

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILLIAM ANCHETA, EDGARDO AREOLA, ANTOS DACANAY, LITO DE LA CRUZ, FELIPE ULEP @ BOY ULEP AND ELY CALCALA, ACCUSED.

G.R. No. 143935. June 04, 2004

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal from the decision[1] dated October 16, 1998 of the Regional Trial Court of Cabanatuan City, Branch 30, convicting the appellant Felipe “Boy” Ulep of the crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua.

Appellant, together with William Ancheta, Edgardo “Liling” Areola, Antos Dacanay, Lito dela Cruz and Ely Calacala, was charged with the crime of robbery with multiple homicide and frustrated murder in an Information dated November 2, 1987:

That on or about the 20th day of March, 1987, at 12:00 o’clock to 1:00 o’clock in the afternoon, at Manggahan, Bicos, Rizal, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously, through force and intimidation upon persons, take, rob and carry away thirty (30) cavans of clean palay valued at P4,500.00 belonging to Alfredo Roca, to his damage and prejudice, and in order to successfully carry out the robbery, the above-named accused, pursuant to the same conspiracy, wilfully, unlawfully and feloniously, with evident premeditation and with treachery, and with intent to kill, fired their guns at Marjune Roca, which caused his death, shot at Benita Avendaño Roca and Febe Roca and hurled a grenade against them and both of them died as consequence of the wounds they sustained; and also fired upon Alfredo Roca with their firearms, thus performing all the acts of execution which would produce the crime of murder as a consequence but which, nevertheless, did not produce it by reason of the timely running for cover by the said Alfredo Roca.

That in the commission of the crime, the generic aggravating circumstances of treachery, disregard of the respect due the deceased Febe Roca and Benita Avendaño Roca on account of their age and sex and that the crime was committed by a band.

ALL CONTRARY TO LAW.[2]

All of the accused remain at large to this day except for appellant who was arrested on January 5, 1990. He pleaded not guilty during arraignment on January 25, 1990. In order to expedite the hearing of his case, appellant was granted a separate trial.

The prosecution presented Alfredo Roca, Virgilita Roca-Laureaga, Dr. Aurora Belsa and Emilio Roca as its witnesses. The prosecution anchored its case principally on the testimony of Alfredo Roca who saw how appellant and his companions robbed them of 35 sacks of palay after killing his son Marjun Roca, his wife Benita Roca and his mother Febe Roca.

Alfredo Roca testified that between 12:00 noon and 1:00 p.m. of March 20, 1987, he was in his farm in Manggahan, Rizal, Nueva Ecija to thresh palay. With him at that time were Marjun Roca, Benita Roca, Febe Roca and daughter Virgilita Roca-Laureaga. He, Benita and Febe were about to take their lunch inside his hut. Marjun and Virgilita were done eating and were standing outside. At this point, Alfredo noticed the arrival of an owner-type jeep with trailer which stopped at a spot not far from his hut. He recognized the occupants as accused Antos Dacanay, Edgardo “Liling” Areola, William Ancheta, Lito de la Cruz, Ely Calacala and appellant Felipe “Boy” Ulep who all alighted from the jeep. Dacanay, Areola and Ancheta stood on one side of the irrigation canal facing Marjun Roca who was standing on the other side. From a distance of 10 to 12 meters, Alfredo saw Dacanay suddenly pull out a gun and shoot Marjun on the head, causing the latter to fall to the ground. As he lay on the ground, Marjun was again shot, this time by Areola and Ancheta. Thereafter, Ulep, de la Cruz and Calacala started firing at Alfredo’s hut. Alfredo was not hit, however, because he was able to get out of the hut and dive into the irrigation canal in the nick of time. However, Benita and Febe were fatally hit by the initial volley of gunfire. The assailants fired at Alfredo in the canal but they did not hit him. Ancheta then hurled a grenade which exploded near the hut. When the group ran out of bullets, Alfredo emerged from the canal and hid inside his hut. He saw the group load onto the trailer 35 sacks of palay, each containing an average of 50 kilos valued at P4.50 per kilo. Alfredo owned the stolen palay. Appellant Ulep and his companions then boarded their jeep and left.

