

RUSTICO ABAY, JR. AND REYNALDO DARILAG, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 165896. September 19, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated October 27, 2003 and the Resolution[2] dated October 14, 2004 of the Court of Appeals in CA G.R. CR No. 25212. The Court of Appeals had affirmed the Decision[3] of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, finding petitioners guilty of the crime of Highway Robbery in Criminal Case No. 9045-B.

The facts are as follows:

On January 13, 1995, an Information was filed charging Rustico Abay, Jr., Reynaldo Darilag, Ramoncito Aban, Ernesto Ricalde, Ramon Punzalan, Ariston Reyes, Isagani Espeleta, Cesar Camacho, Leonardo Perello and Danilo Pascual with the crime of Highway Robbery/Brigandage. Said information reads:

X X X X

That on or about 7:30 o'clock in the evening of February 17, 1994, at the South Luzon Expressway, Municipality of Biñan, Province of Laguna, and within the jurisdiction of this Honorable Court, accused Ramoncito Aban y Casiano, Ernesto Ricalde y Jovillano, Rustico Abay, Jr. y Serafico, Ramon Punzalan y Carpena, Reynaldo Darilag y Apolinario, Leonardo Perello y Esguerra and Danilo Pascual y Lagata, who are principals by direct participation, conspiring and confederating together with Ariston Reyes y Plaza, Isagani Espeleta y Arguelles and Cesar Camacho y Deolazo, who are principals by indispensable cooperation and mutually helping each other, form themselves as band of robbers and conveniently armed with handguns and deadly bladed weapons, and while on board a Kapalaran Bus Line with plate number DVT-527 bound for Sta. Cruz, Laguna and a semi stainless owner type jeep with plate number PJD-599 as backup vehicle, accused with the use of the aforesaid handguns and bladed weapons with intent to gain and taking the passengers of the bus by surprise, did then and there wilfully, unlawfully and feloniously divest and take away personalities of the passengers and/or occupants therein, among them were:

- a) Thelma Andrade y Lorenzana, P3,500.00 cash;
- b) Gloria Tolentino y Pamatmat, P30,000.00 cash, \$2,000.00 dollars and eyeglasses (Perare) worth P5,000.00;
- c) Lilian Ojeda y Canta, P120.00 cash;
- d) Paul Masilang y Reyes, assorted used clothes of undetermined amount;

and by reason or on occasion of the said robbery, accused shot passenger Rogelio Ronillo y Lumboy, inflicting upon him gunshot wounds on the neck, thus, accused performed all the acts of execution that would produce the crime of homicide, but nevertheless, did not produce by reason of causes independent of the will of the accused, that is by the timely medical assistance rendered to Rogelio Ronillo y Lumboy, and to his damage and prejudice and to the damages and prejudices of the following:

- a) Thelma Andrade y Lorenzana in the sum of P3,500.00;

b) Gloria Tolentino y Pamatmat in the sum of P30,000.00;

c) Lilian Ojeda y Canta in the sum of P120.00

That the commission of the offense was attended with the aggravating circumstances of nighttime, by a band and with the use of motor vehicle.

With the additional aggravating circumstance that accused Isagani Espeleta y Arguelles and Cesar Camacho y Deolazo, being prison guards, have taken advantage of their public position by bringing out prison inmates and equipped them with deadly weapons and were utilized in the commission of robbery:

With the further additional aggravating circumstance on the following accused/inmates, as follows:

1)

Ramoncito Aban y Casiano with prison number 121577 as recidivist, having been convicted by final judgment on June 15, 1984 by the RTC, Branch VI, Malolos, Bulacan, in Criminal Case No. 3874-M for Robbery with Homicide;

2)

Ariston Reyes y Plaza with prison number 115906-P, as recidivist, having been convicted by final judgment on March 11, 1982 by the CFI, Manila in Criminal Case No. 82-3001 for Robbery; having been convicted by final judgment on September 2, 1987 by the RTC Branch 94, Quezon City, in Criminal Case No. 37432 for Robbery; and for Reiteracion or habituality for having served sentence for Homicide, convicted on March 25, 1991 by the RTC, Branch 34, Quezon City;

