

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHARLIE OROSCO, ACCUSED-APPELLANT.

G.R. No. 209227. March 25, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the Decision[1] dated March 22, 2013 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05171 which affirmed the Decision[2] dated June 24, 2011 of the Regional Trial Court of Legazpi City, Branch 10 finding the accused-appellant Charlie Orosco guilty of the crime of Robbery with Homicide.

Appellant, along with Abner Astor, “John Doe” and “Peter Doe,” were charged with Robbery with Homicide defined and penalized under Article 294 of the Revised Penal Code, as amended. The Information reads as follows:

That on or about the 16[th] day of May, 2006, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent of gain and by means of violence, did then and there [willfully], unlawfully, feloniously and forcibly enter the store owned by one Lourdes Yap situated at Purok 4, Barangay Rawis, Legazpi City, and once inside said store, take, steal and carry away cash money, to the damage and prejudice of said Lourdes Yap, and by reason of or on occasion of said robbery, and for the purpose of enabling them to take, steal and carry away the aforesaid cash money in pursuance of their conspiracy, did then and there [willfully], unlawfully and feloniously and taking advantage of their superior strength and with intent to kill, attack, assault and stab the aforesaid Lourdes Yap, thereby inflicting upon her injury which directly caused her untimely death, to the damage and prejudice of her legal heirs.

CONTRARY TO LAW.[3]

The factual scenario presented by the prosecution is based on the eyewitness account of Albert M. Arca (Arca), the postmortem findings of Sr. Pol. Chief Insp. Dr. James Margallo Belgira who conducted the autopsy on the cadaver of the victim, and the victim’s grandson, Ryan Francis Yap.

Arca testified that on May 16, 2006, about one o’clock in the afternoon, he went to the store of Lourdes Yap (Yap) at Purok 4, Barangay Rawis, Legazpi City. He was buying ice but it was not yet hardened (frozen) so he went home. At around two o’clock, he was again sent on errand to buy ice at the same store. After purchasing the ice, he noticed there was a verbal tussle between Yap and two male customers. The men were arguing that they were given insufficient change and insisting they gave a P500 bill and not P100. When Yap opened the door, the two men entered the store. From outside the store and thru its open window grills, he saw one of the men placed his left arm around the neck of Yap and covered her mouth with his right hand while the other man was at her back restraining her hands. He recognized the man who was holding the hands of Yap as Charlie Orosco (appellant), while he described the man who covered her mouth as thin, with less hair and dark complexion. The latter stabbed Yap at the center of her chest. When they released her, she fell down on the floor. Appellant then took a thick wad of bills from the base of the religious icon or “santo” at the altar in front of the store’s window,

after which he and the man who stabbed Yap fled together with two other men outside who acted as lookouts. Arca went near the bloodied victim but also left and went home afraid because he was seen by one of the lookouts.[4]

Yap was brought to the Aquinas University Hospital but she was declared dead on arrival. Later, at the National Bureau of Investigation (NBI) Legazpi City District office, Arca gave descriptions of the faces of appellant and the dark thin man who stabbed Yap ("John Doe"). From a surveillance digital photo and video clip shown to him, Arca positively identified Abner Astor (Astor) as one of the two men sitting beside the store as lookouts. Consequently, warrants of arrest were issued against appellant and Astor. But only appellant was arrested as Astor, John Doe and Peter Doe remained at large.

Dr. Belgira affirmed the findings in his Medico-Legal Report[5] stating:

TRUNK:

1)

Stab wound, left anterior costal region, measuring 2 x 0.5 cm, 5 cm from the anterior midline, 9 cm deep. The wound tract is directed posteriorwards, upwards and medialwards, cutting the sixth anterior thoracic rib and piercing the heart.

CONCLUSION:

The cause of death is hemorrhagic shock secondary to a stab wound of the trunk.

He explained that it was possible that the lone stab wound caused by a sharp object, such as a knife, was inflicted while the victim was standing, and found no other injuries such as defense wounds.[6]

For his defense, appellant testified that on the date and time of the incident, he was at his house in Bigaa taking care of his three-year-old child while his wife was washing clothes. He stayed in the house until his wife finished the laundry at past 3:00 p.m. He denied knowing Yap and his co-accused Astor. While he admitted that he was a resident of Purok 4, Bgy. Rawis, his family transferred to their other house at Bigaa. He denied knowing Arca and he does not know of any motive for Arca to testify against him. He worked in a copra company in Lidong but stopped reporting for work after May 16, 2006 as he was selling fish. He was arrested by the police at the rotunda in Legazpi when he was buying medicine for his sick child.[7]

Appellant's wife, Teresa Magdaong-Orosco also testified to confirm that at the time of the incident he was at their house while she was doing the laundry just adjacent to their house. On cross-examination, she was asked the distance between their place and Bgy. Rawis and she replied that it will take less than one hour from Bigaa to Rawis.[8]

On June 24, 2011, the trial court rendered judgment convicting appellant of the crime charged, thus:

WHEREFORE, above premises considered, the Court hereby finds accused Charlie Orosco GUILTY of the crime of robbery with homicide. He is hereby sentenced to suffer the penalty of reclusion perpetua, to pay the heirs of Lourdes Yap P75,000.00 as civil indemnity for the fact of death, P75,000.00 as moral damages and P30,000.00 as exemplary damages.

