

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE ALVAREZ, WILFREDO BLANCAFLOR, FELINO ALETA, ORLANDO TONIL, FELIPE ZURBITO AND ROGELIO PAGAYONAN, DEFENDANTS, VICENTE A...

G.R. No. 70446. January 31, 1989

Ponente: CORTES, J.

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CORTES, J.:

The accused Felino Aleta, Orlando Tonil, Felipe Zurbito, Vicente Alvarez, Rogelio Pagayonan alias "Sinco" and Wilfredo "Tolendoy" Blancaflor were charged with the offense of robbery with homicide and physical injuries before the Regional Trial Court of Masbate in an information filed on February 27, 1981 which reads:

. . . on or about July 3, 1978, in the evening thereof, at Barangay Guinlothangan, Municipality of Milagros, Province of Masbate, Philippines, within the jurisdiction of this court, the said accused confederating together and helping one another, with intent of gain (sic), and by means of violence and intimidation, armed with guns, did then and there wilfully, unlawfully and feloniously enter the house of Roberto Beloso, hogtie the latter, and one Victor Javar, and with intent to kill fired their guns at one Severino Malapitan Jr., hitting the latter on the different parts of the body which directly caused his instantaneous death; that as a result of said firings (sic) one Evelyn Bacaresas was hit inflicting upon the latter physical injuries which will require and have required medical attendance for a period as prescribed by the doctor issuing the medical certificate, and will incapacitate and have incapacitated her from performing her customary labor for the same period of time; did then and there wilfully, unlawfully and feloniously take, steal and carry away cash amount of P14,000.00 and jewelries worth P620.00, all belonging to spouses Roberto Beloso and Nora M. Beloso, to the damage and prejudice of the latter in the total sum of P14,620.00, Philippine currency. [Rollo, p. 15.]

Only accused Vicente Alvarez, Tolendoy Blancaflor, and Rogelio Pagayonan were placed under custody. Alvarez and Blancaflor pleaded not guilty. Pagayonan was not arraigned as he was then sick but before he could be arraigned, he escaped from the Provincial Jail and he has been at large since then. The other accused are also still at large.

After trial, the lower court rendered judgment convicting the accused, the dispositive portion of the amended decision reading as follows:

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WHEREFORE, premises considered, the Court finds the accused VICENTE ALVAREZ and WILFREDO "TOLENDY" BLANCAFLOR guilty of the offense of Robbery in Band[*] with Homicide and Physical Injuries, and, considering the aggravating circumstance of band and the mitigating circumstance of voluntary surrender, hereby imposes on each of the said accused the penalty of RECLUSION PERPETUA, to render restitution to the spouses Roberto Beloso and Nora Morado Beloso, jointly and severally in the amount of P14,815.00, to indemnify the heirs of victim Severino Malapitan, Jr., in the amount of P30,000.00 and to pay the

costs of the suit.

The case against accused FELINO ALETA, ORLANDO TONIL, FELIPE ZURBITO and ROGELIO PAGAYONAN, who are still at large and against whom alias warrants of arrest had been issued, are hereby ordered ARCHIVED.

IT IS SO ORDERED. [Rollo, pp. 22-23.]

The case was brought on appeal to this Court on the sole issue of whether the trial court erred in convicting accused-appellants of the crime charged notwithstanding the alleged insufficiency of evidence adduced by the prosecution.

In ruling against the accused-appellants, the court found the following facts:

At about 7:00 to 8:00 o'clock in the evening of July 3, 1978, in Barangay Guinlothangan, Milagros, Masbate, seven (7) armed men staged a robbery in the house of Roberto Beloso, the then Barangay Captain of the said barangay, while said Roberto Beloso was about to have dinner with his family and a guest named Victor Jabar. Three of the armed men, later identified as Vicente Alvarez, Tolendoy Blancaflor and Felino Aleta, entered the house and announced that it was a hold-up. The one identified as Vicente Alvarez announced in a mixture of Tagalog and Cebuano, "Hold-up, so don't shout otherwise we will kill you."

