

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NONOY EBET, APPELLANT.

G.R. No. 181635. November 15, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is the appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00257, dated July 31, 2007, which sustained the judgment[2] of the Regional Trial Court (RTC) in Criminal Case No. 86-97 dated October 12, 1999, finding appellant Nono Ebet guilty beyond reasonable doubt of the crime of Robbery with Homicide.

The facts, as shown in the records, are the following:

On February 3, 1997, around 7:30 p.m., three (3) men entered the house of the spouses Gabriel Parcasio and Evelyn Parcasio. Of the three men, Evelyn recognized one of them to be appellant Ebet, having been a constant visitor of her husband. Upon entering, one of the unidentified men poked a gun at Evelyn, while another unidentified man wielding a knife, held Evelyn's daughter, Joan. At that moment, Evelyn saw appellant holding a knife and standing at the door of the house. The men asked Evelyn where her husband was hiding and compelled her to lead them to the house's underground. After the two unidentified men reached the underground, Evelyn heard her husband shout for her and her daughters to run, which the latter did. Thereafter, a gunshot was heard, as well as a commotion underground. Joan, after hearing the gunshot, returned to the house fearing that her mother was shot. It was then that the men accosted her and asked for her money. With no money to give, the men took her bag worth One Hundred Thirty Pesos (P130.00), a wrist watch worth One Hundred Twenty-Five Pesos (P125.00) and Thirty Pesos (P30.00) cash, the total of which is Two Hundred Eighty-Five Pesos (P285.00). When the men left the premises, Evelyn went back to their house and saw her husband bleeding to death due to multiple stab wounds. The husband eventually died due to the said stab wounds.

Thus, an Information[3] dated July 10, 1997 was filed, charging appellant with the crime of Robbery with Homicide, which reads:

That on or about February 3, 1997, in the Municipality of Kidapawan, Province of Cotabato, Philippines, the said accused, in company with JOHN DOE and PETER DOE, whose identities are still unknown and at large, armed with handgun and knife, conspiring, confederating and mutually helping one another, with intent to gain by means of violence and intimidation, did then and there, willfully and forcibly get, rob and carry away, one (1) wrist watch worth ONE HUNDRED TWENTY-FIVE PESOS (P125.00); one (1) school bag worth ONE HUNDRED THIRTY PESOS (P130.00); and cash amounting to THIRTY PESOS (P30.00), with the total amount of TWO HUNDRED EIGHTY-FIVE PESOS (P285.00), Philippine Currency, owned by JOAN PARCASIO, to the damage and prejudice of JOAN PARCASIO.

That on the same occasion, above-named accused with intent to kill, willfully, unlawfully and feloniously attack, assault, stab, shot and use physical violence to the person of GABRIEL PARCASIO, JR., thus inflicting upon the latter multiple stab wounds in the different parts of his body, which caused his death thereafter.

CONTRARY TO LAW.

When arraigned[4] on September 17, 1997, appellant, assisted by counsel, pleaded not guilty to the crime charged against him.

Consequently, the trial on the merits ensued.

The prosecution presented the testimonies of Evelyn Parcasio and Joan Parcasio, testifying as to the facts narrated earlier.

For his defense, appellant presented his own testimony, as well as those of Virgilio Balili, Fernando Saud and Feliciano Jordan. Based on their testimonies, the following transpired:

On February 3, 1997, appellant was in the house of Agri Saud, which was 200 meters away from the house of Gabriel and Evelyn Parcasio. Appellant was in the said house from 5:00 p.m. until 9:00 p.m. He was there butchering a pig, together with Agri Saud, Efren Leon, Willy Estigoy and Feliciano Jordan. Appellant claimed that he never left the house or the group from the time he arrived at Agri Saud's house until they dispersed later in the evening.

