

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEE RODRIGO, JOHN DOE @ BUNSO, AND PETER DOE @ LYN-LYN, ACCUSED.

G.R. No. 176159. September 11, 2008

Ponente: BRION, J.

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BRION, J.:

Before us for review is the Decision[1] dated September 18, 2006 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01531 which affirmed with modification[2] the decision dated June 27, 2005 of the Regional Trial Court (RTC), Branch 11, Malolos City, Bulacan in Crim. Case No. 917-M-2001.[3] The RTC's decision found the accused-appellant Lee Rodrigo (Rodrigo) guilty beyond reasonable doubt of the crime of robbery with homicide, and sentenced him as follows:

WHEREFORE, this Court finds the herein accused, Lee Rodrigo, GUILTY beyond reasonable doubt of Robbery with Homicide under Article 294, par. 1 of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the late Paquito Buna the following sums of money, to wit:

- [P50,000.00] as civil indemnity;
- P50,000.00 as moral damages; and
- P60,000.00 as actual damages.

x x x

SO ORDERED.

The Antecedents

The basic facts of the robbery with homicide are not disputed. The spouses Paquito Buna and Rosita Cabrera-Buna[4] (Rosita) owned a restaurant located at Area H in San Rafael, Bulacan. The spouses were in their restaurant at around 10:20 a.m. on October 27, 2000 together with their two helpers; Paquito was cooking in the kitchen while Rosita and the helpers were attending to two customers. Three men, armed with guns, suddenly entered the restaurant, declared a holdup, and immediately proceeded to divest the two customers of their money and the restaurant of its earnings of P500.00. While the robbery was in progress, Paquito came out of the kitchen and, seeing what was happening, grabbed a "bangko"; he was instantly fired upon three times by one of the armed men while the other two turned their backs and laughed. After the robbers left, Rosita rushed Paquito to the hospital where he was pronounced dead on arrival.

Rosita afterwards filed a criminal complaint through her Sinumpaang Salaysay (dated November 24, 2000)[5] where she identified Rodrigo as among the men who robbed the restaurant and killed her husband. On February 28, 2001, Rodrigo and two men bearing the aliases of "Lyn Lyn"[6] and "Bunso" were formally charged of the

special complex crime of robbery with homicide. The Information[7] reads:

That on or about the 27[th] day of October, 2000, in the Municipality of San Jose del Monte, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with short firearms, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, take, rob, and carry away with them P500.00 belonging to the spouses Paquito Buna and Rosita Cabrera-Buna, to the damage and prejudice of the said spouses in the amount of P500.00; and on the occasion of the commission of the said robbery or by reason thereof, the herein accused, in furtherance of their conspiracy, did then and there willfully, unlawfully and feloniously, attack, assault and shoot with the short firearms Paquito Buna, thereby inflicting on him serious physical injuries which directly caused his death.

Contrary to law.

Rodrigo was arrested on May 29, 2001. The other two accused remain at large. Rodrigo pleaded not guilty upon arraignment and trial on the merits subsequently followed.

The prosecution introduced two witnesses - Rosita and Dr. Ivan Richard Viray, the medico-legal officer whose testimony was dispensed with by agreement of the parties.[8] Thus, Rosita stood as the prosecution's only witness on the identity of the accused and on the commission of the crime.

As an eyewitness, Rosita identified Rodrigo in court as one of the three armed men who robbed the restaurant and its customers.[9] She testified that she saw Rodrigo as one of the robbers who entered the restaurant; that one of the three immediately declared a holdup;[10] that Rodrigo had a firearm in his possession;[11] that he brandished his firearm and threatened the occupants of the restaurant in the course of the robbery;[12] and that Rodrigo left with the other robbers after achieving their evil purpose.[13]

On re-cross-examination, Rosita admitted that she initially identified Rodrigo by means of a photograph shown to her at the police station; the photograph was the only one shown to her at that time.[14]

After the presentation of the following documentary evidence: (a) Sinumpaang Salaysay dated November 24, 2000 of Rosita Buna (Exhibits "A" and "A-1");[15] (b) List of Expenses Incurred for the wake, funeral, and burial of Paquito Buna (Exhibit "B" with submarkings);[16] and (c) Certificate of Death of Paquito Buna (Exhibit "C"),[17] the prosecution rested its case.

