

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GREGORIO GERAL Y FERNANDEZ AND MARCOS USNAN Y BUSTAMANTE, APPELLANTS.*G.R. No. 145731. June 26, 2003*

Ponente: BELLOSILLO, J.

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On automatic review is the Decision of the Regional Trial Court of Davao City finding the accused GREGORIO GERAL Y FERNANDEZ and MARCOS USNAN Y BUSTAMANTE, in conspiracy with accused Loreto Santan, who remains at large, GUILTY of Robbery with Homicide for having forcibly carted away assorted articles belonging to one Mary Ann Estoce, and in pursuance of such felonious deed, slashed the throat of her grandmother Josefina Estoce which caused her death. Accordingly, accused Geral and Usnan were each sentenced to suffer the penalty of "reclusion perpetua to death" and ordered to indemnify solidarily the heirs of Josefina Estoce P50,000.00 for her death and P30,000.00 for funeral expenses. [1]

Mary Ann Estoce, a computer operator, lived with her grandmother Josefina Estoce whom she called "Nanay" at Km. 19, Los Amigos, Tugbok, Davao City.

On 18 August 1996, Sunday, at around 6:40 in the evening, Mary Ann was in their sala preparing to watch television when she heard someone knocking at the door. When she opened the door, she was met by three (3) rugged and apparently inebriated individuals who inquired from her if she knew one Roel Daban. When she told them that she was not familiar with the person and pointed to another house where they could inquire about him, the three (3) men entered the house while pointing a gun at Mary Ann. Two (2) of the intruders approached her grandmother Josefina Estoce and took turns manhandling her, while a certain Boy[2] brought Mary Ann upstairs and tried to rape her. But failing to rape her, Boy ordered Mary Ann to hand him over her money.

After taking some P500.00 from her, Boy boxed Mary Ann on the stomach causing her to lose consciousness. When she recovered some three (3) minutes later, Mary Ann saw her Nanay lying in a pool of blood and no longer responding to her frantic cries. Accompanied by their neighbors, Mary Ann went to her relatives to seek their help.

On the witness stand, complaining witness Mary Ann Estoce testified that some articles, particularly pieces of jewelry, their TV remote control, a bag, an umbrella, her passbook, an ATM card, all valued at approximately P6,000.00, and P500.00 in cash were taken by the robbers.[3]

During the trial, Mary Ann Estoce positively identified Gregorio Geral as one of those who robbed them and killed her grandmother Josefina Estoce in the early evening of 18 August 1996.[4]

Another prosecution witness, Edgar Sab-owan, testified that sometime on 7 August 1996 while attending the wake of his grandfather, he met Marcos Usnan alias Dodong who told him matter of factly that he and some companions were planning to rob somebody at Km. 20. On 9 August 1996 he again met Usnan who pointed to him the house that his group was intending to rob which, according to Usnan, was occupied by an old woman and

a young lady. He further stated that on 18 August 1996 at around 8:30 to 9:00 o'clock in the evening Gregorio Geral alias Gorio and Loreto Santan alias Boy arrived at his house. Both wore muddied clothes and talked to each other in whispers. Edgar also said that Boy told him that their job was finished and that the old woman was dead.

The following morning, 19 August, Ireneo Juesan alias Onyot arrived at his house carrying with him a camera and a TV remote control and wearing a ring on one of his fingers.

Accused-appellant Gregorio Geral denied the accusations against him. He insisted that in the morning of 18 August 1996 he was on the way home after buying food from the market when three (3) individuals accosted him introducing themselves as Edgar, Onyot and Loreto. At about 3:00 o'clock in the afternoon, the three (3) went back to his house and asked for something to eat since they were hungry. When asked what their business was, they told him that they were waiting for the buyer of gold bars. Since he was in a hurry to get a hilot for his pregnant wife who was in labor, he then asked to be excused. However, the three (3) followed him. One of them whose name he later learned to be Edgar, pointed a gun at his head and forced him to go with them, otherwise, he would kill him and his family.

All four (4) walked towards Calinan and took a truck towards Tugbok. Arriving in Tugbok at around 5:00 o'clock in the afternoon, they alighted in front of a house where Loreto asked the occupants, a young lady and an old woman, if they knew a certain Roel Daban. Suddenly, Loreto seized the old woman and Onyot the young lady. Edgar, who was standing beside the door, pushed him (Geral) inside the house. It was then that he saw Loreto stab the old woman. He rushed out of the house and waited for a passenger jeepney bound for Wangan but the three (3) robbers chased him. As soon as they caught up with him, they warned him not to tell anybody what he had just witnessed. According to Gregorio, he decided not to tell the authorities about the grisly incident for fear that Edgar would make good his threat to kill him and his family.

