

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN ESPERA, ALIAS OGOY, AND FRANCISCO TOLITOL, ALIAS KIKO, DEFENDANTS-APPELLANTS.

G.R. No. 67173. July 31, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

This is an automatic review of the decision of the then Court of First Instance of Samar[1] in Criminal Case No. C-414 (C-1438), the decretal portion whereof reads:

"Viewed from all the foregoing, the Court therefore, declares both accused Juan Espera and Francisco Tolitol GUILTY of the crime of ROBBERY with HOMICIDE and SENTENCES Juan Espera to suffer the extreme penalty of DEATH, the crime having been attended by the aggravating circumstance (sic) of treachery and recidivism and evident premeditation as generic aggravating circumstance (sic); without any mitigating circumstances to offset the aggravating circumstances, and both accused to indemnify (sic) P6,000.00 each to the heirs of Virgilio Camacho, without subsidiary imprisonment in case of insolvency. They are credited in full (sic) their preventive imprisonment, with costs against the accused and to pay the value of the Seiko Watch in the amount of P550.00 and P234.00 cash robbed share and share alike." [2]

Both accused and three others, namely, Tito Espera, Pepe Espera, alias Epe, and Danilo de Guia, alias Danny, were charged with the crime of robbery with homicide in an information of the following textual content:

"That on or about the 22nd day of December 1981, at around 9:30 o'clock in the evening in Brgy. San Agustin, municipality of Mondragon, province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, helping one another, together with Atilo Ubaldo who is still at large, armed with deadly weapons, with intent to gain and benefit and by means of force, violence against and intimidation of persons, did then and there wilfully, unlawfully and feloniously enter the house of one Virgilio Camacho and his family by destroying the window of the dining room through which they gained entrance, and once inside said accused, did then and there wilfully and feloniously take, steal and carry away therefrom the following, to wit:

Two Hundred Thirty Four Pesos in Cash -----

P234.00

One (1) Lady Seiko Wristwatch -----

P550.00

T O T A L -----

P784.00

all belonging to spouses Virgilio Camacho and Teresita Camacho and valued in the total amount of SEVEN HUNDRED EIGHTY FOUR PESOS (P784.00), Philippine Currency, against the will and consent of the

owners, to the damage and prejudice of the latter in the aforesaid amount; that on the occasion of the robbery, the above-named accused, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack and assault one Virgilio Camacho, with said weapon (sic) which the herein accused had conveniently provided themselves for the purpose, thereby inflicting upon said Virgilio Camacho, Sr. various serious wounds on different parts of his body which directly caused his death.

CONTRARY TO LAW."[3]

The factual findings of the trial court established that in the afternoon of December 22, 1981 Teresita Camacho, together with her five children, were in their house in Barangay San Agustin, Mondragon, Northern Samar. At about 6:00 o'clock that afternoon, some persons whom Teresita recognized to be Pepe Espera and Danilo de Guia went to their house, sat there for a while and left. Later, while she and her children were eating supper, she again saw said two persons near the door of their house.

At about 7:30 o'clock that evening, her husband, Virgilio Camacho, arrived, and since he was very tired, went directly to bed. Later that night, while the family was asleep, Teresita was roused from her sleep when her husband stood up and went out of the room. Shortly thereafter, she heard a commotion and the cry of her husband saying that he was hit. Immediately, Teresita stood up, got her flashlight and went out of the room. When she beamed her flashlight, she saw appellant Juan Espera holding a piece of wood about thirty-six (36) inches long, Atilo Ubaldo carrying a bolo around eight (8) inches in length and called a "depang," and appellant Francisco Tolitol. When the three were illumined and revealed by the light coming from the flashlight, they ran toward the kitchen and fled. Thereafter, she saw her husband leaning against the door of their store with his face towards the wall and his mouth profusely bleeding. She immediately called her children to summon help from an uncle who lived nearby but it was her brother who subsequently brought Virgilio to the hospital.

