

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN LEE Y AMOSO, QUIRINO VIRAY, JR. Y COLLADO, AND JUAN LAROSA Y GONZALES, DEFENDANTS-APPELLANTS.

G.R. No. 66848, December 20, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an Information filed with the then Criminal Circuit Court of Manila on 8 July 1981, accused Ruben Lee y Amoso, Quirino Viray, Jr. y Collado, and Juan Larosa y Gonzales, were charged with the crime of Robbery in Band with Homicide and Multiple Physical Injuries, committed as follows:

"That on or about June 22, 1981, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one GERONIMO GERDAD (deceased) and others whose whereabouts and identities are still unknown, and helping one another, all armed with unknown caliber firearms and bladed weapons, by employment of craft, that is, pretending to be bonifide (sic) passengers of a jeepney, bearing plate No. 632 CS, PUJ, driven by BERNABE POYUAON, and at nighttime purposely sought to better accomplish their objectives, with intent of (sic) gain and by means of force, violence and intimidation upon persons, to wit: by then and there simultaneously announcing it was a hold-up and pointing their respective weapons, guns and knives, to the driver and other passengers of the said jeepney, did then and there willfully, unlawfully and feloniously take, rob, and carry away the following, to wit:

From:

RODRIGO CONDE - One (1) wallet, black, valued at P35.00 with 1-dollar bill;

BERNABE POYUAON - Cash money of P50.00;

ANNABELE JAVIER - Wallet, wrist?watch and necklace valued not less than P5.00;

WONG NGAW - Seiko Wallet, valued at P25.00; with SSS ID card and other papers and cash money of P200.00 and

PERPETUO AQUINO - Cash Money of P10.00,

or all in the total amount of P325.00, more or less, belonging to the aforesaid driver and passengers of the said jeepney, against their will, to the damage and prejudice of the said owners, in the aforesaid amount of P325.00, more or less, Philippine Currency; that by reason or on the occasion of the said robbery and for the purpose of enabling the said accused to take, rob, and carry away the said amount, in pursuance of their conspiracy, the said accused with intent to kill, willfully, unlawfully, and feloniously attacked, assaulted and used personal violence upon the passengers of the said jeepney, by then and there taking possession of the steering wheel and driving the vehicle away, firing shots at the crew of the mobile patrol car who (sic) gave chase of the said accused, and hitting, as a consequence, the following hold-up victims, to wit: LEOPOLDO ESPELLEGO, who sustained mortal gunshot wounds which were the direct and immediate cause of his death thereafter; GINA SALVADOR, who sustained a gunshot wound at the back, thereby inflicting upon her serious physical injuries

which required and will require medical attendance for a period of more than thirty days and incapacitated and will incapacitate the said Gina Salvador from performing her customary labor during the said period of time; and WONG NGAW and PERPETUO AQUINO, both of whom sustained physical injuries which have (sic) required medical attendance for a period of not less than one day but not more than nine days and incapacitated the said Wong Ngaw and Perpetuo Aquino from performing their customary labor during the same period of time.

CONTRARY TO LAW."[1]

The case was docketed as Criminal Case No. CCC-VI-49 (81).

Each of the accused entered a plea of not guilty at the arraignment on 7 September 1981.[2]

At the trial on the merits, the prosecution presented the following witnesses: Gina Salvador and Rodrigo Conde, two (2) of the jeepney passengers; PFC. Florentino Bagallon, the investigating policeman; and Drs. Marcial C. Cenido and Narciso Adraneda, Jr., the examining physicians. The defense presented the three (3) accused. Thereafter, on 26 August 1983, the trial court (now Branch XLVI, Regional Trial Court of Manila) promulgated its decision[3] finding the accused guilty of the crime charged and sentencing them to suffer the penalty of death. The dispositive portion of the decision reads in full as follows:

"WHEREFORE, the Court finds the accused, Ruben Lee y Amoso, Quirino Viray, Jr. y Collado and Juan Larosa y Gonzales, guilty beyond reasonable doubt of the crime of robbery in band with homicide and multiple physical injuries which is aggravated further by craft and nighttime and hereby sentences them to suffer the penalty of DEATH; to pay, jointly and severally, the heirs of the deceased Leopoldo Espellego the sum of P12,000.00 for the death of the latter, and to the robbery victims, the following sums: Rodrigo Conde, P35.00; Wong Ngaw, P225.00; and Perpetuo Aquino, P10.00 all of which were not recovered. They are also ordered to pay their proportionate shares of the costs of suit.