The case for the defense relied solely on the testimony of Rodrigo who interposed the defenses of denial and alibi.[18] He claimed that he was at his house at FVR I, Norzagaray, Bulacan with his wife, cousin, and neighbor on the alleged date and time of the commission of the crime. He was at the time watching television while taking care of his child. On cross-examination, he admitted that the distance from Barangay San Rafael, Sapang Palay to his house was more or less one kilometer; the distance can be covered in 10 minutes through a single tricycle and jeepney ride. He also admitted that he came to know that he was being implicated in the case two days after the October 27, 2000 robbery-killing incident.[19]

The RTC convicted Rodrigo on June 27, 2005 of the crime of robbery with homicide on the basis of Rosita's testimony which the court found to be candid, straightforward, firm, and without any trace of any improper motive. This testimony, an eyewitness account, confirmed that Rosita saw Rodrigo as among the three robbers who robbed the restaurant and who fled after divesting the restaurant of its earnings and the customers of their money, killing Paquito in the course of the robbery. The RTC declared that it was not important that Rodrigo did not actually shoot Paquito since there was a conspiracy; it did not matter who among the conspirators did the actual shooting as the act of one was the act of all, and all were equally liable. The court refused to believe Rodrigo's defenses of denial and alibi in the absence of any corroborating evidence and in light of Rosita's

positive and categorical eyewitness identification and account of the crime.

The CA, to where Rodrigo appealed his conviction, affirmed the lower court's decision, with the modification that the award of civil indemnity should be reduced to P50,000.00. As the lower court did, the CA gave premium to Rosita's identification when it said: ". . .Rodrigo was positively identified by Rosita Buna as one of the three (3) armed men who perpetrated the crime. She was straightforward in narrating how accused-appellant Rodrigo and his cohorts entered their restaurant, armed with guns and declared a hold-up. . . ." On the matter of identification, the appellate court significantly noted that: Rosita identified accused-appellant Rodrigo from the picture shown to her at the police station, and months later when she saw him in San Jose del Monte Police Station, and that she pointed to accused-appellant Rodrigo inside the courtroom during the trial of the case as among those who robbed them in their restaurant.[20]

Rodrigo elevated his conviction to this Court, citing the following reversible errors committed by the RTC and CA in their decisions:

(1)

In convicting Rodrigo of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt; and

(2)

In relying on the alleged weakness of the defense evidence rather than on the strength of the prosecution evidence.

Rodrigo particularly cited the inconsistencies in Rosita's testimony regarding his participation in the crime. In his view, these inconsistencies, together with his alibi, showed that he was not actually present at the crime scene. The identification Rosita made at "the police station was not sufficient and convincing to lead one to believe that Lee Rodrigo was among the malefactors. The act of the wife (herein witness) is expected from someone who had just lost a loved one unexpectedly and in an unacceptable manner. Such form of identification clearly impaired her credibility as a witness." [21] Further, Rodrigo asserted:

However, before the doctrine that positive identification prevails over denial or alibi may apply, it is necessary that the identification must first be shown to be positive and beyond question. Even though inherently weak, the defense of alibi or denial nonetheless acquires commensurate strength where no positive and proper identification has been made by the prosecution witness of the offender, as the prosecution still has the onus probandi in establishing the guilt of the accused. (People v. Crispin, 327 SCRA 167). While it is true that denial and alibi are weak defenses, it is equally settled that where the evidence of the prosecution is itself feeble, particularly as to the identity of the accused as the author of the crime, the defense of denial and alibi assume importance and acquire commensurate strength. (People v. Giganto, Sr. 336 SCRA 294).[22]

For its part, the People banked on the great weight accorded to the factual findings of the trial court, given its unique position of having observed the witnesses while testifying. It heavily relied, too, on Rosita's credibility and the positive identification she made as an eyewitness,[23] and the fact that she was not actuated by any improper motive.[24] Predictably, the People derided the alibi for being inherently weak and for failure to demonstrate that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.[25]

Our Ruling

We find the petition impressed with merit and acquit Rodrigo of the crime charged.