On that same evening, Teresita discovered that the amount of two hundred thirty-four pesos (P234.00) representing the store's earnings that day was no longer in the drawer of a table near the shelves of the store and her Seiko watch worth five hundred fifty pesos (P550.00) which was kept in the same drawer was missing. She also found out that the three, Juan, Atilo and Francisco, were able to enter the house through the window shutter which had been destroyed. Teresita immediately reported the incident to the Chief of Police of Mondragon who made an ocular inspection that very evening.

Four days thereafter, Virgilio died in the hospital, the cause of his death being severe cranio?cerebral injury secondary to trauma. Dr. Lydia Quilatan, senior resident physician of the Northern Samar General Hospital and who performed the post-mortem examination, testified that the victim suffered five (5) wounds. Testifying on the medico-legal certificate on the wounds of the victim which are numerically referred to herein for facility, she explained that the first wound could have been inflicted by a hard object, such as a piece of wood; the second wound, by a hard object or a fistic blow; the third wound, with the use of a sharp-bladed instrument; and the fourth and fifth wounds could likewise have been inflicted by a hard object. The most serious injuries, according to her, were the first, second, fourth and fifth wounds because they were fractures which involved the brain.[4]

Both accused denied any participation in the commission of the offense and interposed the defense of alibi. Appellant Juan Espera alleged that he was at the house of one Mariano Gularez when the crime took place. Gularez was then having a party to celebrate the birth of his son and Espera was hired to cook the "lechon" or roast pig and to thereafter serve as kitchen helper and dishwasher. He claimed that he did not go home that whole evening and slept at Gularez' house until the following day. This alibi was substantially corroborated by Mariano Gularez. The other appellant, Francisco Tolitol, also alleged that on the same evening he came home from the field very tired and slept very early, at about 7:00 o'clock in the evening. He was then sleeping at the house of Teresita de Guia for whom he worked as a hired hand. He claimed that he did not go out of the house until the

next day when he woke up at 6:00 o'clock in the morning.[5]

On July 23, 1983, the trial court rendered a partial advance decision acquitting the three accused, Tito Espera, Pepe Espera and Danilo de Guia of the offense charged for lack of sufficient evidence to prove their participation beyond reasonable doubt.[6]

On October 8, 1983, the lower court rendered its main decision, hereinbefore mentioned, finding Juan Espera and Francisco Tolitol guilty of the crime of robbery with homicide and imposing the death penalty on Juan Espera and the lesser penalty of reclusion perpetua on Francisco Tolitol.

In a resolution en banc, dated May 23, 1985, the Court appointed counsel de oficio for both accused in this automatic review of the decision of the court a quo, noting therein that although Francisco Tolitol did not appeal from his sentence of reclusion perpetua, he "was apparently of the impression that as an alleged co-conspirator of Espera, who was sentenced to death, his case is also subject to automatic review." [7]

We commend said counsel de oficio for the zealous efforts in presenting the case for the appellants and the arguments in their brief faulting the court below with the following errors:

1. The lower court erred in according undue weight and credence to the testimony of witness Teresita Camacho and in finding appellants guilty beyond reasonable doubt;
2. The lower court erred in finding the existence of the crime of robbery with homicide and in finding appellants guilty thereof;
3. The lower court erred in finding the attendance of the aggravating circumstances of treachery and evident premeditation;
4. The lower court erred in finding appellant Tolitol principally guilty of the crime of robbery with homicide; and
5. The lower court erred in not giving weight to the evidence of the defense.[8]

We have scrupulously reviewed the records and calibrated the evidence of the parties, and We find no reason to reject the testimony of prosecution witness Teresita Camacho. That she is the widow of the deceased victim does not on that score alone affect her credibility. It is an established and conceded rule that the mere fact that the witness is a relative of a victim is not a valid or sufficient ground to disregard the former's testimony nor does it render the same less worthy of credit, in the absence of any ill-motive.[9] The utter failure of the appellants in this case to show any evil reason or motive on the part of the witness that could have made her testify as she did and to implicate them in such a serious crime as robbery with homicide makes the testimony of Teresita Camacho all the more worthy of full faith and credit. There is, thus, nothing in the record which would contradict this observation of the court a quo: "Witness Teresita Camacho indeed testified serenely and with composure which the Court observed keenly. Her testimony was natural and flawless. The court gives full credence to her testimony." [10]

Consequently, We cite the well-settled rule that the findings of the trial court on the credibility of witnesses are respected by the appellate courts, the former having heard the witnesses themselves and observed their deportment and manner of testifying, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.[11] We are not persuaded by appellants' arguments that their case falls under the exception, hence the Court finds no reason to disturb the findings of facts of the lower court.