Insofar as the other accused is concerned, the case is hereby sent to the archives, pending their eventual arrest.

So Ordered.[9]

Appellant went to the CA but his appeal was dismissed. The CA upheld his conviction as it found no compelling reason to deviate from the factual findings and conclusions of the trial court.

In this petition, appellant reiterates the arguments he raised before the CA that the trial court erred in giving credit to the uncorroborated eyewitness testimony of Arca who could not point to him during the trial, and that even granting that criminal charges may be imputed against him, it should only be robbery and not the complex crime of robbery with homicide considering the fact that it was not him who stabbed Yap.

The appeal lacks merit.

It is settled that witnesses are to be weighed not numbered, such that the testimony of a single, trustworthy and credible witness could be sufficient to convict an accused. The testimony of a sole witness, if found convincing and credible by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt. Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate.[10]

In this case, both the trial and appellate courts found the testimony of the lone eyewitness, Arca, convincing notwithstanding that he was quite slow in narrating the incident to the court and that he initially desisted from physically pointing to appellant as the one who held Yap's hands from behind and took her money at the store after she was stabbed by appellant's cohort (John Doe).

In his direct examination, Arca named appellant as one of those who robbed and killed Yap but refused to pinpoint him in open court, thus:

ACP NUQUI

x x x x x x x x

Q.

This person who was holding the hands of Lourdes Yap, were you able to identify him?

A.

Yes, sir.

Q.

Do you know the name of this person?

A.

Yes, sir. He is Charlie.

Q.

Do you know the family name?

A.

Orosco, sir.

Q.

If this Charlie Orosco whom you said was then holding the hands of Lourdes Yap, if he is in Court, would you please point to him?

WITNESS (answering)

A.

Yes, sir.

Q.

Please look around you and point at him.

A.

He is here.

Q.

If he is in Court, please point at him.

Q.

Why can't you point at him?

COURT INTERPRETER

At this juncture, the witness is somewhat trembling.

ACP NUQUI

Oh, you see.

ATTY. BAÑARES

The witness can not answer.

ACP NUQUI

By the look of the witness, Your Honor, he is afraid. Perhaps....

x x x x x x x x

ACP NUQUI (continuing)

Q.

Please point at him.

ATTY. BAÑARES

We have already foreseen the witness to pinpoint at anyone.

ACP NUQUI

No. He said that the....

ATTY. BAÑARES

Then, let him voluntarily do it.

ACP NUQUI

Okay.

ATTY. BAÑARES

Your Honor, I move that the prosecutor will transfer to another question because we keep on waiting already.

ACP NUQUI

Your Honor, it is understandable that even he is slow, he keeps on glancing at the person.

COURT

Observations are all noted.

x x x x x x x x

ACP NUQUI

At this point, Your Honor, I would like to make of record that when it comes to the person of Charlie Orosco, Your Honor, he stopped and did not say ---- he did not nod or do anything of what he has been doing when the other persons were identified.

COURT

Okay. Noted.[11]

Arca continued with his testimony on how Yap was stabbed by appellant's companion and appellant taking the thick wad of P1,000 bills before fleeing along with the two lookouts. When asked for the fourth time to pinpoint appellant, Arca was still hesitant:

Q.

Now, is this Charlie Orosco here in Court?

A.

Yes, sir, he is around.

Q.

This person who took the money or Charlie Orosco you said "he is in Court," will you please look at him.

x x x x x x x x

ACP NUQUI (continuing)

Q.

Is he now in Court?

A.

Yes, sir.

Q.

Please point at him.

ATTY BAÑARES

The same observation, Your Honor.

COURT

Oh, the same observation?

ACP NUQUI

Yes, Your Honor, he is hesitant. It is understandable because he is afraid.

x x x x x x x x

COURT (to the witness)

Q.

Why can you not point at Charlie Orosco who according to you he is inside the Court?

WITNESS (answering)

A.

I can't afford to point at him.

ACP NUQUI (to the witness)

Q.

Why?

A.

I am afraid.