Presumption of Innocence

While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our Constitution.[26] It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt.[27] Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. We point all these out as they are the principles and dynamics that shall guide and structure the review of this case.

Mode of Review

We mention, too, that the review of a case opens the whole case for our consideration, including the questions not raised by the parties.[28] Our role in the justice system is not so much to penalize as to see that justice is done. Towards this end, ours is the obligation to explore all aspects of a case, including those that the parties have glossed over or have not fully explored.

The Court, in discharging its mandated duty, is tasked to consider two crucial points in sustaining a judgment of conviction: first, the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and second, all the elements constituting the crime were duly proven by the prosecution to be present. Failing in either of these, a judgment for acquittal is in order.

Identification of the Accused

The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

In the present case, the records show that Rodrigo's arrest and eventual conviction were wholly based on the testimony of Rosita who testified as an eyewitness and who identified Rodrigo as one of the perpetrators of the crime. To the prosecution, the trial court, and the appellate court, an eyewitness identification coming from the widow of the victim appeared to have been enough to qualify the identification as fully positive and credible. Thus, none of them appeared to have fully examined the real evidentiary worth of the identification Rosita made. The defense, for its part, grasped the possible flaw in the prosecution's case, but did not fully pursue its case and its arguments on the basis of the existing jurisprudence on the matter.

The aspect of this case that remains unexplored, despite the availability of supporting evidence, is Rosita's out-of-court identification of Rodrigo, done for the first time through a lone photograph shown to her at the police station, and subsequently, by personal confrontation at the same police station at an undisclosed time

(presumably, soon after Rodrigo's arrest). Jurisprudence has acknowledged that out-of-court identification of an accused through photographs or mug shots is one of the established procedures in pinning down criminals.[29] Other procedures for out-of-court identifications may be conducted through show-ups where the suspect alone is brought face to face with the witness (a procedure that appears to have been done in the present case as admitted by Rosita[30] and noted in the decision[31]), or through line-ups where a witness identifies the suspect from a group of persons lined up for the purpose.[32]

The initial photographic identification in this case carries serious constitutional law implications in terms of the possible violation of the due process rights of the accused as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. Either way, the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.

In *People v. Pineda*, we had occasion to explain photographic identification and the dangers it spawns: an impermissible suggestion and the risk that the eyewitness would identify the person he or she saw in the photograph and not the person she saw actually committing the crime, thus:

... [W]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness' recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."

xxx xxx xxx

A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph.[33]

We confirmed the existence of this danger in *People v. Teehankee* where the Court tackled the reliability of out-of-court identifications as an issue; we recognized that the harmful effects on the rights of the accused of these types of identification can go as far as and contaminate in-court identification.[34] Speaking through Mr. Justice (now Chief Justice) Reynato Puno, the Court said:

It is understandable for appellant to assail his out-of-court identification by the prosecution witnesses in his first assignment of error. Eyewitness identification carries vital evidence and, in most cases, decisive of the success or failure of the prosecution. Yet, while eyewitness identification is significant, it is not as accurate and authoritative as the scientific forms of identification evidence such as the fingerprint or DNA testing. Some authors even describe eyewitness evidence as "inherently suspect." The causes of misidentification are known, thus:

x x x

Identification testimony has at least three components. First, witnessing a crime, whether as a victim or a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. Dangers of unreliability in eyewitness testimony arise at each of these three stages, for whenever people attempt to acquire, retain, and

retrieve information accurately, they are limited to normal human fallibilities and suggestive influences.[35]
[Emphasis Supplied].

