

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINADOR CIERBO, FLORENTINO MOLINA AND ANTONIO CHAN, ACCUSED-APPELLANTS.

G.R. No. 62887, August 29, 1986

Ponente: FERIA, J.

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FERIA, J.:

This is an automatic review of the decision of the then Court of First Instance of Ilocos Sur in Criminal Case No. 594-N convicting accused-appellants, Dominador Cierbo, Florentino Molina and Antonio Chan, of the crime of Robbery with Homicide with the aggravating circumstances of nighttime, dwelling and abuse of superior strength in the commission of the crime, without any mitigating circumstances, sentencing each of them to suffer the penalty of DEATH and to indemnify jointly and severally the heirs of the victims: 1) the amount of P12,000.00 each victim; 2) P5,000.00 each victim as moral damages; 3) P5,000.00 each victim as exemplary damages; 4) the amount of P17,000.00 to the heirs of Nenita Dizon, and to pay the proportionate costs.

The information against accused-appellants reads as follows:

"The undersigned Acting Provincial Fiscal accuses Dominador Cierbo alias Ador, Florentino Molina alias Dolfo, Antonio Chan, Dominador Dayag and Nestor Dayag of the crime of robbery with multiple homicide and serious physical injuries, defined under Art. 293 of the Revised Penal Code, and penalized under Art. 294 paragraph 1 of the same code, committed as follows:

"That on or about the 4th day of February 1980, in the Municipality of Lidlidda, Province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Dominador Cierbo alias Ador, Florentino Molina alias Dolfo, Antonio Chan, Dominador Dayag and Nestor Dayag, the last two named accused are still at large and the preliminary investigation of the case against them have not yet been conducted, conspiring together and helping one another, with intent to gain and with violence against or intimidation of persons, did then and there wilfully, unlawfully and feloniously take and carry away without the consent of the owner thereof, the following articles to wit:

"Cash money in the amount of P17,000.00 Two Cassette radios; belonging to Marcelino Dizon, that on the occasion of said robbery and for the purpose of enabling them to take and steal and carry away the articles above mentioned, the herein accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously and with evident premeditation and taking advantage of their superior strength and with intent to kill, assault, attack and shoot with guns, Nenita Dizon, Maria Castañeda, Aurora Castañeda, Romeo Sumalbag and Mylene Dizon, thereby inflicting upon them several gunshot wounds directed to the different parts of their bodies, which respective wounds necessarily produced the deaths of said Nenita Dizon, Maria Castañeda, Aurora Castañeda, Romeo Sumalbag and Mylene Dizon, shortly thereafter and inflicting upon Teodoro Castañeda, serious physical injuries, which injuries have required medical attendance for a period of not less than 30 days and have incapacitated the said Teodoro Castañeda from the performance of his customary labor for the same period of time.

"Contrary to law."

Accused Dominador Dayag and Nestor Dayag have remained at large.

It is indeed regrettable that counsel de oficio for accused-appellants, after having obtained fifteen extensions of time totalling two hundred twenty eight days, filed a six-page brief wherein he merely questions the alleged lack of the second stage of the preliminary investigation before the Municipal Circuit Court; and after the Solicitor General had filed the brief for the appellee, counsel de oficio requested for eight extensions of time totaling one hundred days within which to file a supplemental (reply) brief, but he never filed one. Appellants' brief does not even contain a statement of facts.

The facts as ascertained from the records are as follows:

At about 3:00 o'clock in the morning of February 4, 1980, while Orlando Castañeda, a 15-year old second year high school student, and his cousin Romeo Sumalbag were asleep at the ground floor of the house of the spouses Marcelino and Nenita Dizon, accused Dominador Cierbo, Florentino Molina and Dominador Dayag arrived and woke them up (pp. 18-19, TSN, June 9, 1981). Accused Cierbo was holding a gun about 4 1/2 feet long, while accused Molina and Dominador Dayag held guns about ten inches long (pp. 21-22, TSN, June 9, 1981). Accused Molina tied the hands of Orlando with a blanket, while accused Cierbo tied the hands of Romeo also with a blanket (pp. 22-23, TSN, June 9, 1981). The other two accused stayed outside the door (p. 24, TSN, June 9, 1981). Orlando and Romeo were then ordered to go upstairs. Romeo went up first, followed by accused Cierbo who was pointing a gun at him. Orlando went up next, followed by accused Molina who was also pointing a gun at him (p. 24, TSN, June 29, 1981). Inside a room in the second floor of the house, Orlando and Romeo were ordered to lie flat on their abdomen (p. 25, TSN, June 9, 1981). In the room were Nenita Dizon and her husband Marcelino Dizon, their daughter Mylene, Maria Castañeda, Aurora Castañeda, and Teodoro Castañeda (p. 26, TSN, June 9, 1981). Accused placed a blanket over Marce-lino Dizon who was lying in the western part of the room (p. 26, TSN, June 9, 1981). Thereafter, accused Cierbo ordered Nenita Dizon to bring out her money (p. 25, TSN, June 9, 1981; p. 12, TSN, October 21, 1981). Nenita Dizon got the money from her bag (maleta) and handed it to accused Cierbo (pp. 12-13, TSN, October 21, 1981). After Nenita had given the money to accused Cierbo, all the accused began shooting. The shots were first directed at Nenita and then to the other persons inside the room (pp. 27-28, TSN, June 9, 1981; p. 13, TSN, October 21, 1981). Teodoro and Orlando were able to hide behind a door (pp. 28-29, TSN, June 9, 1981; p. 14, TSN, October 21, 1981). When they stopped firing, all the accused ran downstairs, but accused Cierbo returned and fired at the small girl Mylene (p. 29, TSN, June 9, 1981).

That same morning of February 4, 1980, Patrolman Jaime Jose and Moreno Balbalan of the Integrated National Police, Lidlidda, Ilocos Sur, received a report of the shooting in the house of the Dizons (p. 3, TSN, September 29, 1981). Norberto de Guzman, Sub-Station Commander of Lidlidda, Patrolman Moreno Balbalan, Jaime Jose, Antero Antiway and a certain Rodrigo Quindangan proceeded to the place of the incident. Upon arrival thereat, they found the dead bodies of Aurora Castañeda, on the western portion of the room; Romeo Sumalbag, lying flat on his stomach with his hands under his forehead and tied with a blanket, and Mylene Dizon, a three-year-old baby girl, near the door under a small table (pp. 27-28, TSN, May 27, 1981; pp. 18-19, TSN, June 3, 1981). They also found Maria Castañeda and Nenita Dizon who were gravely wounded. They tried to bring them to a hospital in Candon, Ilocos Sur, but they died along the way (pp. 9, 12, 20 and 22, TSN, May 27, 1981).

At the scene of the crime, Patrolman Balbalan found six (6) empty shells of a Garand rifle in the sala of the house (pp. 8-11, TSN, September 29, 1981; Exhs. "O", "O-1" to "O-5"; p. 4, TSN, September 29, 1981); three (3) slugs of a Garand rifle embedded in the wall (Exhs. "F" to "F-2"); three (3) empty shells of a .45 caliber gun (Exhs. "Q" to "Q-2"); one (1) empty clip of a Garand rifle (Exh. "R"); and two (2) slugs of a .45 caliber gun (Exhs. "S" to

"S-1").

As above stated, counsel de oficio for accused-appellants does not dispute the factual findings of the trial court. He merely contends that accused-appellants were denied due process because the Municipal Circuit Court did not conduct the second stage of the preliminary investigation under Section 10, Rule 112 of the former Revised Rules of Court. (It should be noted that the first and second stages of the preliminary investigation have now been integrated under Section 37 of BP No. 129 and Rule 112 of the 1985 Rules on Criminal Procedure.) This contention is devoid of merit. The records show that appellants had waived their right to the second stage of the preliminary investigation. Page 49 of the original record contains the following:

x x x x x x x x

Atty. Galang: -

Your honor, the accused are waiving their rights to the Second Stage of Preliminary Investigation.

Court: -

The Complaint was read before the accused, Dominador Cierbo, Florentino Molina and Antonio Chan. They entered a "PLEA OF NOT GUILTY" and waived their right to the Second Stage of Preliminary Investigation.

Moreover, the alleged denial of the right to the second stage of the preliminary investigation was never raised before the trial court.

