

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO MESIAS Y SEBASTIAN, DEFENDANT-APPELLANT.

G.R. No. 67823. July 09, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is an appeal from a decision of the then Court of First Instance of Rizal, Branch XXXI, Quezon City, through Judge Rodolfo A. Ortiz, finding Danilo Mesias y Sebastian guilty of the crime of robbery with homicide committed against Vivencio Cruz y Ramos. The dispositive part reads:

"ACCORDINGLY, judgment is hereby rendered convicting the accused, DANILO MESIAS y SEBASTIAN, beyond reasonable doubt of the crime of Robbery with Homicide, as charged in the information, and as defined and penalized under Article 294 (1) of the Revised Penal Code, and in accordance therewith, applying the provisions of Article 63, paragraph 2(2) of the Revised Penal Code there being no mitigating or aggravating circumstances which attended the commission of the offense, the said accused is hereby sentenced to reclusion perpetua, with all the accessory penalties provided for by law; to indemnify the Heirs of Vivencio Cruz y Ramos the sums of: P12,000.00, as compensatory damages; P9,073.75, represent-ing the unrecovered cash and the value of the goods robbed by the accused; P10,000.00 as burial expenses; P20,000.00, by way of moral damages; and, P1,500.00 monthly, for the loss of the earning capacity of the victim, from October, 1980 until the victim shall have reached the age of 65 years if he were alive, and to pay the costs.

"The accused being detained and consider-ing the practice in the Quezon City Jail for all detention prisoners to agree in writing that they be governed with the same rules regarding convicted prisoners, he is credited with the full extent of the period under which he was under detention.

"x x x."[1]

The prosecution's version of the incident, drawn substantially from the testimonies of the victim's wife and son and relied upon by the trial court in convicting Danilo Mesias, is as follows:

At around 8:00 o'clock in the evening of September 26, 1980, while Mrs. Olympia Cruz was setting the table for dinner, five (5) armed men, four of them wearing masks, barged into their house situated at No. 41 Kasunduan St., Barangay Commonwealth, Quezon City. Her husband, Vivencio Cruz, was in the living room while their son, Marlon, then six (6) years old, was in the bedroom watching television. Three (3) men poked their guns at Vivencio. Upon seeing this, Olympia shouted, "Ina ko po, Diyos ko!" One man pointed a gun at her and another one, who was not wearing a mask, pointed an ice pick at her chest. She was ordered to lie down, so she sat on a sack of rice. Her head was pressed down and she was blind-folded with a red handkerchief. She was then frisked and brought inside a room where she was told to produce the family's money and gun. She said that they had no gun but there was money since they had a store in their house. Then, she heard the armed men ransacking their house. She also heard her husband being ordered to produce their money, jewelry and gun but her husband explained that he had lost his watch in a drinking spree. Later, her son Marlon was brought to her and was also asked where their money was placed, but the boy replied that he did not know.[2]

Marlon was allowed by the malefactors to return to the bedroom to watch television. Then through the open door, Marlon saw the robber without a mask stabbed Vivencio three times, twice on the chest and once on the left neck, with what appeared to be an icepick. Upon seeing his father wounded, Marlon ran to his mother and exclaimed "Nanay, naku si Tatay!" Olympia removed her blindfold and saw Vivencio apparently lifeless and bathed in his own blood. The five robbers were nowhere in sight. Olympia rushed out of the house and cried to the neighbors for help. The barangay officials promptly called the police and an investigation was undertaken at about ten o'clock that evening. The investigation revealed that the five robbers had taken with them cash and various items valued at P9,249.00.[3]

In her subsequent sworn statement before the Quezon City police, Olimpia gave a description of one of the five robbers who was not wearing a mask during the night in question.[4] This led to the apprehension of Danilo Mesias, a twenty-five year old mechanic, who was recognized by Olympia and her son Marlon as among the malefactors who robbed their house and store and stabbed Vivencio to death.

The body of the deceased Vivencio Cruz, 44 years old, a driver and storeowner, was autopsied on September 27, 1980. The postmortem report disclosed that he sustained three stab wounds: two on the chest and one at the back of his neck. Death was due to severe hemorrhage caused by the three wounds.[5]

Of the alleged five offenders, only Mesias was charged. At his arraignment, he pleaded not guilty to the crime of robbery with homicide. Trial followed. On January 26, 1982, the lower court rendered the assailed judgment of conviction.