In *People v. Pineda*, we also laid down the proper procedure on photographic identification, namely: first, a series of photographs must be shown and not merely that of the suspect; and second, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.[36] In these cases, we emphasized that photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.[37]

That a single photograph, not a series, was shown to Rosita is admitted by Rosita herself in her testimony. The following exchanges transpired at her re-direct examination:

Fiscal:

(to the witness)

Q

Now, when you saw the accused Lee Rodrigo, how did you see Lee Rodrigo to [sic] the Police Station?

A

His picture was shown to me and I told the police that he is the one, sir.

Q

This Lee Rodrigo, the accused in this case?

A

Yes, sir.[38]

reinforced by the following on re-cross-examination:

Atty. Roque:

Q

You said, Madam witness, that you knew the accused through picture shown to you, am I correct?

A

Yes, sir.

Q

Who showed you the picture?

A

Police Morado, sir.

Q

How many pictures were shown to you?

A

Just one only, sir.

Q

Only the accused in this case, Lee Rodrigo?

A

Yes, sir. [39] (Emphasis supplied)

This testimonial admission has its roots in Rosita's Sinumpaang Salaysay ("Salaysay," Exhs. "A" and "A-1")^[40] that gave the following details of this same out-of-court identification as follows:

12. T:-

Sino ba ang sinasabi mong pumasok sa loob ng iyong Restaurant na armado ng mga baril at nangholdap una sa Bombay at bumaril dito sa iyong asawa at pagkatapos kinuha pa and benta ng iyong Restaurant?

S:

Ito sina LEE RODRIGO, Alyas BUNSO at isang Alyas LYN LYN po.

13. T:-

Kilala mo ba itong nasabing mga suspects na armado ng baril at pumatay sa iyong asawa matapos mangholdap?

S:-

Hindi ko sila kilala pero sinabi sa akin ni Chito Alicante na driver ng nagdedeliver ng Coca Cola na ang mga pangalan ay Alyas Bunso at Alyas LYNLYN at ang isa dito si LEE RODRIGO dito ko nalang (sic) nalaman ang tunay na pangalan sa himpilan ng pulisya ng ipakita sa akin and kanyang retrato na siya ang nakita kung unang bumaril sa aking asawa at kumuha ng pera na kita ng aming Restaurant. [emphasis supplied].

Thus, the prosecution's evidence themselves, both documentary and testimonial, show that the police investigatory procedure violated the jurisprudential rule we cited above. To reasonably determine whether this flawed procedure indeed led to an unreliable in-court identification, we again hark back to Teehankee for the very useful guidelines it provided:^[41]

In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.

Another well-known authority on eyewitness identification, Patrick M. Wall, made a list of 12 danger signals that exist independently of the identification procedures investigators use.^[42] These signals give warning that the identification may be erroneous even though the method used is proper.^[43] Outside of the six factors mentioned in Teehankee, two danger signals in Wall's list are relevant in the case before us, namely: (1) the limited opportunity on the part of the witness to see the accused before the commission of the crime; and (2) the fact that several persons committed the crime. We shall consider them all in passing upon the reliability of Rosita's in-court identification in the discussions below.

1. Rosita did not know the robbers. A critical point in the totality of Rosita's testimony, admitted as early as her November 24, 2001 Sinumpaang Salaysay, is that she did not know the robbers. In other words, she saw them for the first time during the robbery. This fact can make a lot of difference as human experience tells us: in the

recognition of faces, the mind is more certain when the faces relate to those already in the mind's memory bank; conversely, it is not easy to recall or identify someone we have met only once or whose appearance we have not fixed in our mind.

2. Lack of any prior description. Other than giving Rodrigo's name in her Sinumpaang Salaysay and confirming that - dito ko nalang [sic] nalaman ang tunay na pangalan sa himpilan ng pulisya ng ipakita sa akin ang kanyang retrato na siya and nakita kung [sic] unang Bumaril sa aking asawa at kumuha ng pera na kita ng aming Restaurant - Rosita provided no other description of Rodrigo or of the other two, whether in her Sinumpaang Salaysay or in court. The original records of the case in fact contain no record of statements secured from witnesses immediately after the crime was committed on October 27, 2000. Thus, there is no basis to compare Rosita's or any other witnesses' immediate recollection of what transpired at the crime scene and the description of the perpetrators, with Rosita's photographic identification and her in-court identification at the trial. This is a glaring gap in the police investigation and one that leaves Rosita's identification unsupported, given the absence of corroborative evidence from other witnesses.