3)

Reynaldo Darilag y Apolinario with prison number 129552-P for reiteracion or habituality for having been previously punished for an offense of murder in Criminal Case No. 039 by the RTC, Branch 5, Tuguegarao, Cagayan and as a recidivist for having been previously convicted by final judgment on July 8, 1987 by the same Court in Criminal Case No. 040 for Robbery;

4)

Rustico Abay, Jr. y Serafico with prison number 132566-P as a recidivist for having been previously convicted by final judgment on August 31, 1988 by the RTC, Branch 163 Manila, in Criminal Case No. 71060 for Theft;

5)

Ramon Punzalan y Carpena with prison number 113605-P as recidivist for having been previously convicted by final judgment by the RTC, Branch 111, San Pablo City on the following dates, to wit:

January 8, 1981 in Criminal Case No. 2454-SP, for Robbery in Band;

December 8, 1981, in Criminal Case No. 2549 for Theft;

October 7, 1983 in Criminal Case No. 2550-SP for Carnapping; and

Having been previously convicted by final judgment by the City Court of San Pablo City on March 30, 1981 in Criminal Case No. 17738 for simple theft;

6) Ernesto R[i]calde y Jov[i]llano with prison number N92P-2735, as a recidivist for having been previously convicted by final judgment on August 2, 1992 by the RTC, Branch 54, Lucena City in Criminal Case No. 91-679 for simple theft.

CONTRARY TO LAW.[4]

When arraigned, all the accused pleaded not guilty. However, upon motion filed by accused Ramoncito Aban, with the conformity of the public prosecutor and private complainants Thelma Andrade and Gloria Tolentino, he was allowed to withdraw his earlier plea of "not guilty". Thus, on September 11, 1997, Ramoncito Aban, with the assistance of his counsel, pleaded "guilty" to the crime of simple robbery and on even date, the trial court sentenced him. Meanwhile, trial proceeded with respect to the other accused.

The prosecution presented the following witnesses: Thelma Andrade, Gloria Tolentino and Ramoncito Aban.

Thelma Andrade, a conductress of the Kapalaran Bus Line, testified that in the evening of February 17, 1994, the bus she was on was held-up. She said that Ramoncito Aban took from her, at gunpoint, the fares she collected from the passengers of the bus. She also identified Rustico Abay, Jr. and Ernesto Ricalde as two of the other companions of Aban.[5]

Gloria Tolentino, a passenger of the bus, testified that someone shouted "hold-up" and ordered them to bow their heads. She obeyed the order but once in a while she would raise her head. According to Tolentino, the man seated beside her, Ariston Reyes, took her money and pieces of jewelry and handed them over to Reynaldo Darilag. She also identified Rustico Abay, Jr. as one of the companions of the robbers.[6]

Ramoncito Aban, the last witness, testified that on February 22, 1994, Camacho and Espeleta, who were both prison guards of the New Bilibid Prison (NBP), took him and his companions, Ricalde, Abay, Jr., Punzalan, Darilag, Reyes, Perello and Pascual, on board the owner-type jeepney of Camacho to stage a hold-up. He said they held-up a Kapalaran bus and it was Punzalan and Darilag who took the money and other belongings of the passengers in the bus. He further testified that the February 22, 1994 hold-up was the fourth staged by their group. According to Aban, the other hold-ups were carried out on February 11, 13 and 17, and all four hold-ups were staged by the same persons.[7]

The defense, for its part, presented the testimony of petitioners Rustico Abay, Jr., and Reynaldo Darilag, the other co-accused, and Genaro Alberto.