COURT

He can not because he is afraid.[12] (Emphasis supplied)

At the next hearing, Arca was recalled to the witness stand and this time he was able to pinpoint appellant as among those persons who robbed and killed Yap, thus:

PROSECUTOR NUQUI

Q-

You mentioned that you saw two (2) persons talking to Lourdes Yap. Who are these persons you are referring to?

ATTY. CHAN

Your Honor please, we are again registering our objection.

COURT

Witness may answer.

WITNESS

A-

Charlie Orosco and a certain thin person.

PROSECUTOR NUQUI

Q-

Why are you able to say that Charlie Orosco was one of the persons talking, how long have you known Charlie

Orosco?

A-

He always go with a fisherman and act as helper and because of that I know him.

x x x x x x x x

PROSECUTOR NUQUI

Q-

You mentioned that you have long known Charlie Orosco. Will you look around and point to him if he is in Court?

INTERPRETER

At this juncture, the witness is pointing to a man wearing a yellow T-shirt with handcuff and when asked answered by the name of Charlie Orosco.

PROSECUTOR NUQUI

No further questions Your Honor.[13]

Assessing the identification made by Arca, the trial court concluded that he had positively identified appellant as one of the perpetrators of the robbery and killing of Yap, viz:

Here, Albert Arca, the prosecution's main witness, positively identified accused Orosco as one of [the] two men who robbed and killed Lourdes Yap on that fateful day. As observed by the trial court during the bail hearings, when asked to identify one of the men who robbed and killed the victim, Arca was trembling and constantly looking towards the direction of accused Orosco. Though simple-minded, Arca was well-aware of the possible consequences his testimony could trigger. To the Court's mind, Arca's act of constantly looking towards Orosco's direction whenever he was asked to point out one of the culprits, is a mute but eloquent manner of identifying Orosco as one of the perpetrators of the crime. As such, Arca's act is sufficient identification already.

Later, when Arca was recalled to the stand to answer some additional questions, he was able to gather enough courage to point out to Orosco as the man who held the hands of Lourdes Yap while his companion stabbed her. Arca stated that he was hesitant to identify and point out accused earlier because he feared what Orosco might do to him. Incidentally, both Orosco and his wife stated that they do know neither Albert Arca nor Lourdes Yap. Thus, it appears that there is no reason whatsoever for Arca to lie and attribute the crime to Orosco. Following settled jurisprudence, Arca's positive identification of Orosco prevails over the latter's alibi.[14]

We find no compelling or cogent reason to deviate from the findings of the trial court on its evaluation of Arca's testimony. The well-settled rule in this jurisdiction is that the trial court's findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal without any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could affect the result of the case.[15]

Appellant repeatedly harped on the hesitation of Arca to point to him at the trial. However, as the trial court's firsthand observation of said witness' deportment revealed, Arca's fear of appellant sufficiently explains his initial refusal to point to him in open court during his direct examination. Arca was finally able to point to appellant as one of the perpetrators of the robbery and killing of Yap during his additional direct examination when he had apparently mustered enough courage to do so.

Robbery with homicide is defined under Article 294 of the Revised Penal Code, as amended, which provides in part:

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

1. 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.

The elements of the crime of robbery with homicide are: (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 done with animo lucrandi; and (4) by reason of the robbery or on the occasion thereof, homicide (used in its generic sense) is committed.[16] Homicide is said to have been committed by reason or on the occasion of robbery if it is committed (a) to 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 to the commission of the crime.[17] 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.[18]

Here, the homicide was committed by reason of or on the occasion of the robbery as appellant and John Doe had to kill Yap to accomplish their main objective of stealing her money. The earlier verbal tussle where the two pretended to have paid a greater amount and asked for the correct change was just a ploy to get inside the store where the victim kept her earnings. To verify whether the cash payment was indeed a P500 or P100 bill, the victim let them enter the store but once inside they got hold of her and stabbed her. Appellant, however, argues that if he had committed any offense, it was only robbery since Arca testified that it was John Doe, whom he described as a thin man, who stabbed the victim.

We disagree.

The evidence presented by the prosecution clearly showed that appellant acted in conspiracy with his co-accused. Appellant and John Doe first engaged the unsuspecting victim in a verbal altercation until she allowed them to enter the store. Upon getting inside, they held the victim with John Doe wrapping his arm around her neck while appellant held her hands at the back. With the victim pressed between the two of them, John Doe stabbed her once in her chest before releasing her. Once she fell down, appellant quickly took the money placed at the altar inside the store and fled together with John Doe and the two lookouts outside the store. All the foregoing indicate the presence of conspiracy between appellant and his co-accused in the perpetration of robbery and killing of the victim.

It must be stressed that appellant played a crucial role in the killing of the victim to facilitate the robbery. He was behind the victim holding her hands while John Doe grabbed her at the neck. His act contributed in rendering the victim without any means of defending herself when John Doe stabbed her frontally in the chest. Having acted in conspiracy with his co-accused, appellant is equally liable for the killing of Yap.

