

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ISAGANI GUITTAP Y PENGSON (ACQUITTED), WILFREDO MORELOS Y CRUZ (ACQUITTED), CESAR OSABEL @ DANILO MURILLO @ DANNY @ SONNY VISAYA @ BENJI...

G.R. No. 144621. May 09, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Appellant Decena Masinag Vda. de Ramos assails the decision[1] of the Regional Trial Court of Lucena City, Branch 60, in Criminal Case No. 92-387, finding her and accused Cesar Osabel guilty beyond reasonable doubt of the crime of Robbery with Homicide and sentencing each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, and to indemnify the heirs of the victims the amounts of P100,000.00 as civil indemnity and P67,800.00 as actual damages.

On September 1, 1992, an Amended Information for Robbery with Double Homicide was filed against appellant Masinag, Isagani Guittap y Pengson, Wilfredo Morelos y Cruz, Cesar Osabel,[2] Ariel Dador y De Chavez, Luisito Guilling and John Doe @ "Purcino". The accusatory portion of the information reads:

That on or about the 17[th] day of July 1992, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating with one another, armed with bladed weapons, by means of violence, and with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away certain personal items, to wit:

one (1) solid gold ring valued at P8,000.00
one (1) diamond ring valued at P40,000.00
one (1) necklace with pendant valued at P2,000.00
cash money in the amount of P4,500.00
one (1) samsonite bag valued at P650.00
one (1) .22 Cal. Squibbman with SN 64130 valued at P5,000.00
one (1) pair of sandal valued at P650.00
one (1) music mate (karaoke) valued at P5,000.00
one (1) jacket (adidas) valued at P1,000.00; and
one (1) pair of shoes valued at P1,000.00

with a total value of P67,800.00, owned by and belonging to spouses Romualdo Jael and Lionela[3] Caringal, without the consent and against the will of the latter, to the damage and prejudice of the aforementioned offended parties in the aforesaid sum of P67,800.00, Philippine Currency, and, on the same occasion of such robbery, the said accused, conspiring and confederating with one another, armed with the same bladed weapons, taking advantage of superior strength, and employing means to weaken the defense or of means or persons to insure or afford impunity, and with intent to kill, did then and there willfully, unlawfully and feloniously stab both of said spouses Romualdo Jael and Lionela Caringal thereby inflicting upon the latter several fatal wounds which directly

caused the death of the aforementioned spouses.

Contrary to law.[4]

Upon arraignment, appellant Masinag pleaded "not guilty." Trial on the merits thereafter ensued. Accused Ariel Dador was discharged as a state witness while accused Purcino remained at large.

On February 15, 2000, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, premises considered, this court finds Cesar Osabel and Decena Masinag GUILTY beyond reasonable doubt of the crime of robbery with homicide and they are sentenced to RECLUSION PERPETUA with all the accessory penalties provided by law. For insufficiency of evidence, the accused Isagani Guittap, Wilfrido Morelos and Luisito Guilling are hereby ACQUITTED.

The accused Cesar Osabel and Decena Masinag are also ordered to indemnify the heirs of the deceased Romualdo Jael and Leonila Caringal Jael in the amount of (P100,000.00) One Hundred Thousand Pesos plus actual damages of (P67,800.00) Sixty Thousand and Eight Hundred Pesos, Philippine Currency.

SO ORDERED.[5]

During the trial, state witness Ariel Dador testified that in the evening of July 15, 1992, Cesar Osabel asked him and a certain Purcino to go with him to see appellant Masinag at her house in Isabang, Lucena City. When they got there, Osabel and Masinag entered a room while Dador and Purcino waited outside the house. On their way home, Osabel explained to Dador and Purcino that he and Masinag planned to rob the spouses Romualdo and Leonila Jael. He further told them that according to Masinag, the spouses were old and rich, and they were easy to rob because only their daughter lived with them in their house.

The following day, at 7:00 p.m., Dador, Osabel, and Purcino went to the house of the Jael spouses to execute the plan. Osabel and Purcino went inside while Dador stayed outside and positioned himself approximately 30 meters away from the house. Moments later, he heard a woman shouting for help from inside the house. After two hours, Osabel and Purcino came out, carrying with them one karaoke machine and one rifle. Osabel's hands were bloodied. He explained that he had to tie both the victims' hands with the power cord of a television set before he repeatedly stabbed them. He killed the spouses so they can not report the robbery to the authorities.

Osabel ordered Dador to hire a tricycle while he and Purcino waited inside the garage of a bus line. However, when Dador returned with the tricycle, the two were no longer there. He proceeded to the house of Osabel and found him there with Purcino. They were counting the money they got from the victims. They gave him P300.00. Later, when Dador accompanied the two to Sta. Cruz, Manila to dispose of the karaoke machine, he received another P500.00. Osabel had the rifle repaired in Gulang-Gulang, Lucena City.