During the trial, accused-appellants denied any participation in the commission of the crime and interposed the defense of alibi. Thus, accused Dominador Cierbo claimed that at the time of the commission of the crime he was at Ucop, Pilar, Abra, gathering tobacco leaves on the land owned by his uncle Marcelino Dizon, together with Eugenio Carpio, Estanislao Carpio, Bernardo Carpio, Adela Desono, Ernesto Santiago, Isabel Taccadan and Felicidad Agaloos (pp. 3-4, TSN, March 16, 1982). For their part, accused Florentino Molina and Antonio Chan testified that on the early dawn of February 4, 1980, they were in the field of Cirilo Umanga in Agagrao, Sta. Maria, Ilocos Sur, gathering tobacco leaves with Corazon Chan, Lolita Uda-onda, Charito Chan, Librada Chan, Marina Chan and Cirilo Umanga (p. 3, TSN, February 4, 1982; pp. 3-4, TSN, February 18, 1982). Cirilo Umanga and Lolita Uda-onda corroborated the testimony of both accused (pp. 6-8, TSN, December 8, 1981; pp. 4-7, TSN, January 14, 1982).

The trial judge did not give credence to the defense of alibi and ruled as follows:

"Alibi cannot prevail over the positive identification of the accused. Accused were identified by prosecution witnesses Orlando Castañeda and Teodoro Castañeda. Both witnesses have no ill motive to testify against all the accused. (p. 14, TSN, March 29, 1982; pp. 16 & 18, TSN, Feb, 18, 1982) It was a bright moonlight night. (p. 57, TSN, Oct. 7, 1981)

"In *People vs. Chavez, et al.* (G.R. No. L-38603, promulgated Sept. 30, 1982) the Supreme Court held: 'Alibi is a question of fact which is best determined by the trial court and in order that it would be believed there should be a showing that there was physical impossibility for the accused to be at the place of the incident. Otherwise stated, for the defense of alibi to prosper, the evidence to support it must be clear and convincing considering that "it is easy to fabricate". (*People vs. Fontañosa, et al.*, 20 SCRA 249).

'x x x

"The declaration of appellant Alexander Dollisen cannot prevail over the positive identification by prosecution witnesses Antonio Narvadez and Jose Flor. The early identification of this appellant by prosecution witnesses as the companion of the other accused in perpetrating the heinous offense, and which identification led to his

apprehension, bespeaks of their spontaneity and veracity. The testimonies of those two witnesses appear to be clear and positive. Both clearly identified appellant whom they have known for some time before the incident. As has been consistently held by this Court, where clear and positive identification are made by the People's witnesses regarding the participation of the accused in the crime against him, his denial and explanation cannot overcome such evidence.'

"Courts should exercise great caution in accepting the defense of alibi because it is easily concocted. (People vs. Curiano, Oct. 31, 1963, 9 SCRA 324; People vs. Pasicolan, February 28, 1966, 16 SCRA 212; People vs. Ragas, 44 SCRA 152; People vs. Mori, 55 SCRA 382; People vs. Bereja, 56 SCRA 554; People vs. Zapatero, 58 SCRA 450) The Supreme Court had occasion to rule that to establish alibi, that accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where and the time when the crime was committed. (People vs. Lumantas, July 17, 1969, 28 SCRA 764; People vs. Alcantara, June 30, 1970, 33 SCRA 812; People vs. Selfaison, January 28, 1961, 1 SCRA 235) Alibi (like self defense) is a defense which can easily be concocted. (People vs. Labinia, et al., G.R. No. L-38140 promulgated only on July 20, 1982) The accused has failed to prove, and it is incumbent upon them that their identification by prosecution witnesses was not clear and not certain. They failed in this regard.

"Ucop to Bique, Pilar can be reached by walking. (p. 8, November 18, 1981) Pilar, Abra is adjoining the boundary of Ilocos Sur and Abra (p. 9, November 18, 1981) is near Lidlidda. (p. 10, November 18, 1981) Barrio Ag-agrao, residence of accused Molina and Chan may be reach by a jeep (p. 10, November 18, 1981) from Barrio Bique.

"The crime was committed before or at about 3:00 o'clock a.m. on February 4, 1980. (p. 21, TSN, May 27, 1981) Even assuming that accused were indeed gathering tobaccos at about 4:00 o'clock in the morning on February 4, 1980, the proximate distance of Bique, Lidlidda to Ucop, Pilar and Ag-agrao, Sta. Maria, Ilocos Sur did not preclude their presence at the crime scene."

We affirm the findings of the trial judge, except as to accused-appellant Antonio Chan.

The three eyewitnesses to the crime were Marcelino Dizon, Orlando Castañeda and Teodoro Castañeda. The five victims were Nenita Dizon, wife of Marcelino and sister of Orlando and Teodoro, Maria Castañeda (mother), Aurora Castañeda (sister), Romeo Sumalbag (cousin) and Mylene Dizon (daughter).