Roberto Beloso and Victor Jabar were tied up and made to lie face down on the floor and the former's wife, Nora Morado Beloso, and one of their small children were brought upstairs by the said Vicente Alvarez and the one identified as Tolendoy Blancaflor. The one identified as Felino Aleta was left downstairs to guard those who were left behind. Taken by the robbers upstairs after ransacking it were cash amounting to P12,000.00, coins in the piggy bank amounting to P2,000.00, jewelries worth P600.00, a pair of pants worth P160.00 and a travelling bag worth P55.00.

Meanwhile, as Mrs. Beloso and her child were being brought upstairs, Evelyn Bacaresas, a maid in the household, fled from the house and as she ran outside she was shot by Tolendoy Blancaflor and hit at the back felling her. She identified two of the robbers who entered the house as Vicente Alvarez and Tolendoy Blancaflor.

As the robbers, with Mrs. Beloso and her child, were going downstairs, after ransacking the upper floor, Severino Malapitan, Jr., a cousin of Roberto Beloso who was earlier in the house drinking beer with Roberto Beloso, suddenly made his appearance having heard a shot coming from the house and he was shot by those armed companions of the robbers left on the yard outside the house. He died from the gunshot wounds inflicted on him by the said armed robbers.

The robbers then left the scene as church bells rang warning the people of danger with Mrs. Beloso and her child as hostage and keeping by (sic) the people attracted by the ringing of bells and shots at bay with threats on the hostages proceeded to the shore where they fled on board a motorboat, leaving their hostage Nora Morado Beloso in waist deep water, firing their guns as they left.

xxx xxx xxx[Rollo, pp. 16-18.]

The thrust of the instant appeal is that the identities of the appellants as the perpetrators of the crime have not been positively proven.

Upon a thorough evaluation and review of the evidence on record, the Court finds that the identification of the appellants as the perpetrators of the crime has been sufficiently established. In their testimonies before the court a quo, the prosecution witnesses unhesitatingly pinpointed the appellants as the robbers who entered the house on that fateful night. Considering the uncontested facts that during the robbery, the inside of the house was

well-lighted with kerosene lamps [TSN, March 16, 1982, p. 47] and that the three men who entered the house wore no masks nor made any effort to conceal their faces nor did they put out the light [TSN, September 4, 1981, p. 31], it is no wonder that the victims were able to recognize the faces of the malefactors. Thus when the appellants, upon their voluntary surrender, were brought to the municipal hall of Milagros, Masbate, together with other apprehended suspects, a few days after the incident, the Beloso couple readily pointed to the appellants as the malefactors [Rollo, p. 18.] Thus:

While evidence as to the identity of the accused as the person who committed the crime should be carefully analyzed, the Court has consistently held that "where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted. And this is more so where the witness is the victim or his near-relative, as in this case, because these (people) usually strive to remember the faces of the assailants" [People v. Bernat, G.R. No. 55176, February 28, 1983, 120 SCRA 918, 924 citing People v. Zapanta, 45 O.G. 1312; Underscoring supplied.]

Appellants, citing inconsistencies in the testimonies of the complainants, claim that the witnesses for the prosecution have seriously contradicted themselves on crucial and material points. While Nora Morado Beloso testified that Tolendoy Blancaflor was among those who entered the house, yet her husband categorically stated on cross-examination that he did not see Tolendoy Blancaflor in the house during the armed robbery. Also, as regards the claim of Evelyn Bacaresas that it was Tolendoy Blancaflor who shot her when she ran outside, the defense insists that the same is not worthy of credence as she herself admitted on cross-examination that since it was dark, she did not see the person who shot her [Brief for Accused-Appellant, p. 11; Rollo, p. 26.]

These inconsistencies, though, do not detract from the positiveness of the identification of the appellants. Nora Beloso, when confronted by the trial court with the fact that her husband had earlier testified that Tolendoy Blancaflor was not one of the three robbers who entered the house gave a convincing explanation. According to her, her husband and Victor Jabar were hogtied and made to lie with their faces down on the floor. Afterwards, appellants Alvarez and Blancaflor, brought Nora Beloso and her child upstairs [TSN, September 4, 1981, p. 38.] Roberto Beloso's admission that he was not able to identify the other robbers lends greater credence to the version of the facts as narrated by the prosecution. For in view of his position and the fact that Alvarez and Blancaflor immediately went upstairs, it is highly probable that Roberto Beloso had no chance to identify Blancaflor with accuracy. As to appellant Vicente Alvarez, it is not surprising that Roberto Beloso was able to identify him as he was the one who, upon entry to the house, said "Hold up, so don't shout otherwise, we will kill you" [TSN, September 3, 1981, p.8.]