All the accused denied participation in the robbery that happened on February 17, 1994. Abay, Jr., Darilag, Reyes and Ricalde, who were detention prisoners, testified that they were confined in the NBP at the time the incident happened.[8] Pascual and Perello, both civilians, testified that they were at home then.[9] Genaro Alberto, a prison guard at the Bureau of Corrections, testified that during the headcount of the inmates conducted at 5:00 p.m. and 8:00 p.m. on February 17, 1994, no inmate was found to be missing.[10]

In a Decision dated November 29, 2000, the RTC of San Pedro, Laguna, Branch 31 found petitioners Abay, Jr. and Darilag, as well as the other accused guilty of the crime charged. The trial court decreed as follows:

WHEREFORE, this Court hereby renders judgment convicting accused Ernesto Ricalde y Jovillano, Rustico Abay, Jr. y Serafico, Ramon Punzalan y Carpena, Reynaldo Darilag y Apolicario, Ariston Reyes y Plaza, Isagani Espeleta y Arguelles, Cesar Camacho y Deolazo, Leonardo Perello y Esguerra and Danilo Pascual y Lagata of the crime of highway robbery/holdup attended by the aggravating circumstance of a band only and hereby sentences each of them:

- 1) to suffer an indeterminate penalty of imprisonment [of] ... twelve (12) years and one (1) day as minimum to thirteen (13) years, nine (9) months and eleven (11) days as maximum, both of reclusion temporal in its minimum period;
- 2) to indemnify Thelma Andrade, the amount of P3,500 and Gloria Tolentino, the amount of P30,000 and US\$2,000; and

3) to pay the costs.

SO ORDERED.[11]

The Court of Appeals on appeal acquitted Espeleta, Camacho and Punzalan of the crime charged but affirmed the conviction of petitioners Abay, Jr. and Darilag, Ricalde and Reyes. The dispositive portion of the Decision dated October 27, 2003 states:

WHEREFORE, the assailed decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, in Criminal Case No. 9045-B, is REVERSED and SET ASIDE, but only insofar as accused-appellants Isagani Espeleta, Cesar Camacho and Ramon Punzalan, are concerned, for insufficiency of evidence. Isagani Espeleta, Cesar Camacho and Ramon Punzalan are hereby ACQUITTED. Unless held for any other charge/charges their immediate release is hereby ordered.

With respect to accused-appellants Rustico Abay, Jr., Ernesto Ricalde, Reynaldo Darilag and Ariston Reyes, the said decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, in Criminal Case No. 9045-B, finding them guilty beyond reasonable doubt of the crime of highway robbery/hold-up is hereby AFFIRMED IN TOTO.

SO ORDERED.[12]

Petitioners Abay, Jr. and Darilag moved for a reconsideration of the aforesaid decision, but their motion was denied. Hence, they filed the instant petition raising a single issue:

WHETHER OR NOT PETITIONERS MAY BE CONVICTED ON THE BASIS OF THE TESTIMONIES OF RAMONCITO ABAN, THELMA ANDRADE AND GLORIA TOLENTINO.[13]

Stated simply, did the Court of Appeals err in affirming on the basis of the testimonies of said three witnesses the conviction of petitioners Abay, Jr. and Darilag?

In their petition,[14] petitioners Abay, Jr. and Darilag assert that their guilt has not been proven beyond reasonable doubt. They argue that Ramoncito Aban is not a credible witness and that he testified on an incident which happened on February 22, 1994 and not on February 17, 1994 as alleged in the information. Petitioners also claim that no physical evidence linking petitioners to the crime was presented. They likewise point to a related case filed against them wherein they were acquitted. They fault the trial court and Court of Appeals for disregarding their defense of alibi and in giving credence to the testimonies of Andrade and Tolentino, contending that these testimonies were incredible and unsubstantiated. They likewise contend that the lower courts erred in relying on Aban's extrajudicial confession which was coerced.

The Office of the Solicitor General (OSG) challenges the petition on the ground that the petition raises a question of fact. It also maintains that Aban is a credible witness and that petitioners' defense of alibi cannot prevail over the positive testimonies of the prosecution witnesses.[15]

After a thorough examination of the evidence presented, we are in agreement that the appeal lacks merit.