The trial court found appellant guilty beyond reasonable doubt of the crime of Robbery with Homicide. The dispositive portion of the Decision reads:

WHEREFORE, prescinding from the foregoing facts and considerations, the Court finds accused Nonoy Ebet guilty beyond reasonable doubt as principal by direct participation of the crime of Robbery with Homicide, hereby sentenced him to suffer the penalty of Reclusion Perpetua. He is hereby ordered to indemnify the heirs of Gabriel Parcasio the sum of P50,000.00.

With costs de officio.

IT IS SO ORDERED.[5]

A Notice of Appeal[6] was filed and this Court accepted the appeal. However, in a Resolution[7] dated September 15, 2004, this Court transferred the case to the CA, in conformity with *People of the Philippines v. Efren Mateo y Garcia*,[8] modifying the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, as well as the resolution of this Court's en banc, dated September 19, 1995, in Internal Rules of the Supreme Court in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Section 5, Article VIII of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court.

On July 31, 2007, the CA affirmed with modification the decision of the trial court. The dispositive portion of the Decision reads:

WHEREFORE, the assailed Decision is AFFIRMED with MODIFICATION that appellant shall pay P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages and to return the wrist watch, school bag and P30.00 in cash or pay its reasonable value in the total amount of P285.00 in case restitution is not feasible, to the heirs of the victim.

SO ORDERED.[9]

Hence, the present appeal.

In his Brief,[10] appellant assigned the following errors:

I

THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESS.

II.

THE TRIAL COURT ERRED IN NOT GIVING ANY PROBATIVE VALUE TO THE DFENSE OF ALIBI BY THE ACCUSED.

According to appellant, the prosecution witnesses failed to positively identify him. He also argues that the trial court, in rejecting the defense of alibi, simply adopted the general principle of alibi as a defense, being inherently weak, but failed to point out any inconsistencies and falsities to his testimony, as well as those of the other witnesses for the defense.

On the other hand, the Office of the Solicitor General (OSG) in its Brief,[11] argued the following:

I

THE TRIAL COURT CORRECTLY GAVE FULL CREDENCE TO THE PROSECUTION EVIDENCE.

II

IN THE LIGHT OF THE POSITIVE AND UNERRING IDENTIFICATION OF APPELLANT BY THE PROSECUTION WITNESS, THE TRIAL COURT CORRECTLY REJECTED HIS DEFENSE OF DENIAL AND ALIBI.

The OSG insists that the prosecution witnesses positively and categorically recognized and identified appellant as one of the perpetrators; thus, the trial court correctly appreciated the evidence presented by the prosecution. It further posits that appellant's defense of denial and alibi was correctly rejected by the trial court, because those defenses cannot prevail over the positive identification of appellant.

With both arguments from the parties under consideration, this Court finds the appeal unmeritorious.

In *People v. De Jesus*,[12] this Court had the occasion to meticulously expound on the nature of the crime of Robbery with Homicide, thus:

Article 294, paragraph 1 of the Revised Penal Code provides:

Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or any person shall suffer:

The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

- (1) the taking of personal property is committed with violence or intimidation against persons;
- (2) the property taken belongs to another;
- (3) the taking is *animo lucrandi*; and
- (4) by reason of the robbery or on the occasion thereof, homicide is committed.

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the situs of the robbery.[13]

The trial court, in finding appellant guilty beyond reasonable doubt of the crime of robbery with homicide, gave credence to the testimonies of the prosecution witnesses. As it explained:

The court finds the testimonies of Evelyn and Joan Parcasio as trustworthy, honest and straightforward. It is significant to note that the prosecution's testimonies have not been assailed. No motive was advanced by the defense why the witnesses will falsely testify and implicate the herein accused in the commission of such a heinous crime. Thus, it has been ruled by the Supreme Court "that when there is no evidence indicating that the

principal witness for the prosecution was moved by improper motive, the presumption is that he was not so moved, and his testimony is entitled to full faith and credit. Denial, like alibi is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. (People vs. Belibet, 194 SCRA 588).