The lower court properly gave full faith and credit to the testimony of Evelyn Bacaresas that Tolendoy Blancaflor was her assailant. Indeed, she did not actually see who shot her inasmuch as her assailant was behind her and she was shot at the back. But she was able to establish during the cross-examination that it was Tolendoy Blancaflor who, upon seeing her run away from inside the house, chased her up to the window garden where she was shot. Evelyn Bacaresas could not have been mistaken in the identity of Tolendoy. When the robbers, without tying her hands, ordered her to sit beside Roberto Beloso, she kept staring at their faces which she fully saw as they were not wearing any masks and the room was brightly illuminated [TSN, March 16, 1982, pp. 50 and 78.]

Even if the trial court disbelieved Bacaresas' identification of Blancaflor as the one who shot her, it does not follow that her entire testimony should be discredited. For the testimony of a witness can be believed as to some facts and disbelieved as to others [People v. Pacada, Jr, G.R. Nos. L-44444-45, July 7, 1986, 142 SCRA 427.] The categorical declaration of Evelyn Bacaresas that appellants Alvarez and Blancaflor were two of the robbers who entered the house on that fateful night, which is corroborated by the testimony of Nora Beloso, is worthy of belief.

Even assuming that Evelyn Bacaresas mistook Blancaflor as her assailant, the latter will not be absolved from any liability. Since Evelyn Bacaresas was able to establish in her testimony that Blancaflor was one of the robbers who entered the house, it does not matter now if it was actually one of his companions and not he, who shot Bacaresas since in a conspiracy, the act of one is the act of all. Thus, it was ruled in *People v. Trinidad* [G.R. No. L-38930, June 28, 1988] that where conspiracy has been proven, a showing as to who inflicted the fatal blow is not required.

The next inquiry then is whether conspiracy in the commission of the robbery was duly proven in the instant case.

It is settled that conspiracy need not be established by direct evidence but may be proven through a series of acts done in pursuance of a common unlawful purpose [*People v. Cadag*, G.R. No. L-13830, May 31, 1961, 2 SCRA 388; *People v. Cruz*, G.R. No. L-15369, April 26, 1962, 4 SCRA 1114; *People v. Alcantara*, G.R. No. L-26367, June 30, 1970, 33 SCRA 812.] The facts proven by the prosecution clearly indicate a conspiracy to rob the Beloso family. Indeed, in order that conspiracy may properly be appreciated, it is enough that at the time the offense was committed, the participants had the same purpose and were united in its execution as may be inferred from the attendant circumstances [*People v. Masangkay*, G.R. No. 73461, October 27, 1987, 155 SCRA 113.] That the appellants were united in purpose and in the execution of their criminal designs has been amply proven in the instant case. Here, the existence of a conspiracy can be gleaned from the concerted acts of the appellants in going together inside the Beloso house and robbing the occupants while their other companions stood guard outside the house. Then after the appellants had ransacked the house, appellants and their companions fled together to the seashore and rode in a motorboat away from the scene of the crime.

Accordingly, since the rule in conspiracy is that every conspirator is responsible for the acts of others done in pursuance of the conspiracy [*People v. Pareja*, G.R. No. L-2937, November 29, 1969, 30 SCRA 693], Alvarez and Blancaflor can be held liable for the act of the robber who shot Evelyn Bacaresas, thereby inflicting upon the latter serious physical injuries. Likewise, they should be held accountable for the act of another robber, whose identity however was not established, in shooting Severino Malapitan, Jr., resulting in the latter's death. For when a group of malefactors conspire to commit robbery and arm themselves for the purpose, no member of the group may disclaim responsibility for any act of violence that is perpetrated by reason or on occasion of the robbery. Such violence is always reasonably to be expected, either to overcome active opposition or to forestall it altogether by disabling the victim at the very outset, or even to silence him completely thereafter [*People v. Espejo*, G.R. No. L-27708, December 19, 1970, 36 SCRA 400.]