In this appeal, accused Mesias insists on his innocence. His principal defense is alibi. He alleges that on the night of September 26, 1980, he slept early in his sister's house located at the IBP site, Constitution Hills, Quezon City, about a half (1/2) kilometer away from the crime scene. This was corroborated by his sister, Leni Claudio, who testified that Mesias was in her house between 6:00 in the evening of September 26, 1980 and 6:00 in the morning of September 27, 1989.[6]

To further support his claim of innocence, Mesias alleges that the victim's widow and young son, mistook him for another person because there is another man who looks just like him, which he calls his "double", and who happens to live in the same area.

The defense also calls the attention of the Court to the testimony of the medico-legal officer which stated that the victim, Vivencio Cruz, was stabbed with a "single bladed pointed type of stabbing instrument" and not an ice pick, contrary to the statement of the prosecution witnesses, Olympia and Marlon Cruz.

After a careful review and examination of the records of the case, we find that accused Danilo Mesias is guilty beyond reasonable doubt of the crime of robbery with homicide.

Admittedly, there is a discrepancy between the testimony of the witnesses and the autopsy report and testimony of the medico-legal officer on the weapon used. The witnesses, Olympia and Marlon Cruz, stated that accused Mesias had used an ice pick in killing the victim while the medico-legal officer testified that based on the wounds, the instrument used in stabbing the victim was a "single bladed pointed stabbing instrument."

This discrepancy has to give way to the positive identification of accused Mesias as the one who killed Vivencio. Although the victim's wife admitted that she did not see who stabbed her husband since she was blindfolded, her son's testimony should be given full weight and credit.

During direct and cross-examination, the boy Marlon, a six-year old kindergarten pupil, remained firm in his assertion that it was none other than Danilo Mesias, the unmasked one, who stabbed his father. The defense, on

cross-examination, repeatedly asked Marlon who killed his father and each time Marlon replied that it was the accused Mesias. In the light of Marlon's categorical and straightforward testimony which re-counted the violence that transpired on September 26, 1980, as well as his consistent declaration that among the five (5) men who entered their house, it was Mesias who fatally knifed his father, we cannot but conclude that the boy Marlon was indeed telling the truth and that what he stated on the witness stand was what he had actually witnessed on the night in question.

Children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimony is therefore likely to be more correct in detail than that of older persons; and when once established that they understood the nature and character of an oath, full faith and credit should be given to their testimony.[7]

Dr. Hans Gross, a noted Austrian jurist and expert in criminology, said that an intelligent child is undoubtedly the best observer to be found. He is, as a rule, little influenced by the suggestions of others and he describes objects and occurrences as he has really seen them. Generally, children have good and retentive memory.[8]

Although Marlon may have mistakenly described the type of weapon his father's assailant had used, this is but a minor lapse when weighed against his unerring recognition of the killer. Inconsistencies in the testimony of prosecution witnesses do not affect their credibility. What is essential, particularly in the instant case, is that Marlon unhesitatingly identified the accused as the sole person responsible for the death of his father. In *People vs. Encipido*,[9] this Court held that the credibility of the testimony of a witness is not affected by some flaws and inconsistencies in minor details, if, as regards the main incident, the identities of the malefactors and the testimonies appear to be consistent with each other.

Accused's defense of alibi deserves little consideration. In no way did it prove that Mesias could not have been at the scene of the crime at the time of its commission. In fact, Mesias even admitted that the house of his married sister Leni where he was allegedly sleeping, was a mere one-half kilometer from the Cruz' residence.

In the case of *People vs. Reunir*,[10] it was held that for an effectual alibi, it must be shown that not only was the accused at some other place at the same time but that it was physically impossible for him to have been at the scene of the crime when it occurred.

