

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHARMEN OLIVO Y ALONG, NELSON DANDA Y SAMBUTO, AND JOEY ZAFRA Y REYES, APPELLANTS.

G.R. No. 177768. July 27, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the Decision[1] dated November 30, 2006 of the Court of Appeals in CA- G.R. CR HC No. 00595 which had affirmed in toto the Decision[2] dated August 24, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 81, finding accused-appellants Charmen Olivo (Olivo), Nelson Danda (Danda), and Joey Zafra (Zafra) guilty beyond reasonable doubt of the crime of robbery with homicide, with no aggravating nor mitigating circumstance, and sentencing them to suffer the penalty of reclusion perpetua and to indemnify, jointly and severally, the heirs of the victim, Mariano Constantino, P65,000 as actual damages, P50,000 for the death of the victim, and P50,000 as moral damages.

Accused-appellants Olivo, Danda and Zafra were charged in an Information dated November 29, 2000, as follows:

The undersigned accuses CHARMEN OLIVO Y ALONG alias Lipay, NELSON DANDA Y SAMBUTO alias Teng, and JOEY ZAFRA Y REYES, of the crime of Robbery with Homicide, committed as follows:

That on or about the 21[st] day of November 2000, in Quezon City, Philippines, the said accused, conspiring and confederating together and helping one another, with intent to gain and by means of force, violence, and intimidation against persons, to wit: by then and there armed with guns forcibly entered the hardware store of Mariano Constantino [y] Zoleta located at Eagle Street, Sitio Veterans B, Bgy. Bagong Silangan, this City, then announced that it was [a] HOLD-UP and ordered Maricel Permejo, storekeeper thereat, at gunpoint to give them the money of said store, did then and there wilfully, unlawfully and feloniously took, rob and carry away the total amount of P35,000.00 Philippine Currency, representing the days earnings of said hardware store, that on the occasion of and by reason of the said robbery and in pursuance of their conspiracy, the said accused with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one MARIANO CONSTANTINO Y ZOLETA, by then and there shooting him with a gun hitting him on the trunk and extrem[i]ties, thereby inflicting upon said Mariano Constantino [y] Zoleta serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Mariano Constantino [y] Zoleta.

CONTRARY TO LAW.[3]

When arraigned on January 22, 2001, all of the accused-appellants pleaded not guilty.[4]

The evidence for the prosecution consisted of the oral testimonies of Maricel Permejo, storekeeper of the victim Mariano Constantino, Pablito Constantino, the victim's brother, SPO2 Joseph Dino (SPO2 Dino), medico-legal officer Dr. Winston Tan, and Emelita Constantino, the victim's wife. The defense, for its part, presented

accused-appellants Olivo and Zafra, Dominica Bernal, who was the landlady of Olivo and Danda, and Rodel de Belen who corroborated Zafra's testimony.

The prosecution, through the Office of the Solicitor General, narrates its version of the facts as follows:

On November 21, 2000, around 6:30 o'clock in the evening, Maricel [Permejo] was tending the store of the victim, Mariano Constantino in Bagong Silangan, Quezon City. Suddenly, three (3) armed men entered the store and demanded money. When Maricel did not accede to the demand, one of the armed men later identified as appellant Nelson Danda kicked her in the leg while his other companion, appellant Joey Zafra got money from the cash register. When the store owner, Mariano Constantino, went inside the store and shouted, the third companion, appellant Charmen Olivo poked a gun at him. Mariano ran towards the back of the house but appellant Olivo nevertheless chased him. Thereafter, Maricel heard successive shots and saw appellants Danda and Zafra going out of the store while the bloodied body of Mariano was lying at the stairway of the house. The victim was taken to the hospital where he died upon arrival.

Two days after the incident SPO2 Joseph Dino received an information from the Batasan Police Station that they have three (3) suspects for drug violations and illegal possession of firearms. He borrowed the suspects for identification by Maricel. When presented to her, she identified them as the men who staged a hold up and shot the deceased.[5]

The defense, through the Public Attorney's Office, summarized its version of facts as follows:

EVIDENCE FOR THE PROSECUTION:

To prove the allegations in the Information, the prosecution presented Maricel [Permejo], Pablito Constantino, SPO2 Joseph Dino, Dr. Winston Tan, and Emelita Constantino.