3. Opportunity to view the criminals and degree of focus at the time. Rosita's first encounter with the robbers - people she did not know before - happened very briefly during a very horrifying experience when her husband was shot and killed. Whether the event and its details etched themselves in Rosita's memory or whether everything happened in a blur is hard to say with definite certainty and should be gauged through Rosita's consistency in testifying on other aspects of the case.

4. Number of criminals involved; degree of focus on the criminals. With three robbers involved,[44] Rosita's focus and attention could not have been total on any one robber alone. In fact, if one robber should have caught her attention at all, he would have been the one who shot her husband and who, by her own testimony, was not Rodrigo whom she variously claimed to be outside the restaurant at that time or robbing her Indian customer.[45]

5. Time element attendant to identification. The time element involved in the process of identification is shown by the sequence of events following the robbery-homicide on October 27, 2000. The earliest document on record subsequent to the crime is Rosita's Sinumpaang Salaysay of November 24, 2000 where Rosita significantly mentioned that she did not know the robbers and that one Chito Alicante gave her their names. The Information against Rodrigo was filed with the court on February 28, 2001[46] and the warrant of arrest was issued only on April 18, 2001.[47] The records do not show when Rosita saw Rodrigo at the San Jose del Monte Police Station[48] (as the CA decision noted) but this presumably happened only after his arrest on April 18, 2001 or 5 ½ months after the crime. Thereafter, Rosita identified Rodrigo in court on April 10, 2002, or more than 15 months after the crime. Thus, Rosita only saw Rodrigo twice before they met in court; first, at the crime scene as she alleged; and, second, at the San Jose del Monte Police Station under circumstances that do not appear in the records.

6. Suggestiveness of the photographic identification. As we have already noted, at no point did Rosita describe the robbers so that a take-off point for comparison can be made. Rosita simply made her photographic identification of Rodrigo as follows:

21. T:-

Mayroon akong ipapakita dito sa iyong isang retrato, ano ang masasabi mo dito?

S:-

Iyan po ang tumutok sa Bombay pagkatapos kinuha ang pera at ina [sic] bumaril dito sa aking asawa. (Investigator showing to the complaining witness of picture of suspect LEE RODRIGO). [emphasis supplied]

Significantly, this identification came a month after the crime - a long month when the police appeared to have achieved no headway in their investigation (although Rodrigo himself admitted that he heard from a policeman-neighbor that he was "implicated" in the crime two days after its commission[49]). By her own account, Rosita only learned the names of the robbers from information given by one Chito Alicante who never appeared as a witness in the case.[50] The photographic identification was made at the police station by showing her the lone photograph of Rodrigo who was expressly noted in the Sinumpaang Salaysay as a "suspect." Thus, Rosita, who did not know the robbers, initially fixed them in her mind through their names that Chito Alicante supplied, and subsequently, linked the name Lee Rodrigo to the faces she saw in the photograph the police presented as the suspect. Note that by providing only a lone photograph, complete with a name identified as the suspect, the police did not even give Rosita the option to identify Rodrigo from among several photographed suspects; the police simply confronted her with the photograph of Rodrigo as the suspect.

7. Rosita's consistency regarding Rodrigo's precise role in the robbery leaves much to be desired.[51] It is a matter of record that she testified that Rodrigo entered the restaurant along with his two cohorts,[52] but she subsequently declared that Rodrigo was outside the restaurant brandishing his firearm.[53] She also declared on cross-examination that Rodrigo was one of those who robbed the Indian,[54] but on re-direct, he declared that he did not touch the Indian nor take his valuables; he just stood there.[55] It is noteworthy that while Rosita appeared clear, categorical, and definite about the participations of Lyn-lyn and Bunso in the robbery, she failed to do the same with respect to Rodrigo's role in the crime. An aspect that never saw light during the trial was the statement in the Sinumpaang Salaysay that there were other participants in the crime, albeit hearsay, who served as lookouts, namely, Ricky de la Cruz, Mateo Malson alias "Mike," and Carding Oronos. No explanation can be gleaned from the evidence on what happened to these identified possible accomplices. The Salaysay also mentions the people with Rosita in the restaurant, namely, the helpers and the customers. None of these eyewitnesses was ever called upon to testify. While these discrepancies and gaps may appear to be trivial in considering the elements of the crime, they assume significant materiality in considering the weakness of Rodrigo's identification as one of the robbers.