The .45 caliber paltik, Exhibit W, and the .32 caliber Sentinel revolver, Exhibit W-1, which bears Serial No. P.5803, are hereby confiscated in favor of the government and the Clerk of Court is hereby directed to cause delivery of the same to the Firearms and Explosives Section, Philippine Constabulary, Camp Crame, Quezon City.

Atty. Fernando Mangubat is hereby awarded the sum of P500.00 as attorney's fees."

Pursuant to the governing law then in force,[4] the case was elevated to this Court for automatic review.

The conviction is based on the following findings of fact of the trial court:

"June 22, 1981, at about 2:30 o'clock, a.m., a passenger jeepney with Plate No. 632 CS, PUJ, driven by Bernabe Poyuaon, was on its way from Rizal Avenue, Manila to Baclaran, Metro Manila. In the jeepney as passengers while it was already nearing the Philippine General Hospital along Taft Avenue were some 13 persons who were seated as follows: On the left seat (which is directly behind the driver) were a male passenger immediately behind the driver, Leopoldo Espellego, Annabelle Javier, Gina Salvador, and a male passenger who was seated just at the entrance of the jeepney, in that order. On the right seat beginning from the entrance of the jeepney were a male passenger, Maria Lourdes Javier, Rodrigo Conde, Perpetuo Aquino and Wong Ngaw, also in that order. Beside the driver were two male passengers.

x x x

The jeepney was travelling southward along Taft Avenue when the passenger seated last on the left seat near the entrance of the jeepney and who turned out to be the accused, Ruben Lee, drew out a gun and first poked it at Gina Salvador who was to his left and then waived (sic) said gun at the other passengers, at the same time announcing a hold-up as follows: 'Mga putang ina ninyo, huag kayong sisigaw, hold-up ito' (Sons of bitches,

don't shout. This is a hold-up). Simultaneously, the passenger seated in front of Ruben Lee who turned out to be Quirino Viray, Jr. drew out a knife and poked it at Maria Lourdes Javier who was to his right; the passenger seated just behind the driver who turned out to be Geronimo Gerdad drew out a gun and pointed it at the driver; and the passenger seated further from the driver drew out and poked a knife at the driver.

The announcement of the hold-up frightened the passengers and Ruben Lee ordered them to hand over their wallets, watches and other valuables. He ordered Geronimo Gerdad to collect the things of the passengers near him. Gina Salvador gave the following: to Ruben Lee: her Seiko 5 Men's watch worth P500.00; her Chinese gold necklace worth P200.00; cash amounting to P800.00; and her handbag worth P15.00. From Rodrigo Conde was taken a wallet worth P35.00 and containing one Australian dollar. From the others, including that of the driver, were taken cash which were (sic) handed over to Geronimo Gerdad.

When approaching Pedro Gil Street, Ruben Lee ordered the driver to turn right towards Roxas Boulevard and upon reaching Mabini Street, the jeepney was noticed by the crew of Police Mobile Patrol Car No. 221 as Pedro Gil is a one-way street. Patrol Car No. 221 tailed the jeepney and signalled it to a stop. Upon orders of Ruben Lee, the jeepney driver stepped down to talk nicely to the policemen (who stopped their car about seven meters behind) by telling the latter that they entered the street by accident. At the same time, Ruben Lee warned the passengers to keep quiet, otherwise he will shoot them.

Once the jeepney driver left to talk to the policemen, Ruben Lee also stepped down, placed his gun on his seat and ordered Quirino Viray, Jr. to take hold of it, and proceeded to the driver's seat, started the jeepney and drove off towards Roxas Boulevard, turned left and sped towards Baclaran. Mobile Patrol Car No. 221 (with the jeepney driver on board) followed suit with its sirens blowing and at the same time alerting other patrol cars through its radio. The jeepney, with Ruben Lee on the wheels, turned left towards the airport and on reaching a dark road, turned back. At this juncture, Ruben Lee ordered one of the passengers thrown out in order to distract the attention of the pursuers. So that the passenger beside him was thrown out. However, said passenger was not hurt; instead he ran away after hitting (sic) ground. With the mobile patrol car in pursuit, the jeepney sped back to Roxas Boulevard and towards the Luneta with the hold-uppers taking potshots at the pursuers. And because the passengers heard shots coming from behind, they were either down on the floor or were stooping from their seats, for fear that the policemen might shot (sic) directly at them. The jeepney finally stopped at Marvex Drive in Balintawak, Quezon City. The hold-uppers jumped out of the jeepney and engaged the pursuing policemen in a shoot out. Ruben Lee pointed a gun at Gina Salvador's back and fired. When the firing subsided, one of the hold-uppers, Geronimo Gerdad, was found seriously wounded and a .22 caliber revolver (Exhibit W-1) was found near his body. One of the passenger victims, Leopoldo Espellego, was seriously wounded while three others were wounded, namely: Gina Salvador who suffered a gunshot wound; Wong Ngaw, with lacerations and abrasions (see Exhibit F); and Perpetuo Aquino, with a lacerated wound (See Exhibit G). One patrol car brought Gerdad and Espellego to the Chinese Memorial Hospital where both were pronounced dead on arrival. Gina Salvador, Wong Ngaw and Perpetuo Aquino were brought to the Jose Reyes Memorial Hospital where they were treated."[5]