Moreover, circumstantial evidence have been duly established in the case at bar which is in conformity with the rules of court. That accused Nonoy Ebet in the company [of] two (2) unidentified persons entered the house of Gabriel Parcasio, once inside took [the] personal properties of Joan, daughter of Gabriel, and thereafter the accused took turns in stabbing Gabriel Parcasio to death.[14]

Appellant's main contention is that the trial court was wrong in giving credence to the testimonies of the prosecution's witnesses. According to him, he was not positively identified by the said witnesses. However, this Court finds otherwise.

The following are the testimonies of the witnesses for the prosecution which clearly show that the appellant was categorically identified as one of the men who took part in the perpetration of the crime:

Testimony of Evelyn Parcasio:

Q Now, in that evening of February 3, 1997, was there any unusual incident that happened in your house?

A At more or less 7:30, three (3) persons entered our house. The two (2) of them I do not know, only one (1) I know.

Q Who is that one (1) you know?

A Yes, sir.

Q Can you go down and pinpoint him?

A Witness taps the shoulder of a person who, when asked his name, he answered that he is Nonoy Ebet.

Q How do you know him to be Nonoy Ebet?

A He is always in our house. He is always eating with my husband in our house.

Q You said these three (3) entered your house?

A Yes, sir.

Q What happened after that?

A Upon entering the house, he poked a gun on me and one of them pointed a knife to my daughter Joan.

Q What about this Nonoy Ebet?

A Nonoy Ebet was standing in front of the door of my house holding the knife. [15]

Testimony of Joan Parcasio:

Q Now, on that evening at around 7:00 o'clock of February 3, 1997, can you recall whether there was an unusual incident that happened?

A Yes, sir.

Q Can you recall what was that unusual incident that happened?

A We were robbed and my father was killed.

Q What is the name of your father?

A Gabriel Parcasio, Jr.

Q You said you were held up, how many persons robbed you?

A Three (3) persons.

Q Were you able to identify them?

A Only one perpetrator I know.

Q You said you were able to identify one of the perpetrators, if this one which you were able to identify is inside this courtroom, please point at him?

A Witness tapped the shoulder of a person with a stripe polo shirt and who, when asked his name, answered Nonoy Ebet.

Q This Nonoy Ebet is one of those who robbed you and likewise killed your father?

A Yes, sir.

Q What was the weapon used in killing your father?

A Hunting knife. [16]

According to appellant, the testimony of Joan Parcasio during the trial was contrary to her earlier statement with the police authorities of Kidapawan City, Cotabato. The police blotter[17] contains the following:

Entry/Date/Time

15-02/03-97/2000H

-JOAN PARCASIO, 18 years old, student resident of Barangay Upper Manongol, Kidapawan, Cotabato reported this station and requested to put on record, that they were allegedly and forcibly entered by three unidentified men while the one is wearing mask and declared hold-up. His father GABRIEL PARCASIO, 44 years old, a farmer attempted to resist, but the assailant shot him once, by an undetermined type of hand-gun and stabbed him for several times, hitting the different parts of his body. The neighbor of the victim, wife and child, brought him to Kidapawan Medical Specialist, but he was expired upon arrival at the said hospital. Money carting them away by the perpetrators amounting to P30.00 Philippine currency and one wrist watch amounting to P1,000.00. Incident happened at about 7:00 p.m., February 3, 1997. Case referred to investigation section for proper disposition.

Appellant points out that the above contents of the police blotter are corroborated by the testimony of his own witness, Virgilio Balili, who narrated that right after the commission of the crime, he was approached by Evelyn, Jean and Joan Parcasio. When Balili asked if they knew the identities of the perpetrators, Evelyn, Jean and Joan answered in the negative, thus:

Q When Evelyn, Jean and Joan Parcasio approached you, what did you do?

A I asked them if they were able to identify the perpetrators.

Q And what did they tell you?

A They answered me that they did not know the assailant.[18]

x x x x

Q You said on the way you had a conversation with Evelyn, Jean and Joan Parcasio, please tell us what the

content of your conversation? What was the subject matter of your conversation?

A I asked them to tell the truth so that we could help them.

Q So what was the answer?