Separately from these considerations, we entertain serious doubts about the validity of the reasoning, made by both the trial and the appellate courts, that a widow's testimony - particularly, her identification of the accused - should be accepted and held as credible simply because the defense failed to show by evidence that she had reasons to falsify.[56]

Arguably, a widow who testifies about the killing of her husband has no motive other than to see that justice is done so that her testimony should be considered totally credible. This assumption, however, is not the same as the conclusion that a witness is credible because the defense has not shown any ill motive that would motivate him or her to falsely testify. Strictly speaking, this conclusion should apply only to third parties who are detached from and who have no personal interest in the incident that gave rise to the trial. Because of their presumed detachment, the testimonies of these detached parties can be presumed credible unless impugned by the adverse party through a showing of an ill or ulterior motive on the part of the witnesses.

The presumed detachment that applies to third parties obviously cannot apply to a widow whose husband has been killed, or for that matter, to a relative whose kin is the victim, when the testimony of the widow or the relative is offered in the trial of the killer. The widow or the relatives are not detached or disinterested witnesses; they are parties who suffered and experienced pain as a result of the killing. In fact, they are better characterized as aggrieved parties as even the law recognizes them as such through the grant of indemnities and damages. One reality about these aggrieved parties is that their reactions and responses to the crime vary. Indeed, for some of them, the interest of seeing that justice is done may be paramount so that they will act strictly according to legal

parameters despite their loss and their grief. At the opposite extreme are those who may not so act; they may want to settle and avenge their loss irrespective of what the law and evidence may indicate. In between these extremes are those who may not be outwardly or consciously affected, but whose judgment with respect to the case and its detail may be impaired by their loss and grief. All these are realities that we must be sensitive to.

Thus, the testimonies from aggrieved parties should not simplistically be equated to or treated as testimonies from detached parties. Their testimonies should be handled with the realistic thought that they come from parties with material and emotional ties to the subject of the litigation so that they cannot be accepted and held as credible simply because the defense has not adduced evidence of ill-motivation. It is in this light that we have examined Rosita's identification of Rodrigo, and we hold as unpersuasive the lower courts' conclusion that Rosita deserved belief because the defense had not adduced any evidence that she had motives to falsely testify. The better rule, to our mind, is that the testimony of Rosita, as an aggrieved party, must stand on its independent merits, not on any failure of the defense to adduce evidence of ill-motivation.

Conclusion

We hold it highly likely, based on the above considerations, that Rosita's photographic identification was attended by an impermissible suggestion that tainted her in-court identification of Rodrigo as one of the three robbers. We rule too that based on the other indicators of unreliability we discussed above, Rosita's identification cannot be considered as proof beyond reasonable doubt of the identity of Rodrigo as one of the perpetrators of the crime.

A first significant point to us is that Rosita did not identify a person whom she had known or seen in the past. The robbers were total strangers whom she saw very briefly. It is unfortunate that there is no direct evidence of how long the actual robbery and the accompanying homicide lasted. But the crime, as described, could not have taken long, certainly not more than a quarter of an hour at its longest. This time element alone raises the question of whether Rosita had sufficiently focused on Rodrigo to remember him, and whether there could have been a reliable independent recall of Rodrigo's identity.

We also find it significant that three robbers were involved, all three brandishing guns, who immediately announced a holdup. This is an unusual event that ordinarily would have left a person in the scene nervous, confused, or in common parlance, "rattled." To this already uncommon event was added the shooting of Rosita's husband who charged the robbers with a "bangko" and was promptly shot, not once but three times. These factors add up to our conclusion of the unlikelihood of an independent and reliable identification.