At the outset, we note that it was not Aban's extrajudicial confession but his court testimony reiterating his declarations in his extrajudicial admission, pointing to petitioners as his co-participants, which was instrumental in convicting petitioners of the crime charged. Settled is the rule that when the extrajudicial admission of a conspirator is confirmed at the trial, it ceases to be hearsay. It becomes instead a judicial admission, being a testimony of an eyewitness admissible in evidence against those it implicates.[16] Here, the extrajudicial confession of Aban was affirmed by him in open court during the trial. Thus, such confession already partook of judicial testimony which is admissible in evidence against the petitioners.

We likewise agree in finding without merit the petitioners' argument that, since Aban's testimony is not credible as to Espeleta, Camacho and Punzalan who were acquitted, then it should also be held not credible as to them. But in our considered view, the petitioners are not similarly situated as their aforementioned co-accused. Other than the testimony of Aban, there were no other witnesses who testified on the participation of Espeleta, Camacho and Punzalan. In contrast, anent the herein petitioners' participation in the crime, not only is their conviction based on the testimony of Aban, but it was also established by the eyewitness testimony of Andrade and Tolentino who identified positively the petitioners in open court.

Petitioners further aver that Aban testified on a robbery which took place on February 22, 1994, not February 17, 1994. Granted that Ramoncito Aban in fact testified on the details of the robbery which happened on February 22, 1994. However, it is also worth stressing as part of the prosecution evidence that Aban testified that malefactors used the same route and strategy in the perpetration of the robberies which happened on four occasions -- February 11, 13, 17 and 22, 1994. What happened on February 22 was but a replication, so to speak, of the robbery scenarios earlier perpetrated by the same gang on three previous dates. It is very clear, however, that Aban, on the witness stand was testifying specifically also about the offense that took place on February 17 in the Expressway, Biñan, Laguna.

Petitioners claim that no physical evidence was presented by the prosecution linking the petitioners to the crime charged. But in this case, the alleged failure of the prosecution to present physical evidence does not adversely affect the over-all weight of the evidence actually presented. Physical evidence would be merely corroborative because there are credible witnesses who testified on the complicity of petitioners in the crime charged.[17]

Further, petitioners assert that in a similar case filed against them, they were acquitted by the trial court of Imus, Cavite. As correctly observed by the OSG, there is no showing that the amount and quality of evidence in the present case and those in the case where petitioners were allegedly acquitted are the same. Indeed, if petitioners truly believed that the prosecution evidence is deficient to establish their guilt, their defense could have earlier filed a demurrer to evidence in this case. But, they did not.[18]

Additionally, petitioners claim that the trial court and the Court of Appeals erred in disregarding their defense of alibi.[19] However, we are in agreement with the OSG that the defense of alibi cannot prevail over the positive identification of the accused in this case.

Worth stressing, this Court has consistently ruled that the defense of alibi must be received with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be easily fabricated.[20] Alibi is a weak defense that becomes even weaker in the face of the positive identification of the accused. An alibi cannot prevail over the positive identification of the petitioners by credible witnesses who have no motive to testify falsely.[21]

In this case, petitioners' defense of alibi rested solely upon their own self-serving testimonies. For their defense of alibi to prosper, it should have been clearly and indisputably demonstrated by them that it was physically impossible for them to have been at, or near, the scene of the crime at the time of its commission. But as the trial court correctly ruled, it was not impossible for the petitioners to be at the scene of the crime since petitioners' place of detention is less than an hour ride from the crime scene. Moreover, no dubious reason or improper motive was established to render the testimonies of Andrade, Tolentino and Aban false and unbelievable. Absent the most compelling reason, it is highly inconceivable why Andrade, Tolentino and Aban would openly concoct a story that would send innocent men to jail.[22]

Similarly, petitioners assert that the testimonies of Andrade and Tolentino are incredible and unsubstantiated. They question the failure of Tolentino to identify Punzalan in court, and stress that Andrade and Tolentino were

not able to identify all the accused. The OSG, on the other hand, maintains that the testimonies of Andrade and Tolentino are credible since the facts testified to by them and Aban support each other.