The evidence for the prosecution tends to establish that while Maricel [Permejo] was tending the store of the late Mariano Constantino on 21 November 2000, three (3) armed men barged in at around 6:30 o'clock in the evening and ordered her to bring out the money. When she refused, accused Nelson Danda kicked her leg while accused Joey Zafra proceeded to get the money amounting to P35,000.00 from the cash register.

Meanwhile, the owner Constantino entered his store and shouted. Accused Charmen Olivo pointed a gun at him. Constantino ran to the back of the house and accused Olivo chased him. Successive gunshots were subsequently heard.

[Permejo] looked for her employer and found him wounded and bloodied along the stairway of the house. She sought help from a neighbor and the victim was brought to the Fairview [General] Hospital where he expired.

The cadaver was brought for autopsy to Camp Crame and Dr. Winston Tan, after the procedure, found several gunshot wounds, the fatal among which was the one sustained on the right chest.

The cadaver was thereafter brought to the Dela Paz Funeral where he stayed for a day and a night. The remains were then brought to Marinduque for the wake which lasted four (4) days and four (4) nights. Emelita Constantino testified on the civil aspect of the case.

SPO2 Joseph Dino, an investigator at Camp Karingal, was designated to handle the case. He went to the place of the incident and took the statement of Maricel [Permejo]. Two (2) days after, their office received information that the Batasan Police Station has three (3) suspects for violation of Republic Act (RA) 6425. SPO2 Dino borrowed the suspects and when he presented them to Permejo, the latter identified them as the same persons who held them up and shot her employer.

EVIDENCE FOR THE DEFENSE:

The defense presented the following witnesses, to wit: Charmen Olivo, Dominica Bernal, Joey Zafra and Rodel

de Belen.

The evidence for the defense of accused Charmen Olivo and Nelson Danda shows that at around 6:30 o'clock in the evening of 21 November 2000, the accused were cleaning the house that they rented from Dominica Bernal on 20 November 2000.

While accused Olivo was fetching water along Barangay Holy Spirit in Payatas, Quezon City on 24 November 2000, policemen in civilian clothes mauled and arrested him sans a warrant. Together with two (2) others, they were brought to Station 6 allegedly for violation of R.A. 6425. A woman came and accused Olivo was taken out. The policemen asked her, "ito ba?" which she answered in the negative. The same question was repeated twice but the answer was not changed.

After a few days, the accused were imprisoned at Camp Karingal. They were asked their names. The same woman arrived thereat and at a distance of 1 ½ meters, accused Olivo heard the policemen telling the woman "ituro mo na". The woman then mentioned accused Olivo's name.[6]

On August 24, 2004, the RTC rendered a decision convicting accused-appellants of the crime of robbery with homicide. The dispositive portion of the decision states:

WHEREFORE, premises considered, the Court finds accused Charmen Olivo y Along, Nelson Danda y Sambuto and Joey Zafra y Reyes guilty beyond reasonable doubt of the crime of Robbery with Homicide. There being no mitigating or aggravating circumstance, each accused is hereby sentenced to suffer the penalty of Reclusion Perpetua and is hereby ordered to indemnify, jointly and severally, the heirs of the victim in the following amounts: P65,000.00 as actual damages, P50,000.00 for the death of the victim and P50,000.00 as moral damages.

SO ORDERED.[7]

Accused-appellants Olivo and Danda appealed to the Court of Appeals.

In a Decision dated November 30, 2006, the Court of Appeals affirmed in toto the RTC's decision, as follows:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED. The assailed decision is AFFIRMED in toto.

SO ORDERED.[8]

Before this Court now, the issues raised by the accused-appellants are the following:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS CHARMEN OLIVO AND NELSON DANDA OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.

III.

ASSUMING ARGUENDO THAT ACCUSED-APPELLANTS CHARMEN OLIVO AND NELSON DANDA'S CULPABILITY WAS ESTABLISHED, THE COURT A QUO GRAVELY ERRED IN CONVICTING THEM OF THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE.[9]