The testimony of his sister corroborating his defense of alibi is similarly unacceptable. Leni's testimony is not only biased for it is a natural desire for a sister to exculpate her brother from criminal liability, it is also inconclusive. Alibi is at best a weak defense and easy of fabrication especially between parents and children, relatives, and even those not so related.[11] For alibi to be credible, it must count with a strong corroboration.[12]

Moreover, Mesias' alibi, aside from being inherently weak, has been rendered inutile by the fact that he was conclusively identified by two witnesses. In *People vs. Guevarra*,[13] we reiterated the almost inflexible rule that alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime.[14]

The allegation of accused-appellant Mesias that he was erroneously identified by the witnesses because he has a "double" in the area, is absurd. This defense is self-serving and uncorroborated. Not even an iota of proof to support this allegation was presented. Accused Mesias, in making such a claim, seems to be grasping at straws in a desperate bid to clear himself.

The trial court correctly adjudged Mesias guilty of the special complex crime of robbery with homicide. The killing of Vivencio Cruz resulted by reason of or on the occasion of the robbery.[15] But in imposing the penalty under review, the lower court erred in holding that the subject felony was not attended by any aggravating

circumstance. Dwelling should have been appreciated as an aggravating circumstance, the reason being that dwelling is not inherent in robbery with homicide since the author thereof could have accomplished the heinous deed without having to violate the domicile of the victim.[16]

The monetary awards in favor of the victim's heirs must be modified. They are only entitled to be paid the amounts of P50,000.00 as civil indemnity, P9,073.75 representing the unrecovered cash and goods and P10,000.00 as burial expenses. That part of the decision awarding P12,000.00 as compensatory damages, P20,000.00 as moral damages and P1,500 monthly to compensate for the loss of the earning capacity of the deceased must be eliminated for want of sufficient proof that the victim's heirs had a legal right thereto.

WHEREFORE, accused-appellant Danilo Mesias y Sebastian is hereby declared guilty of the special complex crime of robbery with homicide as defined under paragraph 1, Article 294 of the Revised Penal Code. Taking into account the aggravating circumstance of dwelling, the prescribed penalty of reclusion perpetua to death is imposed in its maximum period which is death. But in view of the abolition of the capital punishment in the 1987 Constitution, the Court AFFIRMS the penalty of reclusion perpetua imposed by the trial court as a reduction from the death penalty. The decision under review is however MODIFIED to the extent that the heirs of the victim are adjudged to be entitled to receive from the accused-appellant Danilo Mesias civil indemnity of P50,000.00 in line with recent jurisprudence, P10,000.00 for burial expenses and P9,073.75 representing the unrecovered cash and value of the stolen goods. The portion of the decision awarding in favor of the heirs P12,000.00 as compensatory damages, P20,000.00 as moral damages as well as P1,500.00 monthly for the loss of the earning capacity of the deceased Vivencio Cruz is ordered DELETED for want of sufficient legal basis. Costs against the accused-appellant.

So ordered.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Original Records, p. 140.

[2] TSN, April 21, 1981, pp. 2-6.

[3] TSN, May 26, 1981, pp. 24, 27, 30-31.

[4] Exhibit A.

[5] Exhibit D.

[6] TSN, December 15, 1980, p. 64.

[7] People vs. Alambra and Garcia, 55 Phil. 578.

[8] People vs. Ricaplaza, No. L-25856, April 29, 1968, 23 SCRA 374. See People vs. Bustos, 45 Phil. 9.

[9] G.R. No. 70091, December 19, 1986, 146 SCRA 478.

[10] G.R. No. 73605, January 29, 1988, 157 SCRA 686.

[11] People vs. Pecato, No. L-41008, June 18, 1987, 151 SCRA 14.

[12] People vs. Hermosa, G.R. No. 74060, September 15, 1989, 177 SCRA 574.

[13] G.R. No. 65017, November 113, 1989, 179 SCRA 325.

[14] See also People vs. Pacada, Jr., Nos. L-44444-45, July 7, 1986, 142 SCRA 427; People vs. Datahan, G.R.

Nos. 77107-08, January 21, 1988, 157 SCRA 215.

[15] *People vs. Aquino*, G.R. No. 50523, September 29, 1983, 124 SCRA 835.

[16] *People vs. Apduhan, Jr.*, No. L-19491, August 30, 1968, 24 SCRA 800; *People vs. Mercado*, No. L-39511, April 28, 1980, 97 SCRA 232; *People vs. Capillas*, No. L-27177, October 23, 1981, 108 SCRA 173; *People vs. Pecato*, No. L-41008, June 18, 1987, 151 SCRA 14.

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