As we held in *People v. Baron*[19]

The concerted manner in which the appellant and his companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. 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. There was no evidence adduced in this case that the appellant attempted to prevent the killing. Thus, regardless of the acts individually performed by the appellant and his co-accused, and applying the basic principle in conspiracy that the “act of one is the act of all,” the appellant is guilty as a co-conspirator. As a result, the criminal liabilities of the appellant and his co-accused are one and the same. (Emphasis supplied)

In sum, the CA did not err in affirming the conviction of appellant for robbery with homicide. Appellant was positively identified by prosecution eyewitness Arca as among those who perpetrated the robbery and killing of Yap at the latter’s store on May 16, 2006 in Bgy. Rawis, Legazpi City. This positive identification prevails over accused’s defense of alibi. As pointed out by the trial court, it was not physically impossible for appellant to be at the scene of the crime considering the presence of many public conveyances which would drastically cut the one hour walk from Bigaa to Rawis to only a “couple of minutes.”[20]

On the award of damages, the trial court was correct in sentencing appellant to suffer the penalty of reclusion perpetua and ordering him to pay P75,000.00 as civil indemnity for the fact of death and P75,000.00 as moral damages, conformably with prevailing jurisprudence.[21] We also find the award of exemplary damages in the amount of P30,000.00 proper due to the presence of the aggravating circumstances of treachery and abuse of superior strength, though these were not alleged in the information. While an aggravating circumstance not specifically alleged in the information (albeit established at trial) cannot be appreciated to increase the criminal liability of the accused, the established presence of one or two aggravating circumstances of any kind or nature entitles the offended party to exemplary damages under Article 2230 of the Civil Code because the requirement of specificity in the information affected only the criminal liability of the accused, not his civil liability.[22]

The aforesaid sums shall earn the legal interest at the rate of six percent (6%) per annum from the finality of judgment until full payment.

WHEREFORE, the appeal is DISMISSED. The Decision dated March 22, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05171 affirming the Decision dated June 24, 2011 of the Regional Trial Court of Legazpi City, Branch 10 in Criminal Case No. 10916 is AFFIRMED. The sums awarded as civil indemnity (P75,000.00), moral damages (P75,000.00) and exemplary damages (P30,000.00) shall earn legal interest at the rate of 6% per annum from the finality of judgment until full payment.

With costs against the accused-appellant.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza,[*] and Reyes, JJ., concur.

April 16, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____March 25, 2015____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 16, 2015 at 9:30 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated additional Member per Raffle dated January 5, 2015.

[1] Rollo, pp. 2-18. Penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela.

[2] Records, pp. 285-291. Penned by Presiding Judge Maria Theresa G. San Juan-Loquillano.

[3] Records, p. 1.

[4] TSN, November 7, 2007, pp. 7-17, 22-32, 36-38.

[5] Records, p. 28.

[6] TSN, October 13, 2010, pp. 6-11, 18-19.

[7] TSN, January 26, 2011, pp. 3-9.

[8] TSN, February 23, 2011, pp. 3-5.

[9] Records, p. 291.

[10] *People v. Porras*, 413 Phil. 563, 588 (2001), citing *People v. Listerio*, 390 Phil. 337, 348 (2000); *People v. Dela Cruz*, 390 Phil. 961, 975 (2000); and *People v. Bromo*, 376 Phil. 877, 898 (1999).

[11] TSN, November 7, 2007, pp. 17-22.

[12] *Id.* at 33-35.

[13] TSN, June 2, 2010, pp. 8-9, 11-12.

[14] Records, p. 289.

[15] *People v. De Leon*, 608 Phil. 701, 721 (2009), citing *People v. Yatco*, 429 Phil. 163, 173 (2002), see also *People v. Boquirin*, 432 Phil. 722, 728-729 (2002), *People v. Taboga*, 426 Phil. 908 (2002).

[16] *People v. Doca*, 394 Phil. 501, 516 (2000), citing *People v. Salazar*, 342 Phil. 745, 764 (1997).

[17] *People v. Quemeggen, et al.*, 611 Phil. 487, 498 (2009), citing *People v. Jabiniao, Jr., et al.*, 576 Phil. 696, 710 (2008); *People v. De Jesus*, 473 Phil. 405, 428 (2004).

[18] *People v. De Jesus*, *id.* at 427.

[19] 635 Phil. 608, 624 (2010).

[20] Records, pp. 288-289.

[21] *People v. Balute*, G.R. No. 212932, January 21, 2015, pp. 5-6.

[22] *People v. Dadulla*, 657 Phil. 442, 457 (2011), citing *People v. Catubig*, 416 Phil. 102, 119-120 (2001).

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