Virgilita Roca-Laureaga corroborated the eyewitness account of her father Alfredo Roca. She declared that, from a distance of 10 meters, she saw her brother Marjun fall to the ground after being shot by Dacanay. Following the grenade explosion, Areola aimed his gun at her and pulled the trigger but the gun did not fire because he had apparently run out of bullets. She also saw appellant Ulep fire his gun at her father’s hut.

Dr. Aurora Belsa, assistant provincial health officer of Rizal, Nueva Ecija, conducted the autopsy on the bodies of Marjun, Benita and Febe. Her report showed that: (1) Marjun sustained gunshot wounds in the head, stomach and chest; (2) Benita suffered gunshot wounds that punctured her small and large intestines and (3) Febe’s gunshot wounds in her chest damaged her lungs, heart and liver. Dr. Belsa declared that all the gunshot wounds sustained by the victims were fatal, causing their immediate death.

Emilio Roca, 81 years old and husband of Febe Roca, testified on the civil aspect of the case. He stated that, as a result of the death of Febe, Marjun and Benita, the family incurred expenses for the wake and funeral in the amount of P85,000. Likewise, the death of his wife, sister-in-law and grandson caused him to suffer a fit of depression. He lived in fear and was forced to sell his house. He transferred residence because the perpetrators might return to kill him.

The defense had a different story.

Appellant Ulep, a cogon-gatherer in the farm of Edgardo Areola, alleged that at around 10:30 a.m. on March 20, 1987, he went to Areola’s farm to check whether the palay crops had adequate water. The farm was located just beside Alfredo Roca’s. When he saw that the crops were almost withered, appellant diverted the flow of water from Alfredo’s farm to that of Areola’s. While he was beside the irrigation ditch, he noticed 10 male strangers in the vicinity of Alfredo’s hut. He saw Alfredo attempting to throw a grenade at the other side of the canal but two women prevented him from doing so by embracing him. As a result of the struggle, Alfredo dropped the grenade. Whereupon Alfredo immediately jumped into the irrigation canal to take cover. The grenade then exploded. He never saw his co-accused in the vicinity nor did he hear any gunshots. After witnessing these events, appellant walked away and continued irrigating Areola’s farm.

At about 1:00 p.m., he had lunch in the house of his in-laws in Bicos, Rizal, Nueva Ecija and returned to the farm at 2:00 p.m. He worked until 5:00 p.m. and spent the night in the house of his in-laws. The next morning, he went

home to Villa Paraiso, Rizal, Nueva Ecija.

Federico Catalan, appellant's neighbor and a barangay captain, testified that at around 11:00 a.m. on March 20, 1987, he went to his farm which was about 100 meters away from Edgardo Areola's farm. Between 12:00 noon and 12:30 p.m., he saw appellant walking towards the irrigation canal and joined him to go there. At 1:00 p.m., they both went home to eat lunch and later returned to continue irrigating their farms up to 5:00 p.m. After work, they proceeded home to Villa Paraiso. He also testified that the wife of appellant was his niece. On cross-examination, he declared that he heard a gunshot at around 1:00 p.m.

On October 16, 1998, the trial court found appellant guilty beyond reasonable doubt of the crime of robbery with homicide. The dispositive portion of the decision read:

WHEREFORE, in view of the foregoing consideration and finding that the accused, FELIPE ULEP, is guilty of the special complex crime of ROBBERY WITH HOMICIDE, he is hereby sentenced to suffer imprisonment of RECLUSION PERPETUA; to indemnify the heirs of Marjun Roca, Benita Avendaño-Roca and Febe Roca P50,000.00 each for their deaths; to pay the sum of P50,000.00 for expenses incurred for the burial of Marjun Roca and Benita Avedaño-Roca; to pay the sum of P50,000.00 to Emilio Roca for burial expenses incurred; and to pay the heirs of Marjun Roca, Benita Avendaño-Roca and Febe Roca, P50,000.00 each by way of moral damages; to pay Alfredo Roca the sum of P7,877.00 for the 35 cavans of palay taken on the occasion of the robbery; and to pay the cost of this suit.