In sum, the appellants' attempt at casting doubt upon their identification by the prosecution witnesses as the malefactors is futile. This Court has already ruled that despite the suddenness of the robbery and the absence of a showing as to its duration or the number of times the robbers were seen by the eyewitnesses, the latter's identification of the malefactors can be given credence. For the victim or his relatives who actually witnessed the robbery would strive to remember the uncovered faces of the malefactors [*People v. Cruz*, G.R. No. L-37173, November 29, 1984, 133 SCRA 426.]

On the other hand, appellants' defense is anchored primarily on alibi, an inherently weak defense. Appellants claimed that on the particular date and time when the robbery took place, they were in Gigatangan, Mabini, Nabal, Leyte. According to the appellants, they left for Gigatangan on June 27, 1978 on board a pump boat owned by Alvarez which was hired by one Rudy Salut to fetch his parents. However, they were not able to bring with them the parents of Salut when they left the place on July 5, 1978. They admitted, though that on said date, they spent the night in Naro, Diot, Cawayan, Masbate due to engine trouble. According to them, it was there that they came to know of the robbery as the people there suspected them of being the robbers [TSN, August 17, 1973, p. 65.]

It is elementary that in cases of positive identification of the culprit by reliable witnesses, the defense of alibi must be established by "full, clear and satisfactory evidence" [U.S. v. Pascua, 1 Phil. 631 (1903); U.S. v. Pascua, 29 Phil. 587 (1915); People v. Pili, 51 Phil. 965 (1926).] The evidence presented by the defense on their alibi is far from being "full, clear and satisfactory". On this point, the trial court said:

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Passing on the defense of alibi by both accused, the court cannot help but find it a convenient coincidence that of the seven accused the only two accused who are under custody and under trial are together in the same alibi. Another coincidence which makes one wonder is the fact that the defense witness supplying alibi to the two accused has the same surname as the accused who escaped from the custody of the Court, namely, PAGAYONAN [Rollo, p. 21.]

This Tribunal has laid down the rule that for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime [People v. Benaraba, G.R. No. L-32865, May 18, 1984, 129 SCRA 266.] In this case, the appellants failed to show such physical impossibility. On the contrary, defense witness Emma Pagayonan testified that it takes only eight to nine hours to travel by motorboat from Gigatangan, Leyte to Milagros, Masbate [TSN, August 17, 1983, p. 15.]

Even if we grant the truth of the appellants' story that they were in Leyte since June 27, 1978, it is not physically impossible for them to have gone to Milagros, Masbate on July 3, 1978 considering that they had an available means of transportation, i.e., the motorboat owned by Alvarez. It should be pointed out that according to the testimony of the prosecution witnesses, the robbers in this case fled from the scene using a motorboat [TSN, September 4, 1981, p. 14.]

To corroborate appellants' claim that they were in Leyte at the time of the incident, the defense presented Emma Salut Pagayonan, sister of Rudy Salut, the person who hired Alvarez' boat for use in Leyte. Her testimony, however was shown to be unreliable upon a rigid cross-examination by the prosecuting fiscal. The fiscal was able to elicit an admission that Emma Pagayonan is a resident of Salvacion, Balud, Masbate and that she had no other evidence to show that she had resided in Gigatangan, Mabini, Nabal, Leyte in 1978, except her birth certificate, which however was never presented to the trial court for confirmation of her claim [TSN, August 17, 1983, p. 33.]

Granting for the sake of argument the veracity of her claim that appellants stayed in Gigatangan from June 27 to July 5, 1978, the defense of alibi must nevertheless fail. Emma Pagayonan was not able to satisfactorily and clearly account for the whereabouts of the appellants on the particular date and time when the crime was perpetrated. All that she testified to was that the appellants stayed in their place during the designated period but she never claimed knowledge of what exactly the appellants were doing, or where the appellants were, on the night in question.