The accused-appellants argue that in criminal prosecutions, the State has the burden of proving the guilt of the

accused beyond reasonable doubt. It has to prove the identity of the accused as the malefactor, as well as the fact of the commission of the crime for which he is allegedly responsible.[10] They argue that it can be gleaned from the records of the case that the prosecution relied mainly on the testimony of the alleged eyewitness Maricel Permejo, but her testimony leaves much to be desired.[11] They argue that Maricel Permejo did not point to them as the malefactors and she only did so upon the instruction given in Camp Karingal. They point out that they were invited allegedly for violation of the anti-drugs law and were appalled to learn that they were charged with a different crime and the alleged witness was coached to identify them. Evidently, they stress, their guilt has not been proved with the required quantum of evidence. Where the people's evidence fails to meet the quantum required to overcome the constitutional presumption of innocence, the accused is entitled to acquittal regardless of the weakness of his defense of denial and uncorroborated alibi, for it is better to acquit a guilty man than to unjustly keep in prison one whose guilt has not been proven beyond the required quantum of evidence.[12]

The appellants further argue that while the alleged eyewitness claimed she saw the accused-appellant Joey Zafra take the money from the cash register, she did not see how and who killed Mariano Constantino. She merely claimed that she saw the accused-appellants armed and chased the deceased outside the store. They conclude that whether or not the accused-appellants indeed committed homicide on the occasion of the robbery is a matter that has not been proven with the required moral certainty of guilt.[13]

On the other hand, the prosecution, through the Office of the Solicitor General, argues that findings of fact of the trial court are generally upheld on appeal and the accused-appellants are assailing the correctness of the findings of fact of the trial court by impugning the credibility of the prosecution witness Maricel Permejo.[14] The prosecution claims that contrary to the accused-appellants' claim that the police officers taught the witness Maricel Permejo to point to them as the perpetrators, her testimony is straightforward and direct.[15]

After review, we find that the accused-appellants should be acquitted.

It is settled that when the issue is the evaluation of the testimony of a witness or his credibility, this Court accords the highest respect and even finality to the findings of the trial court, absent any showing that it committed palpable mistake, misappreciation of facts or grave abuse of discretion. It is the trial court which has the unique advantage of observing first-hand the facial expressions, gestures and the tone of voice of a witness while testifying.[16]

The well-entrenched rule is that findings of the trial court affirmed by the appellate court are accorded high respect, if not conclusive effect, by this Court, absent clear and convincing evidence that the tribunals ignored, misconstrued or misapplied facts and circumstances of substances such that, if considered, the same will warrant the modification or reversal of the outcome of the case.[17]

Factual findings of trial courts, when substantiated by the evidence on record, command great weight and respect on appeal, save only when certain material facts and circumstances were overlooked and which, if duly considered, may vary the outcome of the case.[18]

In this case, the material fact and circumstance that the lone alleged eyewitness, Maricel Permejo, was not able to identify the accused-appellants as the perpetrators of the crime, varies the outcome of this case. This circumstance was established during the direct examination of Olivo and was not rebutted by the prosecution during cross-examination or in its pleadings. Olivo's testimony reads as follows:

x x x x

Q:

Mr. Witness, when they brought you to Station 6[,] what happened there in Station 6?

A

[(Charmen Olivo)]: A woman [(Maricel Permejo)] came in and the police took me out.

Q:

After bringing you out[,] what happened when the certain woman arrived?

A:

They questioned the woman sir.

Q:

What did they ask the woman?

A:

They asked the woman, ["ito ba"]? [T]he woman answered, ["he is not the one sir".]

Q:

How many times did they ask the woman that question, if they asked more than [once]?

A:

Three (3) times sir.

Q:

And what was the answer of that woman for the second and third time that they asked her again?

A:

Hindi po yan sir.[19] (Emphasis supplied.)

x x x x

It was only a few days after, when the accused-appellants were brought to Camp Karingal, that Maricel Permejo was again asked to identify the accused-appellants. This time, she identified them as the perpetrators of the crime. Olivo's testimony reads as follows:

x x x x

Q:

After that what happened?

A:

The woman gave a negative answer.

After a few days, we were brought to Camp Karingal sir.

Q:

When you were brought to Camp Karingal what happened there?

A:

Our names were asked sir.

Q:

Who took your names?

A:

I do not know sir.

Q:

What happened after somebody took your names while you were there at Camp Karingal?

A:

We were put in prison sir.

Q:

What happened after you were brought to the cell?

A:

A woman arrived sir.

Q:

Are you saying that that woman who arrived was the same woman that you saw there at Station 6?

A:

Yes sir.

Q:

When she arrived what did you notice that the poli[c]emen were doing while the woman arrived?

A:

I saw the poli[c]emen teaching the woman sir.