At the trial, accused-appellant Gregorio Geral denied that Marcos Usnan was one of the malefactors; instead, he affirmed and reaffirmed that it was Edgar, Onyot and Loreto who perpetrated the hideous killing.[5]

For his part, accused-appellant Marcos Usnan refused to admit that he was a party to the killing and robbery of 18 August 1996. According to him, on that date, he was at home the whole day. He denied knowing his accuser Edgar Sab-owan, or his co-accused Gregorio Geral whom he met for the first time only on 19 August at the detention cell.[6]

After trial, the court a quo adjudged both accused-appellants Gregorio Geral and Marcos Usnan guilty of robbery with homicide on the basis of their identification by prosecution witnesses Mary Ann Estoce and Edgar Sab-owan. According to the trial court —[7]

Accused Geral claimed he was in his house (in) the whole day and night of August 18, 1996. Alibi is one of the weakest defenses and should be rejected when the identity of the accused has been sufficiently established (P v. Remollo, 213 SCRA 218; P v. Sambangan, 125 SCRA 726; P v. Regalo, 127 SCRA 287).

Accused Usnan claimed Loreto Santan, Ireneo Juesan and Edgar Sab-owan forced him to go with them to the victim's house. He is saying he has nothing to do with the crime but admits that he was in the house of the victim with the accused when the crime was committed. The statement of Prosecution witness Edgar Sab-owan plainly pointed to the accused Usnan as one of the three who robbed and killed Josefina Estoce.

Accused-appellants Geral and Usnan now implore this Court to take a second hard look at their conviction on the ground that the court a quo erred in: (a) giving weight and credence to the testimonies of the prosecution witnesses; (b) finding the guilt of accused-appellant Usnan despite the failure of Mary Ann Estoce to identify him in open court; (c) finding that Edgar Sab-owan positively identified Usnan as one of the three (3) men who robbed

and killed Josefina Estoce; (d) finding that the guilt of accused-appellant Geral for the crime charged has been proved beyond reasonable doubt; and, (e) imposing the penalty of reclusion perpetua to death. [8]

Discussing jointly the first four (4) assigned errors, accused-appellants argue that, contrary to the finding of the trial court, Sab-owan did not identify accused-appellant Usnan as one of those who robbed and killed Josefina Estoce, but rather as the one who proposed to him the plan to rob a house occupied by an old woman and a young lady. Even principal witness Mary Ann Estoce was not able to identify Usnan when she testified in court. She only identified accused-appellant Geral.

Accused-appellants also deplore the failure of the trial court to consider the more credible evidence of the defense vis-à-vis that of the prosecution. According to them, had the trial court only considered the fact that accused-appellant Geral was merely threatened and compelled by the real culprits to join them, thus depriving him of the freedom to act, he should have been exempted from criminal liability.

Accused-appellant Usnan anchors his defense on the theory that the prosecution failed to establish with certitude his identity as one of the gang of robbers who burglarized the Estoce residence and killed Josefina Estoce. On the part of accused-appellant Geral, he bases his plea for acquittal on the alleged failure of the trial court to give credence to his assertion that he was deprived of the freedom to act and was never a willing participant in the commission of the crime charged.

The rule is, in every criminal prosecution the identity of the accused as the perpetrator of the crime is crucial to establish his guilt beyond reasonable doubt. This much is required to overcome the presumption of innocence guaranteed by the Constitution in favor of the accused. The failure of the prosecution to discharge this onus is fatal to its cause and calls for an acquittal, at least insofar as regards the accused whose identity is not established.

Where, as here, principal witness Mary Ann Estoce who could be expected to ensure that the guilty would not go unpunished, failed to identify accused-appellant Usnan despite his presence in the courtroom, his guilt is at once beclouded by a heavy pall of doubt. Even the testimony of Sab-owan, the sole basis for his conviction in the lower court, is fatally flawed. It will be seen that Sab-owan's uncorroborated testimony in no way establishes the identity of the accused beyond reasonable doubt. It does not place Usnan at the scene of the crime at the time of its commission nor can a reasonable inference be made to ascertain his complicity in the crime charged. The statement of witness Sab-owan to accused Usnan, which was timely objected to by the defense counsel as hearsay, could not be used against him unless it be fully established by other evidence that Sab-owan was privy to the crime or had personal knowledge of its commission. Even accused-appellant Geral himself, Usnan's co-accused, affirmed and reaffirmed during his examination that at gunpoint he was coerced by Sab-owan, Juesan, and Santan into joining them in their looting foray. He was emphatic however that Usnan was not involved in the robbery.