Through their counsel de oficio appointed by this Court, accused-appellants filed their Brief[6] on 22 March 1985.

The People, through the Solicitor General, filed the Appellee's Brief[7] on 12 September 1985.

Pursuant to Section 19(1), Article III of the 1987 Constitution of the Republic of the Philippines which provides that any death penalty already imposed shall be reduced to reclusion perpetua, this Court, in a letter to the accused dated 20 April 1988, asked them whether they still wished to continue with their case considering that the death penalty is no longer imposable and their death sentences had been automatically commuted to reclusion perpetua.[8]

In their letter to this Court dated 2 May 1988, accused Ruben Lee and Quirino Viray manifested their willingness to accept the sentence of Reclusion Perpetua.[9] Accused Juan Larosa, however, in a letter to this Court dated 29

April 1988, manifested that he wanted to continue with his appeal.[10]

In view of the foregoing, this Court promulgated on 25 May 1988 the following resolution:

"G.R. No. 66848 (People vs. Ruben Lee, et. al.) - Considering the pleadings filed in this case, the Court Resolved to NOTE: (a) the letter of compliance filed by accused-appellants Ruben Lee and Quirino Viray signed in the presence of witnesses, dated May 2, 1988, stating that they are willing to accept the sentence of reclusion perpetua in consonance with the provision of Section 19 (1), Article III of the 1987 Constitution; and (b) the letter of compliance filed by accused-appellant Juan Larosa dated April 29, 1988 stating that he wants to continue his case as an appealed case."

Said resolution became final on 7 June 1988 and Entry of Judgment was correspondingly made.

This review should then be limited to the case of accused Juan Larosa.

In the Appellant's Brief, accused Juan Larosa assigns the following errors:[11]

"I

THE TRIAL COURT ERRED IN HOLDING THAT ACCUSED LAROSA IS GUILTY OF THE CRIME CHARGED BEYOND REASONABLE DOUBT WHEN HE WAS NOT PROPERLY AND CREDIBLY IDENTIFIED AS PARTICIPANT (SIC) IN THE CRIME;

II

THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE DEFENSE OF ALIBI OF THE ACCUSED;

III

THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER BY ACCUSED."

We shall take them up in the order they are presented.

A. In support of the first assigned error, Larosa claims that the two (2) alleged eyewitnesses presented by the prosecution, namely, Gina Salvador and Rodrigo Conde, were not able to identify him.

Indeed, as correctly pointed out by Larosa, Gina failed to mention him. While she was very specific as to the role and participation of accused Ruben Lee and Quirino Viray, she candidly admitted that she "could no longer recall the hold-upper who was seated (sic) in front (sic) of the jeep." [12] However, prosecution witness Conde positively identified Larosa as the holdupper sitting on the front seat of the jeep. On direct examination, he testified as follows:

"Fiscal Belmonte:

Q When you boarded the jeep, were there passengers?

A Yes, Sir.

Q When you boarded the jeep, were these three already there?

A Yes, Sir.

Q What happened next?

A When the jeep reached at the PGH, the three drew guns, Sir.

Q Did they say anything?

A Yes, Sir, they said, this is a hold-up.

Court:

Q Who among the three drew a gun?

A Ruben Lee, Your Honor.

Q Who else?

A The other one sitting near the driver, Sir.

Fiscal Belmonte:

Q Is that other one in this Courtroom?

A Yes, Sir.

Court:

Q Point to him?

A Larosa, Your Honor.[13]

x x x

Fiscal Belmonte:

Q Do you know if there was any passenger of that jeep fell (sic) down?