We have to factor in, too, into this conclusion, the matter of Rosita's motivation as well as her frame of mind when she identified Rodrigo from a photograph. We take judicial notice that subsequent to the crime was the victim's burial,[57] again an uncommon event attended by an acute sense of loss, grief and, at the very least, disruption of and some measure of confusion in the bereaved family's daily life. Uncertainties and a good measure of anxiety must have been present, too, because of the lack of any immediate significant developments in the investigation of the case in its first month, i.e., between the time of the crime and Rosita's Sinumpaang Salaysay and photographic identification. We note that the original records of the case do not even indicate the initial investigatory steps the police undertook, especially in terms of securing the statements of the immediate witnesses and the description of the criminals. Under these facts, it is more likely than not that when the police called on Rosita to ask for the identification of the lone suspect they had already identified, Rosita was prepared in her mind to believe the police, to confirm the results of their investigation, and to identify the suspect as one of the perpetrators. That Rodrigo was presented and identified as a suspect is unmistakably indicated in Rosita's Sinumpaang Salaysay;[58] that Rosita responded to the not-too-subtle suggestion of the police that Rodrigo was one of the robbers is very likely. We note in this regard that Rosita does not appear to have properly sorted out in

her mind the details of what transpired on October 27, 2000 as demonstrated by the inconsistencies in her narration of the details of the crime, notably between her Sinumpaang Salaysay and her in-court testimony, as well as in the details of her in-court testimony as her narration and credibility were tested at the various stages of examination. To be sure, she correctly testified on the elements of the crime of robbery with homicide and confirmed that it was committed. Not at the same level of certainty, however, are the respective roles of the three perpetrators and their identities as the latter appear to be based more on relayed third-party information and on police conclusions rather than on Rosita's own personal recollection of events. At this level of certainty, we would be violating the rights of the accused to be presumed innocent and to due process if we affirm the lower courts' decisions. Hence, Rodrigo's acquittal on ground of reasonable doubt is in order.

Epilogue: The Defenses of Denial and Alibi

While the defenses of denial and alibi are inherently weak, they are only so in the face of an effective identification. Where, as in the present case, the identification has been fatally tainted by irregularity and attendant inconsistencies, doubt on the culpability of the accused, at the very least, has been established without need to avail of the defenses of denial and alibi. In constitutional law and criminal procedure terms, the prosecution never overcame the presumption of innocence that the accused enjoyed so that the burden of evidence never shifted to the defense. Thus, any consideration of the merits of these defenses is rendered moot and will serve no useful purpose.

WHEREFORE, premises considered, we REVERSE and SET ASIDE the Decision dated September 18, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01531. Accused-appellant LEE RODRIGO is hereby ACQUITTED on the ground of reasonable doubt of the crime of robbery with homicide. We hereby ORDER HIS IMMEDIATE RELEASE unless there are other valid causes for his continued detention.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections in Muntinlupa City for his immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this Decision the action he has taken.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Remedios Salazar-Fernando (as Chairperson) with Associate Justice Noel G. Tijam and Associate Justice Arturo Tayag concurring; CA rollo, pp. 66-74.

[2] Reducing the award of civil indemnity to P50,000.00.

[3] Penned by Judge Basilio R. Gabo, Jr.; CA rollo, pp. 20-22.

[4] TSNs, April 10, 2002, May 22, 2002 and June 26, 2002.

[5] Prosecution's Exhibits "A" and "A-1"; Records, pp. 5-6.

[6] Also referred to as Lengleg in the records.

[7] Records, p. 2.

[8] TSN, October 16, 2002, pp. 3-4. The prosecution and the defense stipulated that Dr. Viray will testify on the following matters: (a) that he is a medico-legal officer at the PNP Crime Office in Malolos, Bulacan; (b) that he conducted an autopsy on the body of the victim Paquito Buna on October 27, 2000; and (c) that the cause of death

of Paquito Buna in his Post-Mortem Certificate of Death is intracranial hemorrhage as a result of gunshot wound in the head.