But accused-appellant Geral's case is a different matter altogether. His defense that he was deprived of the freedom to act because of uncontrollable fear does not inspire our serious consideration. For this defense to prosper, it is incumbent for him to prove that the duress must not be speculative, fanciful, or a remote fear for one's life and limb. Even assuming that this tale was not a mere figment of his imagination, the records are bereft of any evidence to support his claim. He averred that during the robbery he was told, but he refused, to give assistance to the malefactors in their malevolent activity. He managed to "escape" even as an armed robber was standing near the door. Worse, the culprits supposedly chased and caught up with him only to tell him never to report the incident to the authorities. All these circumstances show that the presence of uncontrollable fear, so doggedly insisted by accused-appellant Geral, was speculative, remote or, at the most, illusory.

A person should not commit a very serious crime on account of a feeble kind of fear. If we were to take seriously

Geral's account, there would be no explaining why three (3) persons bent on committing a crime would place a total stranger in their confidence, force him to witness their wicked deed for no apparent purpose, and let him go with nothing more than a flimsy threat. Overshadowing all these considerations however was the positive identification made by complainant Mary Ann Estoce of accused-appellant Geral as an active participant in the burglary which resulted in the killing of Josefina Estoce. Complainant, who has no known impure motive against accused-appellant Geral, would not impute a serious offense against him had it not been for her singular intention to bring to the bar of justice the men who dispossessed her of her valuables and forever deprived her of her Nanay's loving presence.

On the penalty imposed by the court a quo, we agree, as pointed out by accused-appellants and by the Office of the Solicitor General, that the same should not be "reclusion perpetua to death." This penalty is not in accord with Art. 63 of The Revised Penal Code providing the rules for the application of indivisible penalties. The crime of robbery with homicide is punishable by reclusion perpetua to death under Art. 294, par. (1), of The Revised Penal Code. In the absence of an aggravating or mitigating circumstance, the lower penalty, which is reclusion perpetua, should be imposed.

With respect to the amount of P30,000.00 awarded by the trial court representing funeral and other expenses, apart from the barren testimony of prosecution witness Teodoro Estoce who testified on damages, none was duly supported by receipts. Consequently, the Court can only allow those expenses properly receipted or duly proved and genuinely incurred in connection with the death, wake, and burial of the deceased, unlike the indemnity for the death of the victim which is automatically awarded to the heirs of the deceased. In addition, the sum of P6,500.00 must be paid as it represents the total value of the items taken during the incident. Moreover, moral damages must be awarded without need of further proof other than the fact of the killing.

A final word. In writing a decision, we do not necessarily require the judge to adopt a florid and dramatic style such as would appeal to the Shakespearean in us, yet, we deem it of the essence that the decision be lucidly crafted, complete in all its vital details, to enable the parties involved to clearly understand how the judge arrived at his conclusions. Sadly, the decision of the trial court, the ratio decidendi in particular, is not exactly an exemplar in thoroughness and perspicacity but is rather an expression of slapdashness and lack of interest, giving the impression that the author was more after bare compliance than the need to explain the verdict of the court in a clear and convincing manner.

WHEREFORE, the Decision of the RTC-Br. 15, Davao City, finding accused-appellant Gerardo Geral y Fernandez guilty beyond reasonable doubt of the crime of robbery with homicide is **AFFIRMED**. Accordingly, he is sentenced to suffer the penalty of reclusion perpetua. He is further ordered to pay the heirs of the deceased Josefina Estoce the amount of P50,000.00 as indemnity for her death and the additional sum of P50,000.00 as moral damages. He is also ordered to pay the heirs the amount of P6,500.00 which represents the value of the items asported during the robbery.

However, accused-appellant Marcos Usnan y Bustamante is **ACQUITTED** on the ground that his guilt has not been proved beyond reasonable doubt, and hence, is ordered immediately released unless there are other legal grounds for his continued detention.

The Director of Prisons is **DIRECTED** to implement this Decision forthwith and to inform this Court within five (5) days from receipt hereof of the date accused-appellant Marcos Usnan y Bustamante shall have been actually released from confinement.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Austria-Martinez, J., on official leave.

[1] Decision penned by Judge Jesus V. Quitain, RTC-Br. 15, Davao City.

[2] TSN, 6 November 1996, p. 8.

[3] Id., p. 9

[4] Id, p. 8.

[5] TSN, 27 January 1998, pp. 60-74.

[6] TSN, 3 November 1998, pp. 91-104.

[7] Rollo, p. 29.

[8] Id., pp. 60-61.

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