A Yes, Sir.

Q Where was that passenger sitted (sic) at the time that he was fell (sic) down?

A We were on our way to MIA when that passenger fell down, Sir.

Q Why did he fall down?

A Because he was pushed by one of the holduper (sic), Sir.

Q Do you know who was that holduper?

A Larosa, Sir.”[14]

On cross-examination, this witness immediately aborted the defense counsel's attempt to show that the light of the jeep was put off, hence, it was impossible for him to see the holduppers clearly. Thus:

“Atty. Mangubat:

Q By the way when these holduper (sic) announced that it was hold-up, did they order the driver to put out the light?

A No, Sir.”[15]

x x x

Subsequent attempts on the part of the cross-examiner to discredit Conde proved futile. His testimony was given

full faith and credit by the trial court and We find no reason to overturn such a finding. Well-entrenched is the rule that appellate courts will generally not disturb the factual findings of the trial court since the latter are in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying, unless it is found that the trial courts have plainly overlooked certain facts of substance and value that, if considered, might affect result of case.[16]

Equally settled is the rule that conviction may be based on the lone testimony of an eyewitness, when the testimony is credible.[17]

B. In respect to his second assigned error, Larosa would have Us believe that at 2:00 a.m. of 22 June 1981, he was at his house sleeping with his family.[18] However, accused relies merely on his own testimony and his alibi is not corroborated by anybody else.

We have ruled time and again that alibi is a weak defense for it is easy to concoct and fabricate.[19] Alibi cannot prevail over and is worthless in the face of the positive identification by credible witnesses that accused perpetrated the crime.[20] In the case at bar, We find no reason to depart from this doctrine for the prosecution has sufficiently established the guilt of the accused Larosa.

C. In his last assigned error, Larosa claims that he voluntarily submitted to the custody of the police and offered no resistance when the police accosted him. We agree with the Appellee that this contention has no basis. Before Larosa and the other holduppers could even be apprehended, they engaged the pursuing police authorities in a shootout and only gave up upon realizing that they were already surrounded by residents and tanod members in the vicinity.[21]

For a surrender to be voluntary, it must be spontaneous and should show the intent of the accused to submit himself unconditionally to the authorities, either: (1) because he acknowledges his guilt, or (2) because he wishes to save them the trouble and expense necessarily included for his search and capture.[22] In the absence of these two (2) reasons, and in the event that the only reason for accused's supposed surrender is to insure his safety, his arrest being inevitable, the surrender is not spontaneous and hence, not voluntary.[23]

The trial court correctly appreciated against the accused the generic aggravating circumstances of band and craft. Nighttime, however, was erroneously taken against him.

A crime is committed by a band whenever more than three (3) armed malefactors shall have acted together in the commission of an offense.[24] In the case at bar, commission by a band was properly appreciated as it has been shown that when the holdup was staged, Ruben Lee, Quirino Viray, Geronimo Gerdad (deceased), and accused Larosa were all armed with guns and knives.

Craft is likewise present herein since the accused and his cohorts pretended to be bona fide passengers of the jeep in order not to arouse suspicion. However, once inside the jeep, they robbed the driver and the other passengers.[25]

As to nighttime, there is no showing that it was purposely sought for or taken advantage of to facilitate the commission of the offense or for the purpose of impunity.[26] There is no proof that they waited for the night to commit the crime. Besides, as testified to by Rodrigo Conde, the light of the jeep was not put off. Obviously, they did not seek the darkness of the night and were not afraid of the light.

The robbery and the resulting deaths of Leopoldo Espellego and Geronimo Gerdad (holdupper) and physical injuries of Gina Salvador, Wong Ngaw, and Perpetuo Aquino are included in one (1) special complex crime of robbery with homicide and physical injuries, defined and penalized under Article 294 of the Revised Penal Code,

it being evident that the deaths and injuries occurred by reason of or on occasion of the robbery.[27] The penalty provided for therein is reclusion perpetua to death. Considering the presence of the aggravating circumstances of band and craft or disguise, the greater penalty, which is death, shall be applied.[28] However, in view of the provisions of the 1987 Constitution abolishing the death penalty,[29] accused Larosa is entitled to the reduced penalty of reclusion perpetua.