Q:

How do you know that the poli[c]em[e]n [were] te[a]ching the woman?

A:

I heard them sir.

Q:

How far were you from the police and this woman when you said you overheard them?

A:

About one and one half me[t]ers sir.

Q:

And what did the policem[e]n [do] when you said the policemen were teaching the woman[?] What did the policem[e]n tell the woman?

A:

The police said ["ituro mo na"].

Q:

What did the woman do after the policeman said ["ituro mo na"] did the[y] point at you and your companion?

A:

She mentioned my name sir.

Q:

What did the woman [do] aside from mentioning your name?

Aside from the woman [giving] your name, [what else] did she do, if she did any?

A:

No more sir.[20]

x x x x

The fact that Permejo was not able to identify accused-appellants as the perpetrators of the crime impinges heavily on the credibility of prosecution's evidence. For if, indeed, the accused-appellants were the malefactors of the crime who did not hide their faces during the robbery, the eyewitness, who had such close, traumatic encounter with them, should automatically have recalled their faces upon seeing them. It behooves this Court to declare that she was not able to do so positively.

Having ignored the abovementioned important circumstance, the trial court misconstrued and misapplied facts and circumstances of the case, warranting the modification or reversal of the outcome of the case. The trial court grievously erred when it ruled that the lone prosecution eyewitness categorically and positively identified accused-appellants as the perpetrators of the crime.

Other circumstances tend to prove that the accused-appellants were not the perpetrators of the crime.

One, they were not arrested for the crime of robbery with homicide but were arrested during a buy-bust operation. The records are bereft as to whether or not the case against them for violation of Republic Act No. 6425[21] prospered.

Two, they were brought to Camp Karingal for dubious reasons. When SPO2 Dino was asked during direct examination why he was called to investigate the robbery with homicide which occurred in the Batasan area when he was in Camp Karingal, SPO2 Dino replied that it was standard operating procedure (SOP) that when the case is murder and robbery and the amount is more than P1 million, the case will be handled by the Criminal Investigation Unit (CIU). Apparently realizing his mistake that the amount taken was only P35,000.00 when asked the same question during cross-examination, SPO2 Dino replied that it was SOP that if the case is murder or homicide and if there is no available police investigator for that police station, then Camp Karingal will be the one to conduct the investigation. SPO2 Dino's testimony during direct examination goes:

x x x x

Q:

How did you learn of the death of the same person?

A:

The case was called at the Batasan Police Station, in our station, and our desk officer told me to handle the case.

Q:

By the way, can you tell this court why the case/incident happened in Batasan and you were called to investigate when in fact you were in Camp Karingal?

A:

It was SOP in the [Central Police District (CPD)] that when the case is Murder and Robbery [and the amount] is more than 1 million, the case is to be handled by the [Criminal Investigation Unit (CIU)].[22] (Emphasis supplied.)

x x x x

On cross-examination, he replied:

x x x x

Q:

Now, Mr. [P]oliceman, would you tell us why you were assigned to conduct the investigation in this case when they have other police investigator[s] at Batasan Hills, Quezon City?

A:

Because that was the standard [operating] procedure that if the case is [murder] or [h]omicide that if there is [no] available police investigator for that police station, then Camp Karingal will be the one to conduct the investigation.

Q:

In your direct examination, I did not remember you tell before this Court that you conduct[ed] the investigation of this case. Since it involved robbery with [h]omicide, do you know how much was involved in the robbery?

A:

If I remember, it was P[h]p 30,000.00 sir.

Q:

It was not one (1) million?

A:

Yes sir.

Q:

By the way, who is the one making the assignment in case of destination of [a] case like this[?]

A:

The criminal investigator, sir.

Q:

You are referring to Camp [K]aringal or Batasan Hills?

A:

Camp Karingal, sir.

Q:

You are saying that even if the offense is committed at another place, Camp Karingal will be the one to investigate?

A:

Yes sir.

Q:

This case was reported to the Batasan Hills Police Station?

A:

Yes sir.

Q:

And it was not directly reported to Camp Karingal?

A:

The Batasan Police Station Desk Officer reported the case to Camp Karingal.

Q:

How do you know that?

A:

The Desk Officer called the Camp Karingal Office, sir.[23] (Emphasis supplied.)

x x x x

The abovementioned testimony of SPO2 Dino makes his credibility doubtful.