[9] TSN, April 10, 2002, p. 5.

[10] TSN, June 26, 2002, p. 9.

[11] *Id.*, p. 10.

[12] *Id.*, pp. 9-10.

[13] *Id.*, p. 10.

[14] *Id.*, p. 11.

[15] *Supra* note 5, p. 2.

[16] Records, pp. 88-91.

[17] *Id.*, p. 87.

[18] TSN, August 27, 2003.

[19] *Id.*, p. 4.

[20] CA Decision, p. 6, CA rollo, p. 71.

[21] Accused-appellant's Brief; CA rollo, p. 36.

[22] *Id.*, p. 37.

[23] Brief for the Appellee; *id.*, pp. 55-57.

[24] *Id.*

[25] *Id.*, p. 58.

[26] PHILIPPINE CONSTITUTION, Section 14, Article III.

[27] *Aguirre v. People*, G.R. No. L-56013, October 30, 1987, 155 SCRA 337, 342.

[28] *People v. Pineda*, G.R. No. 141644, May 17, 2004, 429 SCRA 478, 495.

[29] *People v. Villena*, G.R. No. 140066, October 14, 2002, 390 SCRA 637, 650.

[30] TSN, June 26, 2002, pp. 5-6, 8.

[31] *Supra* note 20.

[32] *People v. Teehankee*, G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95.

[33] *Supra* note 28, p. 498.

[34] *Supra* note 32, p. 95.

[35] *Id.*, pp. 94-95.

[36] *Supra* note 28, pp. 497-498.

[37] *Id.*, p. 498; *People v. Villena*, *supra* note 29, p. 650; and *People v. Teehankee*, *supra* note 32, p. 95.

[38] TSN, June 26, 2002, p. 8.

[39] Id., p. 11.

[40] Supra note 5.

[41] Citing: Neil v. Biggers, 409 US 188 [1973]; Manson v. Brathwaite, 432 US 98 [1977]; Del Carmen, Criminal Procedure, Law and Practice, 3[rd] Edition, p. 346.

[42] EYE-WITNESS IDENTIFICATION IN CRIMINAL CASE (1965), pp. 90-130, where the author pointed out 12 danger signals that exist independently of the identification procedures investigators use. These are:

"(1)

the witness originally stated that he could not identify anyone;

(2)

the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;

(3)

a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;

(4)

before identifying the accused at the trial, the witness erroneously identified some other person;

(5)

other witnesses to the crime fail to identify the accused;

(6)

before trial, the witness sees the accused but fails to identify him;

(7)

before the commission of the crime, the witness had limited opportunity to see the accused;

(8)

the witness and the person identified are of different racial groups;

(9)

during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

(10)

a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

(11)

several persons committed the crime; and

(12)

the witness fails to make a positive trial identification." Cited in *People v. Pineda*, supra note 28, pp. 503-504.

[43] *Id.*, p. 503.

[44] Other records from the original file of the case suggest that there may have been others who did not enter the restaurant, but this has not been introduced in any of the materials adduced in court; records, p. 8.

[45] TSN, April 10, 2002, p. 6; and TSN, June 26, 2002, p. 6.

[46] Records, p. 2.

[47] *Id.*, p. 10.

[48] TSN, June 26, 2002, pp. 5-6.

[49] TSN, August 27, 2003, p. 4.

[50] TSN, April 10, 2002, p. 5.

[51] TSN, June 26, 2002, p. 9; and TSN, April 10, 2002, p. 6

[52] TSN, June 26, 2002, p. 9.

[53] TSN, April 10, 2002, p. 6.

[54] TSN, June 26, 2002, p. 6.

[55] *Id.*, p. 9.

[56] RTC Decision, p. 2; CA Rollo, p. 21. CA Decision, pp. 6, 8; CA Rollo, pp. 71, 73.

[57] In this regard, see the evidence of expenses attendant to the burial.

[58] Records, p. 5.

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