Dador and Osabel were subsequently arrested for the killing of a certain Cesar M. Sante. During the investigation, Dador executed an extrajudicial confession admitting complicity in the robbery and killing of the Jael spouses and implicating appellant and Osabel in said crime. The confession was given with the assistance of Atty. Rey Oliver Alejandrino, a former Regional Director of the Human Rights Commission Office. Thereafter, Osabel likewise executed an extrajudicial confession of his and appellant's involvement in the robbery and killing of the Jael, also with the assistance of Atty. Alejandrino.

Simeon Tabor, a neighbor of the Jael, testified that at 8:00 in the morning of July 17, 1992, he noticed that the victims, who were known to be early risers, had not come out of their house. He started calling them but there was no response. He instructed his son to fetch the victims' son, SPO1 Lamberto Jael. When the latter arrived, they all went inside the house and found bloodstains on the floor leading to the bathroom. Tabor opened the bathroom door and found the lifeless bodies of the victims.

Dr. Vicente F. Martinez performed the post-mortem examination on the bodies of the victims and testified that since rigor mortis had set in at the back of the neck of the victims, Romualdo Jael died between six to eight hours before the examination while Leonila Jael died before midnight of July 16, 1992. The cause of death of the victims was massive shock secondary to massive hemorrhage and multiple stab wounds.

Appellant Masinag, for her part, denied involvement in the robbery and homicide. She testified that she knew the victims because their houses were about a kilometer apart. She and Osabel were friends because he courted her, but they never had a romantic relationship. She further claimed that the last time she saw Osabel was six months prior to the incident. She did not know Dador and Guilling at the time of the incident. According to her, it is not true that she harbored resentment against the victims because they berated her son for stealing their daughter's handbag. On the whole, she denied any participation in a conspiracy to rob and kill the victims.

From the decision convicting appellant Masinag and Osabel, only the former appealed, based on the lone assigned error:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF CONSPIRING WITH HER CO-ACCUSED TO COMMIT THE CRIME OF ROBBERY WITH HOMICIDE DESPITE THE ABSENCE OF HER ACTUAL PARTICIPATION IN THE COMMISSION OF THE SAID CRIME.

The appeal is meritorious.

While it is our policy to accord proper deference to the factual findings of the trial court,[6] owing to their unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grueling examination,[7] where there exist facts or circumstances of weight and influence which have been ignored or misconstrued, or where the trial court acted arbitrarily in its appreciation of facts,[8] we may disregard its findings.

Appellant contends that the extrajudicial confessions of Osabel and Dador were insufficient to establish with moral certainty her participation in the conspiracy. Firstly, Dador was not present to hear appellant instigate the group to rob the Jael spouses. He only came to know about the plan when Osabel told him on their way home. Thus, Dador had no personal knowledge of how the plan to rob was actually made and of appellant's participation thereof. Secondly, while Osabel initially implicated her in his extrajudicial confession as one of the conspirators, he repudiated this later in open court when he testified that he was forced to execute his statements by means of violence.

On direct examination, Dador narrated what transpired in the house of appellant on July 15, 1992, to wit:

PROSECUTOR GARCIA:

Q. And do you remember the subject or subjects of that conversation that transpired among you?

A. Yes, sir.

Q. Please tell us what was the subject or subjects of the conversation that transpired among you on July 15, 1992 at the house of Decena Masinag?

A. The subject of our conversation there was the robbing of Sps. Jael, sir.

Q. How did that conversation begin with respect to the proposed robbery of Sps. Jael?

A. It was only the two (2) who planned that supposed robbery, Daniel Murillo and Decena Masinag, sir.

Q. And why were you able to say that it was Danilo Murillo and Decena Masinag who planned the robbery?

A. Because they were the only ones who were inside the house and far from us and they were inside the room, sir.

x x x x x x x x

Q. On that night, July 15, 1992 did you ever have any occasion to talk with Decena Masinag together with your companions Danilo Murillo and Purcino?

A. No, sir.

Q. Was there any occasion on the same date that Decena Masinag talk to you?

ATTY. FLORES:

Already answered, your Honor.

COURT:

Witness, may answer.

WITNESS:

None, sir. (emphasis ours)[9]

We find that the foregoing testimony of Dador was not based on his own personal knowledge but from what Osabel told him. He admitted that he was never near appellant and that he did not talk to her about the plan when they were at her house on July 15, 1992. Thus, his statements are hearsay and does not prove appellant's participation in the conspiracy.