Aside from Emma Pagayonan, the other persons, like Rudy Salut, who could have corroborated their alibi were not presented to the witness stand for no apparent reason at all. This Tribunal had occasion to state in People v. Mendoza [100 Phil. 811 (1957)] that the defense of alibi merits outright rejection where it could have been corroborated by other persons and yet, no such corroborating evidence was presented.

Appellants sought to exculpate themselves by presenting the sworn statement of a certain Lino Fenis, [**] marked as Exhibit "4", after having been properly identified by Pat. Wennie Ruga of the INP Mandaon Police Station, attesting to the fact that another group was responsible for the robbery [See Original records, p. 122, et seq.] However, the same has no probative value. An affidavit is inadmissible under the hearsay rule unless the affiant is presented on the witness stand to testify thereon [People v. Villeza, G.R. No. 56113, January 31, 1984, 127 SCRA

349.] Here, said Lino Fenis was never called to the witness stand.

The inadmissible statements of Fenis cannot diminish the greater plausibility of the prosecution's version of the facts surrounding the commission of the crime. No cogent reason exists to warrant disbelief in the prosecution's narration of the incident. It is worth noting the uncontroverted fact that the principal prosecution witnesses in this case, the Belosos, are a well-respected couple and have a high social standing in their community inasmuch as Roberto Beloso had been the Barrio Captain of Guinlothangan, Milagros, Masbate since 1971. No ulterior motive for testifying falsely against the appellants, who were not previously known to the victims, was imputed to the prosecution witnesses and so they are presumed not to have been actuated by any improper motives. Their testimonies thus deserve full faith and credit [People v. Detuya, G.R. No. L-39300, September 30, 1987, 154 SCRA 410 citing People v. Canamo, G.R. No. 62043, August 13, 1985, 138 SCRA 141; People v. Asil, G.R. No. L-32102, February 10, 1986, 141 SCRA 286.]

As all the elements of robbery, namely, intent to gain, unlawful taking of personal property belonging to another and violence against or intimidation of any person [Article 293, Revised Penal Code] have been duly proved in the instant case, the crime committed is robbery complexed with homicide (the death of Severino Malapitan, Jr.) and serious physical injuries (committed against the maid, Evelyn Bacaresas, who was hospitalized for 41 days because of her injuries). However, the physical injuries inflicted upon Evelyn Bacaresas as well as the killing of Severino Malapitan, Jr. should be merged in the composite, integrated whole, that is robbery with homicide, it being evident that the killing and the physical injuries were perpetrated with the sole end in view of eliminating opposition to the robbery or suppressing the evidence, or both [People v. Genoguín, G.R. No. L-23019, March 28, 1974, 56 SCRA 181.] Here, the offense was committed by a band as defined in Article 296 of the Revised Penal Code which states: "When more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band. ..." The Beloso spouses testified that the three robbers who entered the house were all armed while another prosecution witness, Nonilon Ritos, was able to prove that the four other robbers left outside the house as guards were likewise armed [TSN, March 17, 1982, p. 60.]

Under the prevailing jurisprudence, if robbery with homicide is committed by a band, the offense is denominated as "robbery with homicide" under Article 294 (1) of the Revised Penal Code with the element of band as an ordinary aggravating circumstance [People v. Cruz, supra, p. 436.] Since the death penalty can not presently be imposed under the 1987 Constitution, the penalty for robbery with homicide under Article 294 (1) of the Revised Penal Code is now only reclusion perpetua. Despite the existence of a mitigating circumstance of voluntary surrender in favor of the appellants and an aggravating circumstance of band, the same cannot be considered for purposes of meting out the appropriate penalty in this case. Article 63 of the Revised Penal Code mandates that in all cases in which the law prescribes a single indivisible penalty such as reclusion perpetua for robbery with homicide, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

WHEREFORE, the instant appeal is hereby DISMISSED and the judgment of the Regional Trial Court is AFFIRMED with modification as to the denomination of the crime committed which should be "robbery with homicide" under Article 294 (1) of the Revised Penal Code. SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[*]The crime should have been denominated only as "robbery with homicide" according to prevailing jurisprudence as will be discussed later.

[**]Lino Fenis insists in his affidavit that he was only forced by his companions to go with them during the

robbery.

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