entirety, to the prominent facts, nor per se preclude the establishment of the crime and the positive identification of the malefactor (People vs. Mahinay, 304 SCRA 767 [1999]). Discrepancies should touch on significant facts which are crucial to the guilt or innocence of an accused (People vs. Maglente, 306 SCRA 546 [1999]). The alleged inconsistencies of Tongco raised by accused-appellant do not at all alter what had actually been established by his testimony during the trial, that is, accused-appellant with his companions shot to death victim Pacle, and accused-appellant, gun in hand, went near Tongco, and took the money.

No error or ill-motive has been shown which may somehow cast doubt on the veracity of the testimony of Isagani Tongco. His positive identification of accused-appellant as one of the perpetrators of the crime is categorical, consistent, and straightforward. Tongco pointed to accused-appellant as one of the robbers who shot the victim, as the one who pointed the gun at him and took the money from him, and as the one who was shot by the victim, causing him to fall from the motorcycle. This must prevail over accused-appellant's bare denial.

In robbery with homicide, the prosecution needs to prove only the following elements: (a) the taking of personal property with violence or intimidation against persons; (b) that the property taken belongs to another; (c) the taking was done with animus lucrandi; and (d) on the occasion of the robbery or by reason thereof homicide was committed (People vs. Sumallo, 307 SCRA 521 [1999]; People vs. Paraiso, 319 SCRA 422 [1999]).

In our view, the direct relation and intimate connection between robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time (People vs. Nevales, 266 SCRA 69, 594 [1997]), has been successfully proved by the prosecution. The evidence adduced in this case leads to the indubitable conclusion that accused-appellant should be held answerable for the crime of robbery with homicide under Article 294, No. 1, of the Revised Penal Code.

The Court, however, finds no basis from the record to justify the awards of moral damages in favor of the heirs of Romeo Pacle, and prosecution witness Isagani Tongco. Moral damages cannot be awarded in the absence of any factual basis (Brent Hospital, Inc. vs. NLRC, 292 SCRA 304 [1998]). There must be pleading and proof of moral suffering, mental anguish, fright, wounded feelings and similar injury (People vs. Aguilar, 349 SCRA 292 [1998]). Thus, the amounts of P20,00.00 and P30,000.00 as moral damages should be deleted. The award of actual damages of P27,000.00 as reimbursement for the expenses incurred for the wake, burial, and funeral expenses as supported by receipts, and the affirmance of the award of P53,927.88 representing the MERALCO collection in favor of Tongco are in order.

WHEREFORE, the decision appealed from convicting accused-appellant Rolando Olita for the crime of Robbery with Homicide and sentencing him to reclusion perpetua, and ordering him to pay the heirs of Romeo A. Pacle as civil indemnity the amount of P50,000.00 is hereby AFFIRMED. Accused-appellant is further ordered to pay the heirs of the victim P27,000.00, and the amount of P53,927.88 in favor of Isagani Tongco with legal interest from the finality of this decision, as actual damages. The awards of moral damages are deleted for lack of factual basis.

SO ORDERED.

Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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