Under Rule 130, Section 36 of the Rules of Court, a witness can testify only to those facts which he knows of his own personal knowledge, i.e., which are derived from his own perception; otherwise, such testimony would be hearsay. Hearsay evidence is defined as "evidence not of what the witness knows himself but of what he has heard from others." [10] The hearsay rule bars the testimony of a witness who merely recites what someone else has told him, whether orally or in writing. [11] In *Sanvicente v. People*, [12] we held that when evidence is based on what was supposedly told the witness, the same is without any evidentiary weight for being patently hearsay. Familiar and fundamental is the rule that hearsay testimony is inadmissible as evidence. [13]

Osabel's extrajudicial confession is likewise inadmissible against appellant. The *res inter alios acta* rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.[14] Consequently, an extrajudicial confession is binding only upon the confessor and is not admissible against his co-accused. The reason for the rule is that, on a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.[15]

The rule on admissions made by a conspirator, while an exception to the foregoing, does not apply in this case. In order for such admission to be admissible against a co-accused, Section 30, Rule 130 of the Rules of Court requires that there must be independent evidence aside from the extrajudicial confession to prove conspiracy. In the case at bar, apart from Osabel's extrajudicial confession, no other evidence of appellant's alleged participation in the conspiracy was presented by the prosecution. There being no independent evidence to prove it, her culpability was not sufficiently established.

Unavailing also is rule that an extrajudicial confession may be admissible when it is used as a corroborative evidence of other facts that tend to establish the guilt of his co-accused. The implication of this rule is that there must be a finding of other circumstantial evidence which, when taken together with the confession, establishes the guilt of a co-accused beyond reasonable doubt.[16] As earlier stated, there is no other prosecution evidence, direct or circumstantial, which the extrajudicial confession may corroborate.

In *People v. Berroya*,[17] we held that to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. That overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.

In the case at bar, no overt act was established to prove that appellant shared with and concurred in the criminal design of Osabel, Dador and Purcino. Assuming that she had knowledge of the conspiracy or she acquiesced in or agreed to it, still, absent any active participation in the commission of the crime in furtherance of the conspiracy, mere knowledge, acquiescence in or agreement to cooperate is not sufficient to constitute one as a party to a conspiracy.[18] Conspiracy transcends mere companionship.[19]

Conspiracy must be proved as convincingly as the criminal act itself. Like any element of the offense charged, conspiracy must be established by proof beyond reasonable doubt.[20] Direct proof of a previous agreement need not be established, for conspiracy may be deduced from the acts of appellant pointing to a joint purpose, concerted action and community of interest. Nevertheless, except in the case of the mastermind of a crime, it must also be shown that appellant performed an overt act in furtherance of the conspiracy.[21]

All told, the prosecution failed to establish the guilt of appellant with moral certainty. Its evidence falls short of the quantum of proof required for conviction. Accordingly, the constitutional presumption of appellant's innocence must be upheld and she must be acquitted.

WHEREFORE, in view of the foregoing, the appealed decision of the Regional Trial Court of Lucena City, Branch 60 in Criminal Case No. 92-487, insofar only as it finds appellant guilty beyond reasonable doubt of the crime of Robbery with Homicide, is REVERSED and SET ASIDE. Appellant Decena Masinag Vda. De Ramos is ACQUITTED of the crime of Robbery with Homicide. She is ORDERED RELEASED unless there are other lawful causes for her continued detention. The Director of Prisons is DIRECTED to inform this Court, within five

(5) days from notice, of the date and time when appellant is released pursuant to this Decision.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio and Azcuna, JJ., concur.

[1] Penned by Judge Abelio M. Marte.

[2] Also known as "Danilo Murillo", "Danny", "Sonny Visaya", "Benjie Canete".

[3] Spelled elsewhere in the records as "Leonila".

[4] Rollo, pp. 10-11.

[5] Rollo, p. 57.

[6] *People v. Franco*, 336 Phil. 206, 213 [1997].

[7] *People v. Abayon*, G.R. No. 142874, 31 July 2002.

[8] *People v. Bertulfo*, G.R. No. 143790, 7 May 2002.

[9] TSN, November 23, 1993, pp. 17-22.

[10] *People v. Manhuyod*, G.R. No. 124676, 20 May 1998, 290 SCRA 257, 270.

[11] *People v. Garcia*, G.R. No. 124514, 6 July 2000, 335 SCRA 208, 215.

[12] G.R. No. 132081, 26 November 2002.

[13] *People v. Ubongen*, G.R. No. 126024, 20 April 2001.

[14] Revised Rules of Court, Rule 130, Section 25.

[15] *People v. Raquel*, 333 Phil. 72, 80 [1996].

[16] *People v. Francisco*, G.R. No. 138022, 23 August 2001, 363 SCRA 637, 649, citing *People v. Aquino*, 369 Phil. 701, 725 [1999].

[17] 347 Phil. 410, 430 [1997].

[18] *People v. Campos*, G.R. No. 111535, 19 July 2001, 361 SCRA 339, 349.

[19] *People v. Listerio*, G.R. No. 122099, 5 July 2000, 335 SCRA 40, 59.

[20] *People v. Leaño*, G.R. No. 138886, 9 October 2001, 366 SCRA 774, 788.

[21] *People v. Tamayo*, G.R. No. 138608, 24 September 2002.

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