

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANIEL JAVIER AND NILO ILAGAN, ACCUSED, DANIEL JAVIER, ACCUSED-APPELLANT.

G.R. No. 70997, February 28, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Laguna, Branch 36, convicting accused-appellant Daniel Javier of the crime of ROBBERY with HOMICIDE and imposing on him the penalty of reclusion perpetua with the accessory penalties of civil interdiction for life and perpetual absolute disqualification from the exercise of the right of suffrage or to be elected or to hold public office for life.

The appellant and Nilo Ilagan were charged with the crime of Robbery with Homicide in an information which reads:

"That on or about April 25, 1982 at Brgy. Masaya, Bay, Laguna and within the jurisdiction of this Honorable Court, the above-named accused, of which (sic) Nilo Ilagan is a minor, but who acted with discernment, while both are conveniently armed with long and short firearms with intent to gain, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with the use of force and intimidation rob, steal and carry away sacks of palay belonging to Justino Lat and Arnel Lat, and against their will and consent and by reason or occasion thereof, accused conspiring, confederating and mutually helping one another with the use of said firearms, with intent to kill, and with evident premeditation and treachery did then and there wilfully, unlawfully and feloniously, and without justifiable reason, attack, assault and shoot Justino Lat with their firearms, thereby inflicting on the latter serious and mortal wounds on the different parts of his body which directly caused the death of Justino Lat to the damage and prejudice of the said victims and the surviving heirs.

"That in the commission thereof the aggravating circumstances were present:

"1. Evident premeditation

"2. Treachery

"3. Night time and

"4. With the use of unlicensed firearms." (Rollo, pp. 45-46)

When arraigned, both accused-appellants pleaded "NOT GUILTY."

The trial court summarized the facts of the case as follows:

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"On April 25, 1982, at around 11:30 in the evening, Arnel Lat and his father Justino Lat were sleeping on the top of some 84 sacks of palay harvested from Sitio Sanpiruhan, Brgy. Masaya, Municipality of Bay, Laguna.

Two (2) men with firearms, approached them, fired shots and ordered Lat and his father to carry a sack of palay each. Arnel Lat identified the two (2) men as herein accused Daniel Javier and Nilo Ilagan, the former carrying a carbine, and the latter, a short firearm. After walking about 100 meters from the place where the sacks of palay were taken, Arnel and Justino Lat were ordered to stop and to sit on the sacks of palay they were carrying while the two (2) accused pointed their firearms towards them about 1-1/2 meters away. Accused Javier noticed the flashlight bulging in Arnel Lat's back pocket and he ordered Arnel Lat to throw the flashlight towards him and when accused Javier was about to pick it up, Justino Lat rushed to said accused and they grappled. At this time, Arnel Lat did not notice where accused Ilagan was or what the latter was doing. Upon hearing his father Justino Lat call for help, Arnel Lat started approaching his father when a shot was fired from the carbine and his father fell down. Arnel Lat grabbed accused Javier and the latter fired three (3) more shots. While grappling with accused Javier, the latter was able to squeeze Arnel Lat's neck who was rendered unconscious. Upon regaining consciousness, and frightened, Arnel Lat hid himself and after that he ran away towards Bo. Puypuy, leaving behind his father. When it was already dawn, Arnel Lat went home and reached their house at Bo. Masaya at around 4:30 in the morning of April 26, 1982. Not finding his mother, he went to the house of his grandmother, and informed her that his father was shot. He was not able to mention the names of both accused as the perpetrators of the crime until his sworn statement was taken by investigator Pat. Jose Batacan on that same day. (TSN., March 2, 1983, Exh. D)." (Rollo, pp. 46-48)

The trial court found accused Nilo Ilagan guilty beyond reasonable doubt of the crime of simple robbery. After applying the Indeterminate Sentence Law, the Court sentenced him to two (2) years, ten (10) months and twenty (20) days of prision correccional as the MINIMUM to eight (8) years and twenty (20) days of prision mayor as the MAXIMUM. He did not appeal the decision.