A They answered, "What could we do because we were not able to identify those people?"[19]

The above argument of appellant deserves scant consideration. The incomplete entry in the police blotter must not overcome the positive and categorical identification of appellant as one of the perpetrators. As correctly pointed out by the OSG:

The entry in the police blotter was incomplete. In fact, as stated therein, the case was referred to the investigation section for proper disposition. It must be noted that Item No. 2 was entered at 2000 hours or 8 in the evening or about thirty (30) minutes after the incident. The culprits, including the appellant, were still on the loose. This explains the reason why Joan, still distraught over the sudden and unexpected death of her father, hesitated to divulge the identity of appellant as one of the perpetrators of the gory killing of her father.[20]

In *People v. Sabadao*,[21] the appellants therein faulted two (2) prosecution witnesses for, either giving incomplete statements or not giving any statement to the police authorities. However, this Court was not persuaded and ruled that:

x x x It is a matter of judicial experience that an affidavit, being taken ex parte, is almost always incomplete and often inaccurate. To be sure, a sworn statement taken ex parte is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross examination.[22]

Notwithstanding the entry in the police blotter, Evelyn and Joan Parcasio, on the day after the crime was committed, executed their respective sworn statements, positively identifying the appellant as one of the culprits. Thus:

Evelyn Parcasio's Sworn Statement:

02. Q - Why are you here in the Office of the Investigation Section?

A - To file a formal complaint against the persons who robbed us and killed my husband.

03. Q - What is the name of your husband who was killed by the robbers?

A - Gabriel Parcasio Jr., sir.

04. Q - When and where did this incident happen?

A. - It happened on February 3, 1997 at about 7:00 o'clock in the evening inside our residence at Brgy. Upper Manongol, Kidapawan, Cotabato.

05. Q - You mentioned that you were held-up? How many are they?

A - They were three (3) of them.

06. Q - Can you recognize or identify them?

A - I could only identify one of them in the person of alias NONOY EBET.

x x x x

16. Q - You mentioned that you could only identify one of the perpetrators as one alias Nonoy Ebet. How

come that you were able to identify him?

A - Because he is always at our house conversing with my husband and sometimes eat with us.[23]

Joan Parcasio's sworn statement:

02. Q - Why are you here in the Office of the Investigation Section?

A - To give my voluntary statement in connection to the complaint of my mother Evelyn Parcasio to persons of alias NONOY EBET and his two other companions which I could not identify.

03. Q - What is the complaint of your mother against these persons?

A - For robbing us and killing my father Gabriel Parcasio, Jr.

x x x x

19. Q - You mentioned in your statement that you were able to identify one of the perpetrators as one NONOY EBET. How were you able to identify him?

A - Because while one of his companions was holding me at the point of a knife, I saw Alias Nonoy Ebet standing in front of our door.

20. Q - How far was he from you?

A - More or less one meter.

21. Q - Was there light at the house during that time?

A - Yes, sir.

22. Q - Do you know the person of Alias Nonoy Ebet?

A - Yes, sir. He used to go to the house and talk with my father and sometimes we served coffee to him as merienda.[24]

Clearly, it is only the incomplete police blotter that appears to be inconsistent. However, the said inconsistency has been cured by the sworn statements and the testimonies given in open court. With that in perspective, this Court, therefore, has no reason to dispute the trial court's appreciation of the credibility of the prosecution witnesses' testimonies. Deeply entrenched in our jurisprudence is the rule that the assessment of the credibility of witnesses is a domain best left to the trial court judge, because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts - and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.[25]

Appellant further reasons out that, if it were indeed him who was seen standing near or in front of the Parcasio family's door, that fact alone cannot be the basis to consider him as one of the perpetrators of the crime. However, the said argument is inconsequential.