SO ORDERED.[3]

Thus, the instant appeal based on the following assignments of error:

I

THE COURT A QUO GRAVELY ERRED IN ADMITTING AND GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES DESPITE THE FAILURE OF THE PROSECUTION TO MAKE A FORMAL OFFER BEFORE THEY (WITNESSES) TESTIFIED.

II

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

III

THE COURT A QUO ERRED IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.[4]

In the first assignment of error, appellant alleges that the trial court erred in admitting as evidence the testimonies of the prosecution witnesses despite the failure of the prosecution to make a formal offer thereof in violation of Rule 132, Section 34 of the Rules of Court:

Sec. 34. Offer of Evidence The Court shall consider no evidence which has not been formally offered. xxx.

Corollarily, Section 35 of the same Rule 132 states that:

Sec. 35. When to make offer. As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

This formal offer of testimonial evidence is necessary in order to enable the court to rule intelligently on any objections to the questions asked. As a general rule, the proponent must show its relevance, materiality and competence. Where the proponent offers evidence deemed by counsel of the adverse party to be inadmissible for any reason, the latter has the right to object. But such right can be waived. Necessarily, the objection must be

made at the earliest possible time lest silence, when there is an opportunity to speak, operates as a waiver of the objection.[5]

The records show that the prosecution failed to formally offer the questioned testimonies of witnesses Alfredo Roca and Virgilita Roca-Laureaga. However, appellant waived this procedural error by failing to make a timely objection, i.e., when the ground for objection became reasonably apparent the moment said witnesses were called to testify without any prior offer having been made by the proponent. He even impliedly acquiesced to the materiality, competence and relevance of the prosecution witnesses' testimonies by cross-examining them. Since appellant failed to raise before the trial court the issue of the prosecution's failure to formally offer the testimonies of its witnesses, an objection on this score raised for the first time on appeal will not be entertained.

The second and third assignments of error, being interrelated, shall be discussed jointly.

Appellant assails the testimonies of prosecution witnesses, Alfredo and Virgilita, for being unbelievable and contrary to human nature. According to appellant, the natural tendency of a person being fired at is to take cover. Thus, it was inconceivable for Alfredo to still attempt to take a look at his assailants as he was at risk of being shot and killed. Besides, he could not have witnessed the killing of Marjun if he himself was being attacked at the same time.

It is apparent that appellant's defense rests mainly on the credibility of the prosecution witnesses. It is settled, however, that, when the issue of credibility of a witness is involved, the appellate courts will generally not disturb the findings of the trial court, considering that the latter was in a better position to resolve the matter, having heard the witness and observed his deportment during trial, unless certain facts of value were plainly ignored, which if considered might affect the result of the case.[6]

We find the trial court's evaluation of the facts and its conclusions fully supported by the evidence. Alfredo and Virgilita were straightforward and categorical in their narration of how appellant and his cohorts killed Marjun, Febe and Benita, and thereafter took 35 cavans of palay from their farm. Despite the grueling cross-examination, they never wavered in their testimonies regarding the details of the crime.

What made their testimonies even more credible was the fact that both Alfredo and Virgilita had no ill-motive to testify against appellant and his co-accused. It has been our consistent ruling that a witness' testimony deserves full faith and credit where there exists no evidence to show any improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense.[7] Further, the relationship of Alfredo and Virgilita to the victims all the more bolstered their credibility as they naturally wanted the real culprits to be punished. It would be unnatural for the relatives of the victims in search of justice to impute the crime to innocent persons and not those who were actually responsible therefor.

Appellant also points out the glaring inconsistencies in the testimonies of Alfredo and Virgilita. Appellant cites the testimony of Virgilita that the assailants waited for about five minutes after they stopped firing at Marjun before they started shooting at her father Alfredo. This, according to appellant, contradicted Alfredo's testimony that the perpetrators started firing at him immediately after Marjun was killed. Likewise, while Virgilita declared that Ancheta threw the grenade before her father jumped into the irrigation canal, Alfredo testified that Ancheta threw the grenade when he was already in the canal. Appellant insists that these inconsistencies tainted the credibility of both Alfredo and Virgilita.