There is also no basis to doubt the positive identification of the appellants by Teresita Camacho. The beam of light from her flashlight was sufficient to enable her to see and readily recognize the three intruders, especially because they were her neighbors of relatively long standing. In fact, one of the appellants, Francisco Tolitol,

worked for the Camacho spouses as an errand boy for some time and even slept in their house. There is no call either for the defense to denigrate the testimony of Teresita Camacho that she saw and recognized the weapons held by Espera and Ubaldo, that is, a piece of wood and a short bolo. Physical evidence, reflected by the medical findings, confirm that the wounds sustained by the victim could definitely have been inflicted by the said weapons seen and testified to by Teresita. There being an absence of any motive on her part to prevaricate, it would be unnatural for said witness, as the wife of the deceased victim and who is necessarily interested in seeing retribution exacted for the crime, to impute the same to any person other than those responsible therefor.[12]

With respect to the charge of robbery, however, there is warrant for an honest difference of opinion. While, as earlier stated, Teresita's testimony is deserving of credit, her declaration thereon was limited to the fact that, after having gone to the hospital and on her return therefrom, she discovered the loss of the money and the watch alleged in the information. No conclusive evidence proving the physical act of asportation thereof by the accused themselves has been presented by the prosecution.

It is true that, under similar facts wherein the complainant arrived home a few hours after his family was killed by the accused and he found the money and jewelry missing, this Court declared: "In the absence of any other known motive for the crime it would be, in our judgment, to reject the universal teaching of experience to refuse to draw the inference that the same person who killed the occupants of the house also committed the robbery." [13] In said case, however, the stolen items were recovered from a third person who implicated the accused therein as the author of the crime and the latter supposedly confessed, although the competence and weight of such evidence would now be of dubious validity and value under the present rules of evidence.

At any rate, as cited by the defense, in the subsequent case of *People vs. Labita, et al.*, [14] where the wardrobe and the trunk in the house of the deceased were forcibly opened and the contents thereof were scattered on the floor, but evidence was lacking as to when and by whom such acts were committed and the loot not having been recovered, the Court held that the robbery charged as the constituent element of the special complex crime of robbery with homicide has to be entirely disregarded. Thereafter, in *People vs. Moro Ambahang et al.*, [15] the Court also held that the testimony of the witness that he found his personal belongings gone when he returned to the scene of the killing, but he did not see who stole said things, the crime of robbery cannot be imputed to the accused since it is not based on substantial evidence but on mere presumptions.

To the same effect, as noted by Mr. Justice Padilla, is the doctrine in *People vs. Pacala, et al.*, [16] where it was held that absent conclusive evidence that robbery has actually taken place, there can be no conviction for the composite crime of robbery with homicide, but only for homicide which was duly proved. While this holding has been criticized as inaccurate.[17] We are persuaded to hold it as an applicable determinant for our present purposes. It observes fidelity to the fundamental rule that criminal law should yield any reasonable doubt in favor of the accused. At least in the factual milieu of the present case, the acceptance of the foregoing doctrines would not constitute an exacting onus on the criminal justice system and the law enforcement agencies by seemingly demanding that there be an eyewitness to prove the actual *apoderamiento* in crimes like robbery or theft. For, further to what has already been said, in the case at bar there is a paucity of evidence showing that, other than the accused, no other person had or could have had access to the premises where the money and the watch were allegedly kept, either before or after the killing of the victim and until the loss was supposedly discovered. The possibility that there could have been other intruders enhances the element of doubt in favor of appellants on this score.