Finally, conformably with the new policy of this Court,[30] the civil indemnity of P12,000.00 is increased to P50,000.00. However, considering that the judgment against Ruben Lee and Quirino Viray, the other convicted holduppers herein, had become final and executory as of 7 June 1988, they are solidarily liable with Juan Larosa up to the amount of P12,000.00 only. Anything in excess of said amount is the sole liability of accused Larosa.

WHEREFORE, the judgment of the trial court in Criminal Case No. CCC-VI-49 (81) finding the accused, Juan Larosa and his co-accused guilty beyond reasonable doubt of the crime of Robbery with Homicide and Physical Injuries, as defined and penalized under Article 294 of the Revised Penal Code, is hereby AFFIRMED in all respects, except as above modified. As modified, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, and the civil indemnity for the death of Leopoldo Espellego is hereby increased to P50,000.00, the first P12,000.00 of which the accused Juan Larosa shall be jointly and severally liable with his co-accused, and for the remaining P38,000.00 he shall be solely liable.

No pronouncement as to costs.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Rollo, 5-6.

[2] Original records, 10.

[3] Op. cit., 19.

[4] Sections 7 and 9, Rule 122, Rules of Court, in relation to Section 5 (e) of the 1973 Constitution.

[5] Rollo, 8-11.

[6] Id., 86, et seq.

[7] Id., 134, et seq.

[8] Rollo, 141.

[9] Id., 142.

[10] Id., 143.

[11] Rollo, 93-94.

[12] TSN, 8 December 1981, 4.

[13] TSN, 14 July 1982, 63-64.

[14] TSN, 14 July 1982, 67.

[15] Id., 72.

[16] *People vs. Beringuel*, 192 SCRA 561; *People vs. Montante*, 192 SCRA 483; *People vs. Mañago*, 191 SCRA 552; *People vs. Felipe*, 191 SCRA 176; *People vs. Toring*, 191 SCRA 38; *People vs. Sorio*, 190 SCRA 548; *People vs. Manzon*, 190 SCRA 378; *People vs. Gupo*, 190 SCRA 7; *People vs. Manalansan*, 189 SCRA 619.

[17] *People vs. Catubig*, 195 SCRA 505; *People vs. Dela Cruz*, 148 SCRA 582; *People vs. Romero*, 119 SCRA 234; *People vs. Rabang*, 187 SCRA 682; *People vs. Arcana*, 10 SCRA 311; *People vs. Salazar*, 58 SCRA 467.

[18] *Rollo*, 16.

[19] *People vs. Loveria*, 187 SCRA 47; *People vs. Ampo-an*, 187 SCRA 173; *People vs. Bicog*, 187 SCRA 556; *People vs. Rabang*, *supra.*; *People vs. Badilla*, 48 Phil. 718; *People vs. Lumantas*, 5 SCRA 157; *People vs. Genoguin*, 56 SCRA 181.

[20] *People vs. Ferrera*, 151 SCRA 113; *People vs. Ornoza*, 151 SCRA 495; *People vs. Masangkay*, 155 SCRA 113; *People vs. Lopez*, 157 SCRA 304; *People vs. Guevarra*, 179 SCRA 325; *People vs. Bustarde*, 182 SCRA 554; *People vs. Palino*, 183 SCRA 680; *People vs. Clores*, 184 SCRA 638; *People vs. Tenebro*, 191 SCRA 363; and *People vs. Kyamko*, 192 SCRA 374.

[21] *Appellee's Brief*, 18; *Rollo*, 134.

[22] *People vs. Lingatong*, 181 SCRA 424; *People vs. Ablao*, 183 SCRA 658.

[23] *People vs. Salvilla*, 184 SCRA 671; *People vs. Sigayan*, 16 SCRA 839; *People vs. Mationg*, 113 SCRA 167; *People vs. Dimdim*, 106 Phil. 301.

[24] Paragraph 6, Article 14, Revised Penal Code.

[25] *People vs. Daos*, 60 Phil. 143.

[26] *People vs. Balagtas*, 19 Phil. 164; *People vs. Flores*, 40 SCRA 230; *People vs. Moral*, 132 SCRA 474; *People vs. Rebullar*, 188 SCRA 838; *People vs. Toring*, *supra.*; *People vs. Aspili*, 191 SCRA 530.

[27] *People vs. Genoguin*, *supra.*; *People vs. Madrid*, 88 Phil. 1.

[28] Article 63 (1), Revised Penal Code.

[29] Section 19 (1), Article III.

[30] *People vs. Sison*, 189 SCRA 643; *People vs. Sazon*, 189 SCRA 700.

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