The alleged discrepancies in the testimonies of Alfredo and Virgilita referred only to minor matters. There was no inconsistency as far as the principal occurrence and the positive identification of the assailants were concerned. Both Alfredo and Virgilita positively identified appellant's group as the persons who attacked and robbed them.

The court a quo correctly cited the case of *People vs. Fabros*[8] where we held that:

Inconsistencies among witnesses testifying on the same incident may be expected because different persons may have different impressions or recollections of the same incident. One may remember a detail more clearly than another. Witnesses may have seen that same detail from different angles or viewpoints. That same detail may be minimized by one but considered important by another. Nevertheless, these disparities do not necessarily taint the witnesses' credibility as long as their separate versions are substantially similar or agree on the material points. Thus, although it may be conceded that there are some variations in the separate testimonies xxx, these do not, in our view, detract from the integrity of their declarations. On the contrary, they represent a believable narration, made more so precisely because of their imperfections, of what actually happened. xxx

Moreover, the testimonies of Alfredo and Virgilita were supported by the medical findings of Dr. Belsa. The presence of gunshot wounds in the bodies of the victims materially corroborated the prosecution witnesses' testimonies that appellant and his co-accused repeatedly fired their guns at their hapless victims.

Appellant also interposes the defense of alibi. The time-tested rule is that alibi cannot prevail over the positive assertions of prosecution witnesses[9], more so in this case where appellant failed to prove that he was at another place at the time of the commission of the crime and that it was physically impossible for him to be at the crime scene. Appellant's claim that he was in Edgardo Areola's farm from 10:30 a.m. to 5:00 p.m. did not negate the possibility that he had gone to Alfredo's farm between 10:30 a.m. and 5:00 p.m. to commit the crime, considering the fact that Areola's farm was just beside Alfredo's farm, the scene of the crime.

It was, on the contrary, appellant's alibi that was considerably weakened by the major inconsistencies between his and Federico Catalan's supposedly corroborating testimony. While appellant testified that he did not hear any gunshot the entire day on March 20, 1987, Catalan contradicted this by attesting that he heard a gunshot at about 1:00 p.m. Likewise, appellant claimed that after working in the farm, he proceeded to the house of his in-laws in Bicos and only went home to Villa Paraiso the next day. Catalan, on the other hand, stated that after work that same day, they went home to Villa Paraiso together.

Appellant also contends that the prosecution failed to prove the special complex crime of robbery with homicide. He insists that there was no showing that the perpetrators killed the victims in order to steal the palay.

There is robbery with homicide when there is a direct relation or an intimate connection between the robbery and the killing, whether the killing takes place prior or subsequent to the robbery or whether both crimes are committed at the same time.[10]

Based on the facts established, the Court is convinced that the prosecution adequately proved the direct relation between the robbery and the killing. Immediately after shooting the victims, the assailants loaded the sacks of palay onto the trailer of the jeep. As they did so, no conversation took place and there was no hesitation on their part, indicating that they were proceeding from a common, preconceived plan. In fact, why would they bring a trailer if their only purpose was to massacre the Roca family? The series of overt acts executed by appellant and his companions, in their totality, showed that their intention was not only to kill but to rob as well. The group tried to kill all the members of the Roca family to ensure lack of resistance to their plan to take Alfredo's palay. Whenever homicide is perpetrated with the sole purpose of removing opposition to the robbery or suppressing evidence thereof, the crime committed is robbery with homicide.[11]

Further, in order to sustain a conviction for robbery with homicide, robbery must be proven as conclusively as the killing itself.[12] A review of the entire records of this case leads us to conclude that robbery was established beyond reasonable doubt. As long as the killing is perpetrated as a consequence or on the occasion of the robbery,

the special complex crime of robbery with homicide is committed.

Of the aggravating circumstances alleged in the information,[13] only treachery and band were established.