We find petitioners' allegations untenable. The testimonies given by Andrade, Tolentino and Aban corroborate each other. Their testimonies agree on the essential facts and substantially corroborate a consistent and coherent whole. The failure of Tolentino to point to Punzalan in court does not dent her credibility as a witness. It must be noted that it took years before Tolentino was placed on the witness stand. As to the allegation that the testimony of Andrade and Tolentino are incredible because they were not able to identify all the accused deserves scant consideration. During the robbery, they were told to bow their heads and hence, they were only able to raise their heads from time to time. It is but logical that the witnesses would not be able to identify all of the accused.

Considering the testimonies of witnesses and the evidence presented by the parties, we are in agreement that the crime of Highway Robbery/Brigandage was duly proven in this case. As defined under Section 2(e) of Presidential Decree No. 532,[23] Highway Robbery/Brigandage is the seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of person or force upon things or other unlawful means, committed by any person on any Philippine highway. Also, as held in *People v. Puno*: [24]

In fine, the purpose of brigandage is, inter alia, indiscriminate highway robbery. If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed participants...

Further, that Presidential Decree No. 532 punishes as highway robbery or brigandage only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on Philippine highways as defined therein, and not acts of robbery committed against only a predetermined or particular victim...[Emphasis supplied.]

The elements of the crime of Highway Robbery/Brigandage have been clearly established in this case. First, the prosecution evidence demonstrated with clarity that the petitioners' group was organized for the purpose of committing robbery in a highway. Next, there is no predetermined victim. The Kapalaran bus was chosen indiscriminately by the accused upon reaching their agreed destination -- Alabang, Muntinlupa.

All told, we rule that petitioners Rustico Abay, Jr. and Reynaldo Darilag are guilty beyond reasonable doubt of the crime of Highway Robbery/Brigandage.

WHEREFORE, the Decision dated October 27, 2003 and the Resolution dated October 14, 2004 of the Court of Appeals in CA G.R. CR No. 25212, affirming the Decision dated November 29, 2000 of the Regional Trial Court of San Pedro, Laguna, Branch 31 in Criminal Case No. 9045-B, are hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Carpio-Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 36-57. Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente concurring.

[2] *Id.* at 58-59.

[3] Dated November 29, 2000. CA rollo, pp. 105-118. Penned by Judge Stella Cabuco-Andres.

- [4] Records (Vol. I), pp. 1-4.
- [5] Id. at 15-16, 26-28; TSN, May 7, 1996, pp. 3, 5-6, 10-13.
- [6] Id. at 21-23; TSN, July 24, 1996, pp. 3-10, 20.
- [7] TSN, October 3, 1997, pp. 12-13, 16-22; TSN, October 30, 1997, pp. 8, 13, 15, 27-28; TSN, December 17, 1997, pp. 8-13.
- [8] TSN, April 22, 1999, pp. 9-10, 12; TSN, June 17, 1999, p. 5; TSN, July 22, 1999, pp. 3-4; TSN, October 18, 1999, pp. 2-5; TSN, May 10, 2000, pp. 2-3, 5; TSN, June 14, 2000, pp. 3-4.
- [9] TSN, September 4, 2000, pp. 3-4.
- [10] TSN, October 15, 1999, pp. 3-5, 8.
- [11] Rollo, p. 75.
- [12] Id. at 57.
- [13] Id. at 16.
- [14] Id. at 9-35.
- [15] Id. at 125-135.
- [16] *People v. Silan*, G.R. No. 116011, March 7, 1996, 254 SCRA 491, 503; *People v. Victor*, G.R. Nos. 75154-55, February 6, 1990, 181 SCRA 818, 830.
- [17] Rollo, p. 132.
- [18] Id. at 132-133.
- [19] Id. at 23-25.
- [20] *People v. Tuppal*, G.R. Nos. 137982-85, January 13, 2003, 395 SCRA 72, 80.
- [21] *Vergara v. People*, G.R. No. 128720, January 23, 2002, 374 SCRA 313, 325.
- [22] CA rollo, p. 116.
- [23] "Anti-Piracy and Anti-Highway Robbery Law of 1974" effective August 8, 1974.
- [24] G.R. No. 97471, February 17, 1993, 219 SCRA 85, 97.

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