When a homicide takes place by reason of or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether they actually participated in the killing, unless there is proof that there was an endeavor to prevent the killing.[26] The records are bereft of any evidence to prove, or even remotely suggest, that appellant attempted to prevent the killing. Therefore, the basic principle in conspiracy that the "act of one is the act of all," applies in this case. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned

separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective.[27] Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary,[28] since all the conspirators are principals. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof.[29]

As to the failure of the trial court in finding merit to the defense of denial and alibi presented by appellant, this Court is in complete agreement.

Appellant claims that he was butchering a pig at the house of Agri Saud located at Barangay Perez, Kidapawan City from 5:00 p.m. until 9:00 p.m. of February 3, 1997. The said alibi has been supported by the testimonies of two witnesses. However, appellant failed to prove that it was impossible for him to be physically present at the place where the crime had taken place and when the crime was being committed. For alibi to prosper, it must strictly meet the requirements of time and place. It is not enough to prove that the accused was somewhere else when the crime was committed, but it must also be demonstrated that it was physically impossible for him to have been at the crime scene at the time the crime was committed.[30]

This Court has always upheld that alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently

and positively ascertained the identity of the accused. And it is only axiomatic that positive testimony prevails over negative testimony.[31]

WHEREFORE, the appeal is hereby DENIED and the Decision dated July 31, 2007 of the Court of Appeals, in CA-G.R. CR-H.C. No. 00257, which sustained with modification, the judgment of the Regional Trial Court finding appellant Nonoy Ebet guilty beyond reasonable doubt of the crime of Robbery with Homicide, is hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring; rollo, pp. 4-20.

[2] Penned by Judge Rodolfo M. Serrano; CA rollo, pp. 15-23.

[3] Records, p. 1.

[4] Id. at 22.

[5] CA rollo, p. 23.

[6] Id. at 24.

[7] Id. at 161.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] CA rollo, p. 180.

[10] Id. at 35-54.

[11] Id. at 90-119.

[12] 473 Phil. 405 (2004).

[13] Id. at 426-428, citing *People v. Pedroso*, 336 SCRA 163 (2000), *People v. Salazar*, 277 SCRA 67 (1997), *People v. Abuyan*, 213 SCRA 569 (1991), *People v. Ponciano*, 204 SCRA 627 (1991), *People v. Mangulabnan*, 99 Phil. 992 (1956), *People v. Puloc*, 202 SCRA 179 (1991), *People v. Corre, Jr.*, 363 SCRA 165 (2001), *People v. Carrozo*, 342 SCRA 600 (2000), *People v. Verzosa*, 294 SCRA 466 (1998), and *People v. Palijon*, 343 SCRA 486 (2000).

[14] CA rollo, pp. 21-22.

[15] TSN, October 16, 1997, pp. 3-5; records, pp. 39-41. (Emphasis supplied.)

[16] TSN, November 5, 1997, pp. 4-5; id. at 64-65. (Emphasis supplied.)

[17] Records, p. 108.

[18] TSN, September 22, 1998, pp. 6-7; id. at 135-136.

[19] Id. at 8; id. at 138.

[20] CA rollo, p. 107.

[21] 398 Phil. 346 (2000)

[22] Id. at 368.

[23] Records, pp. 6-7.

[24] Id. at 8-9.

[25] *Vidar v. People*, G.R. No. 1777361, February 1, 2010, 611 SCRA 216, 230, citing *Heirs of Florentino Remetio v. Villareal*, 490 SCRA 43, 47 (2006).

[26] *People of the Philippines v. Rene Baron y Tangarocan*, G.R. No. 185209, June 28, 2010, citing *People v. Reyes*, 369 Phil. 61, 80 (1999).

[27] *People v. De Jesus*, supra note 12, at 429, citing *People v. Tulin*, 364 SCRA 11 (2001).

[28] Id., citing *People v. Quinico*, 365 SCRA 252 (2001).

[29] Id., citing *People v. Morial*, 363 SCRA 96 (2001).

[30] *People v. Pagsanjan*, 442 Phil. 667, 686 (2002).

[31] *Vidar v. People*, supra note 25, at 231, citing *People v. Corpuz*, 482 SCRA 435, 450 (2006).

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