Marcelino Dizon, 77 years old, testified that three men committed the robbery and the gruesome killing of five innocent persons, including his wife, Nenita Dizon. But on the witness stand he testified that he could not identify the culprits, although he had previously identified appellants Cierbo and Molina in his statement (Exh. "J", p. 22 of the original record). As the trial judge wisely observed, this is easily understandable because the two accused are the nephews of Marcelino Dizon and he himself was spared of his life by the accused on that fateful morning.

Orlando Castañeda, 15 years old, positively identified appellants Cierbo and Molina in his statements made on March 1, 1980 (Exh. "K", pp. 20-21, 27-28 of the original record) and on February 18, 1980 (Exh. "M", p. 204 of the original record). When he testified in court, he declared as follows:

"Q -

Were you able to identify those persons with guns upon the time that you were awakened?

"A -

Yes, sir.

"Q -

Who were those persons?

"A -

Dominador Cierbo, Florante Molina and Dominador Dayag, sir."

He then pointed to Dominador Cierbo and Florante Molina who were present in court. Dominador Dayag was not present in court. Subsequently, he was asked:

"Q -

How about the person of the accused Antonio Chan, do you know him?

"A -

No sir because I did not see him? (pp. 19-21, TSN, June 9, 1981)

On the other hand, Teodoro Castañeda, 11 years old, who suffered a gunshot wound on his leg, testified that he knew only one of the three malefactors, Dominador Cierbo, and pointed to the latter in court (pp. 9 & 13, TSN, Oct. 21, 1981). Subsequently, he was asked to look around the courtroom to see if he could identify the two other companions of Dominador Cierbo. He then pointed to two persons who were identified as Florentino Molina and Antonio Chan (pp. 24-25, Id.).

In view of the foregoing, we entertain reasonable doubts as to the guilt of accused-appellant Antonio Chan. In the case of *People vs. Omega* this Court ruled thus:

"Although alibi is known to be the weakest of all defenses for it is easy to concoct and difficult to disprove, nevertheless, where the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not the accused committed the crime charged, the defense of alibi assumes importance. (*People vs. Bulawin*, Sept. 30, 1969, 29 SCRA 710; See *People vs. Cunanan*, April 24, 1967, 19 SCRA 769, 783; See also *People vs. Baquiran*, June 29, 1967, 20 SCRA 769). Thus, in the case of *People vs. Fraga, et al.*, (109 Phil. 241, 250) this Court held that:

'x x x an accused cannot be convicted on the basis of evidence which, independently of his alibi, is weak, uncorroborated, and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong.'

In other words, the prosecution has the burden of proof in establishing the guilt of the accused beyond reasonable doubt and the weakness of the defense does not relieve it of this responsibility. The accused does not have to prove his innocence because that is presumed. In the case at bar, the prosecution's evidence falls short of that quantum of evidence which will justify conviction of the appellant. His guilt has not been proven beyond reasonable doubt, and, therefore, he is entitled to an acquittal." (April 14, 1977, 76 SCRA 262, 270-271)

With respect to accused-appellant Dominador Cierbo, there is the additional evidence of the dying declaration of Nenita Dizon who, when asked by Patrolman Moreno Bal-balam who killed them, answered "Dominador Cierbo" and "nephews of my husband" (pp. 10, 36-37, TSN, May 27, 1981). Shortly after, Nenita Dizon died on the way to the hospital. Her declaration was admissible, if not as a dying declaration, as part of the *res gestae* (*People vs. Lanza*, December 14, 1979, 94 SCRA 613).

In his letter to this Court dated March 10, 1986 requesting that his case be decided at our most convenient time,

accused-appellant Dominador Cierbo shows signs of repentance when he states that "I regretted very much of what had happened and had already asked forgiveness to God and to the offended party of what I have done" (p. 231, Record).

WHEREFORE, accused-appellant Antonio Chan is acquitted. The judgment of the trial court is affirmed with respect to accused-appellants Dominador Cierbo and Florentino Molina, but for lack of the required number of votes, the penalty is modified to reclusion perpetua, with costs against said accused-appellants.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and Paras, JJ., concur.
Cruz, J., see concurring opinion.

CONCURRING OPINION

CRUZ, J.:

I concur in view of the overwhelming evidence against accused Cierbo and Molina but not without expressing this word of censure against their de officio counsel, who was less than energetic in their defense. Lawyers, whether remunerated or not, should exert their best efforts for their clients, to the end that their rights are amply protected. The counsel de officio in this case displayed a lackadaisical attitude in the defense of the accused that I for one find distasteful and unbecoming.

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