Apparently, the accused-appellants were arrested without a warrant during a buy-bust operation on November 24, 2000,[24] transferred to Camp Karingal under dubious circumstances, and made to stand in a police line-up and identified by an eyewitness who failed to identify them three times. These circumstances were ignored by the trial court who gave too much credence on the positive identification of the accused-appellants by the same eyewitness during direct examination.

Trial courts are mandated not only to look at the direct examination of witnesses but to the totality of evidence before them. In every case, the court should review, assess and weigh the totality of the evidence presented by the parties. It should not confine itself to oral testimony during the trial.[25]

We cannot convict appellants for the special complex crime of robbery with homicide when the evidence relied upon by the trial court is plainly erroneous and inadequate to prove appellants' guilt beyond reasonable doubt. Conviction must rest on nothing less than moral certainty, whether it proceeds from direct or circumstantial evidence.[26]

In view of the foregoing, acquittal of the accused-appellants is in order.

One final note. The other accused, Joey Zafra, who is identically circumstanced as the other appellants and who was likewise convicted on the same evidence, does not appear to have perfected an appeal from the trial court's judgment. The record does not show the reason therefor.

Be that as it may, the present rule is that an appeal taken by one or more several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.[27] Our pronouncements here with respect to the insufficiency of the prosecution evidence to convict appellants beyond reasonable doubt are definitely favorable and applicable to accused Joey Zafra. He should not therefore be treated as the odd man out and should benefit from the acquittal of his co-accused. In fact, under similar conditions and on the same ratiocination, Section 11(a), Rule 122 of the Rules of Court has justified the extension of our judgment of acquittal to the co-accused who failed to appeal from the judgment of the trial court which we subsequently reversed.[28]

WHEREFORE, the Decision dated November 30, 2006 of the Court of Appeals in CA-G.R. CR HC No. 00595 and the Decision dated August 24, 2004 of the Regional Trial Court of Quezon City, Branch 81 are REVERSED AND SET ASIDE. Accused-appellants Charmen Olivo and Nelson Danda are hereby ACQUITTED of the crime charged on the ground of reasonable doubt. Pursuant to Rule 122 of the Rules of Court, their co-accused Joey Zafra is declared entitled also to ACQUITTAL. Let a copy of this decision be furnished the Director of the New Bilibid Prison, Muntinlupa, Rizal, who is ordered to IMMEDIATELY RELEASE them from confinement unless held for some other legal cause, and to report to this Court any action taken by him within ten days from notice.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,**] and Brion, JJ., concur.

[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[1] CA rollo, pp. 88-102. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta concurring.

[2] Records, pp. 228-231. Penned by Presiding Judge Ma. Theresa L. Dela Torre-Yadao.

[3] Id. at 1.

[4] Id. at 18.

[5] CA rollo, pp. 74-75.

[6] Id. at 47-49.

[7] Records, p. 231.

[8] CA rollo, p. 102.

[9] Id. at 44-45.

[10] Id. at 49.

[11] Id. at 50.

[12] Id. at 52.

[13] Id. at 53.

[14] Id. at 75.

[15] Id. at 76.

[16] *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 752.

[17] *Abuan v. People*, G.R. No. 168773, October 27, 2006, 505 SCRA 799, 826.

[18] *People v. Sy*, G.R. No. 171397, September 27, 2006, 503 SCRA 772, 783.

[19] TSN, June 19, 2003, p. 7.

[20] Id. at 8-10.

[21] The Dangerous Drugs Act of 1972, approved on March 30, 1972.

[22] TSN, June 17, 2002, p. 2.

[23] TSN, June 20, 2002, pp. 2-4.

[24] Records, pp. 9-10.

[25] *People v. Servano*, G.R. Nos. 143002-03, July 17, 2003, 406 SCRA 508, 523.

[26] *People v. Canlas*, G.R. No. 141633, December 14, 2001, 372 SCRA 401, 403.

[27] SEC. 11. Effect of appeal by any of several accused. --

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

(b) The appeal of the offended party from the civil aspect shall not affect the criminal aspect of the judgment or order appealed from.

(c) Upon perfection of the appeal, the execution of the judgment or final order appealed from shall be stayed as to the appealing party.

[28] *People v. Fernandez, et al.*, G.R. No. 80481, June 27, 1990, 186 SCRA 830; *People v. Perez, et al.*, G.R. No. 119014, October 15, 1996, 263 SCRA 206.

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