The defense of appellants is alibi. It has been interminably repeated that this defense can not prevail over the positive identification of the accused by the prosecution's witness who has no motive to testify falsely against them. To make alibi worthy of credit, the 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 the crime was committed at the time of its commission.[18] This is not so in the case at bar. The places where appellants claimed to have been at the time of the incident and the place of the crime are located within the same barrio and not far from the situs of the crime. In fact, as found by the trial court, appellant Tolitol was supposed to be in the house of Jesusa de Guia which is just across the street from the Camacho residence.

The lower court, however, erred in holding that the killing of the victim was attended by treachery and evident premeditation. For treachery to be appreciated, it is necessary to prove that, at the time of the attack, the victim was not in a position to defend himself and that the offender consciously and deliberately adopted the particular means, method or form of attack employed by him to ensure the accomplishment of his purpose with impunity. The absence of evidence to show the means employed by the assailants and the mode of attack negates the imputed circumstance of treachery. Treachery may not be simply deduced from presumptions; it must be as clearly proven as the crime itself in order to aggravate the liability of the culprit.[19]

Neither may evident premeditation be considered against appellants, in the absence of proof that they had a prior plan to kill the victim, when that plan was agreed upon and the interval of time between such agreement and its commission. On the other hand, the trial court also erred in not considering dwelling as an aggravating circumstance.

WHEREFORE, the judgment of the lower court is MODIFIED and both appellants herein are sentenced to serve an indeterminate sentence of twelve (12) years of prision mayor to twenty (20) years of reclusion temporal and to indemnify the heirs of Virgilio Camacho in the sum of thirty thousand pesos (P30,000.00), with costs in both instances.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Sarmiento, JJ., concur.
Padilla, J., separate opinion.

[1] Branch XX, Judge Andres S. Santos, Presiding.

[2] Rollo, 011.

[3] Ibid., 003-004.

[4] Exh. A; TSN, Nov. 12, 1982, 3; Rollo, 103-104.

[5] Appellant's Brief, 58-59; Rollo, 85.

[6] Appendix A, Appellants' Brief; Rollo, 85.

[7] Rollo, 41.

[8] Appellants' Brief, i; Rollo, 85.

[9] People vs. Moises, et al., 66 SCRA 151 (1975); People vs. Lopez, 132 SCRA 188 (1984); People vs. Canada, et al., 144 SCRA 121 (1986).

[10] Rollo, 010.

[11] People vs. Bania, 134 SCRA 347 (1985); People vs. Baao, 142 SCRA 477 (1986); People vs. Salufrania, 159 SCRA 401 (1988).

[12] *People vs. Demeterio*, 124 SCRA 914 (1983).

[13] *U.S. vs. Merin*, 2 Phil. 88 (1903).

[14] 99 Phil. 1068 [Unpublished] (1956).

[15] 108 Phil. 325 (1960).

[16] 58 SCRA 370 (1974).

[17] Reyes, L.B., *The Revised Penal Code*, Book Two, 1981 Ed., 606.

[18] *People vs. Urgel*, 134 SCRA 483 (1985).

[19] *People vs. Soriano, et al.*, 134 SCRA 542 (1985); *People vs. Nabaluna*, 142 SCRA 446 (1986).

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SEPARATE OPINION

PADILLA, J.:

Robbery with homicide is primarily a crime against property. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the offender.[1]

Hence, where an information charges the complex crime of robbery with homicide, as in the present case, the proof must show beyond reasonable doubt that robbery was committed, proof of the homicide alone not being sufficient to support a conviction for the offense of robbery with homicide.[2]

In the present case, the information charges the accused, as follows:

"That on or about the 22nd day of December 1981, at around 9:30 o'clock in the evening in Brgy. San Agustin, municipality of Mondragon, province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, helping one another, together with Atilo Ubaldo who is still at large, armed with deadly weapons, with intent to gain and benefit and by means of force, violence against and intimidation of persons, did then and there willfully, unlawfully and feloniously enter the house of one Virgilio Camacho and his family by destroying the window of the dining room through which they gained entrance, and once inside said accused, did then and there willfully and feloniously take, steal and carry away therefrom the following, to wit:

Two Hundred Thirty Four Pesos in Cash---P234.00

One (1) Lady Seiko Wristwatch----- P550.00

TOTAL-----P784.00

all belonging to spouses Virgilio Camacho and Teresita Camacho and valued in the total amount of SEVEN HUNDRED EIGHTY FOUR PESOS (P784.00), Philippine Currency, against the will and consent of the owners, to the damage and prejudice of the latter in the aforestated amount; that on the occasion of the robbery,

the above-named accused, with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack and assault one Virgilio Camacho, with said weapon (sic) which the herein accused had conveniently provided themselves for the purpose, thereby inflicting upon said Virgilio Camacho, Sr. various serious wounds on different parts of his body which directly caused his death.

"CONTRARY TO LAW."

The prosecution, however, has not presented any evidence that herein appellants took and carried away the aforesaid personal properties belonging to the spouses Virgilio Camacho and Teresita Camacho. The only evidence on the robbery is the testimony of Teresita Camacho, which is found on page 4 of the decision. Thus, she testified that --

"On that same evening, Teresita discovered that the amount of two hundred thirty-four pesos (P234.00) representing the store's earnings that day was no longer in the drawer of a table near the shelves of the store and her Seiko watch worth five hundred fifty pesos (P550.00) which was kept in the same drawer was missing. x x x."

Since "there was no eyewitness to the alleged robbery, and the evidence merely shows that after the killing some of the things inside the house, where the killing took place were missing, it cannot be presumed that the accused killers committed, robbery. It is necessary to prove intent to rob. This necessarily includes evidence to the effect that the accused carried away the effects or personalty of the offended party. In the absence of evidence that the accused carried away the missing objects, they cannot be convicted of robbery." [3]

In *People vs. Pacala*, [4] this Court held:

"1. In connection with the robbery aspect- of the crime charged, two things must be borne in mind: first, that there were no eyewitnesses to the alleged robbery: and second, that none of the things allegedly stolen, namely, the transistor radio and the trunk purportedly containing the sum of P1,700.00 was ever recovered. If there was, therefore, any evidence to support the charge of robbery, the same was entirely circumstantial in character.

"Roque Bacsal testified that the five accused surrounded the hut, and after Saberon fired his pistol, he and his father jumped from the hut into the ground and ran to a place about sixty meters away where his father was overtaken and attacked by said accused, and, afterwards, the latter left and proceeded towards the direction of the hut. Roque then went to the succor of his father and tried to assist him until Victoriano Fortaleza, the barrio captain, arrived. It was only after the arrival of the barrio captain that Roque was able to return to their hut, and discovered that the radio and the trunk where the money was kept was missing.

"It is evident from the foregoing that no iota of evidence had been presented showing that appellants and their companions knew of the existence of the money in the amount of P1,700.00, or of the place where it was allegedly kept, much less is there any positive proof that when they went to the place of the victim their intention was to rob the latter. It would seem, therefore, that the trial court's conclusion that it has been 'established beyond peradventure of doubt that, taking advantage of the night, five men decided to rob the deceased whom they knew to have some money in the trunk' is based on a mere inference, or conjecture and not upon positive evidence. It is well-settled that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide be committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would, therefore, be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide." (Emphasis supplied)

Additionally, it should be stated that penal laws are strictly construed against the Government and liberally in favor of the accused.[5] Hence, in case of doubt, the doubt should be resolved in favor of the accused.

[1] *People v. Pagal*, 79 SCRA 570, 576-577

[2] *U.S. v. Pandit*, 1 Phil. 426

[3] Aquino, *Revised Penal Code*, Vol. III, 1988 Ed., pp. 91-92

[4] 58 SCRA 370

[5] *U.S. vs. Abad Santos*, 36 Phil. 243; *People vs. Yu Hai*, 99 Phil. 728

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