There was treachery as the events narrated by the eyewitnesses pointed to the fact that the victims could not have possibly been aware that they would be attacked by appellant and his companions. There was no opportunity for the victims to defend themselves as the assailants, suddenly and without provocation, almost simultaneously fired their guns at them. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[14]

We deem it necessary to reiterate the principle laid down by the Court en banc in the case of *People vs. Escote, Jr.*[15] on the issue of whether treachery may be appreciated in robbery with homicide which is classified as a crime against property. This Court held:

xxx (t)reachery is a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime. xxx

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In fine, in the application of treachery as a generic aggravating circumstance to robbery with homicide, the law looks at the constituent crime of homicide which is a crime against persons and not at the constituent crime of robbery which is a crime against property. Treachery is applied to the constituent crime of “homicide” and not to the constituent crime of “robbery” of the special complex crime of robbery with homicide.

The crime of robbery with homicide does not lose its classification as a crime against property or as a special complex and single and indivisible crime simply because treachery is appreciated as a generic aggravating circumstance. Treachery merely increases the penalty for the crime conformably with Article 63 of the Revised Penal Code absent any generic mitigating circumstance.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

In sum then, treachery is a generic aggravating circumstance in robbery with homicide when the victim of homicide is killed by treachery.

The offense was also proven to have been executed by a band. A crime is committed by a band when at least four armed malefactors act together in the commission thereof. In this case, all six accused were armed with guns which they used on their victims. Clearly, all the armed assailants, including appellant, took direct part in the execution of the robbery with homicide.

Under Article 294 (1) of the Revised Penal Code, the crime of robbery with homicide carries the penalty of reclusion perpetua to death. Inasmuch as the crime was committed on March 20, 1987 which was prior to the effectivity of RA 7659 on December 31, 1993, the penalty of death cannot be imposed even if the aggravating circumstances of treachery and band attended its commission. Only the single indivisible penalty of reclusion perpetua is imposable on appellant.

With respect to damages, we affirm the award of P50,000 as civil indemnity each for the death of Marjun, Febe and Benita Roca. In addition, moral damages must be granted in the amount of P50,000 for each of the deceased victims. The amount of P7,875 is also due to Alfredo Roca as reparation for the 35 sacks of palay stolen from

him, each valued at P225. The heirs of the victims are likewise entitled to exemplary damages in the sum of P20,000 for each of the three victims due to the aggravating circumstances that attended the commission of the crime. However, the award of burial expenses cannot be sustained because no receipts were presented to substantiate the same. Nonetheless, the victims' heirs are entitled to the sum of P25,000 as temperate damages in lieu of actual damages, pursuant to the case of *People vs. Abrazaldo*.^[16]

WHEREFORE, the decision of the Regional Trial Court of Cabanatuan City, Branch 30, convicting appellant Felipe "Boy" Ulep of the crime of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua is hereby AFFIRMED with MODIFICATION. Appellant is also ordered to pay the heirs of the victims: (1) P50,000 as civil indemnity for each of the three victims; (2) P50,000 as moral damages for each of the three victims; (3) P7,875 as reparation for the 35 stolen sacks of palay; (4) P20,000 as exemplary damages for each of the three victims and (5) P25,000 as temperate damages.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Penned by Judge Federico B. Fajardo, Jr., Rollo, pp. 94-120.

[2] Rollo, p. 16.

[3] Rollo, p. 120.

[4] Appellant's Brief, pp. 1-2.

[5] *Catuirra vs. Court of Appeals*, 236 SCRA 398 [1994].

[6] *People vs. Rama*, 374 SCRA 447 [2002].

[7] *People vs. Merino*, 321 SCRA 199 [1999].

[8] 214 SCRA 694 [1992].

[9] *People vs. Aliben*, 398 SCRA 255 [2003].

[10] *People vs. Hernandez*, 46 Phil. 48 [1924].

[11] *People vs. Madrid*, 88 Phil. 1 [1951].

[12] *People vs. Rubio*, 257 SCRA 528 [1996].

[13] Treachery, evident premeditation, that the crime was committed by a band and in disregard of the respect due to the age and sex of the victims.

[14] *People vs. Sebastian*, 378 SCRA 557 [2002], citing *People vs. Lascota*, 275 SCRA 591 [1997].

[15] 400 SCRA 603 [2003].

[16] 397 SCRA 618 [2003].

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