As stated earlier, the appellant was found guilty of the complex crime of robbery with homicide and was sentenced to suffer the imprisonment of reclusion perpetua.

In this appeal, the appellant questions the credibility of Arnel Lat, the son of the deceased Justino Lat, and an eyewitness to the commission of the crime.

The appellant insists that his identity was not proved beyond reasonable doubt because of the following facts: 1) there is no evidence on record which confirms Lat's testimony; 2) if Javier were the assailant, Arnel Lat could have easily reported his identity to his grandmother who according to Lat was the first person to whom he reported the incident; 3) Arnel Lat admitted that the appellant's face was covered and that the flashlight carried by the two (2) assailants was pointed at the victims which necessarily would mean that his (Lat's) eyes were against the light, hence it was impossible for Lat to recognize the appellant through his voice.

The rule is that "the testimony of a single witness if credible and positive and if it satisfies the court as to the guilt of the accused beyond reasonable doubt, is sufficient to convict." (People v. Francia, 154 SCRA 495 [1987] citing People v. Martinez, 127 SCRA 260 [1984]).

Arnel Lat on cross-examination, testified as follows:

"ATTY. PAJUTAN:

Q —

According to you, you were able to recognize the 2 accused because they were childhood friends, is it not?

"WITNESS:

A —

They are not my friends although Daniel Javier was my former classmate in the elementary, sir.

Q —

In what school, can you name the school where you were classmates?

A —

Masaya Elem. School, sir.

Q —

Being childhood friends, Mr. witness, and neighbors and living in the same community, can you tell the distance where Daniel Javier is living and the house where you were living?

A —

From my place (witness stand) up to the portion of the road nearer to the court. (Estimated by the parties to be about 20 meters).

Q —

And as childhood friends, was there any occasion in the past or during your childhood that you were together with the accused Daniel Javier?

A —

He was never a friend and we never went together in any party, sir.

Q —

Was there any occasion in the past also a childhood friends when you were able to converse even for a short time with the accused Daniel Javier?

A —

Yes, sir, whenever he was loading palay I was the one jotting down the number of palay they carry, sir.

Q —

So, Daniel Javier is your worker in your field?

A —

During harvest time only and while loading palay, sir.

Q —

Was there any previous altercation with your father and you when you were hiring the accused Daniel Javier?

A —

None that I know, sir.

Q —

In your statement dated April 26, 1982, you stated in question No. 7 which I would summarize, your answer the Honorable Court was one of the accused Daniel Javier was naked at that time of the incident according to you, is it not?

A —

Yes, sir, it is correct.

Q —

And at that time also one of the persons who approached you at that time their faces were covered, is it not?

A —

Yes, sir, it is correct.” (TSN., March 2, 1983, pp. 61-63)

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Q —

Please tell us, Mr. witness, if the faces of the 2 persons were covered, how were you able to notice them?

A —

Nilo Ilagan has a cover on his head up to his nose, while Daniel has also a cover from the nose downwards, sir.

Q —

Who was wearing a hat?

A —

Both Daniel Javier and Nilo Ilagan were wearing hats (saklob), sir.

Q —

What is the length of the cover of their faces?

A —

From the bridge of the nose up to the chest, sir.

Q —

How were you able to recognize them?

A —

Because of their eyes and voices, sir.

Q —

How are you able to direct your flashlight towards their faces?

A —

By focusing the flashlight on both their faces, sir.

Q —

On what particular incident did you use the flashlight?

A —

When they asked us to stand up, sir.

Q —

When you grappled with Daniel Javier after the face of your father was kicked, was he still with that mask?

A —

No more, sir.” (TSN., March 2, 1983, pp. 65-67)

Thus, Arnel Lat positively identified the accused as one of the assailants. As can be gleaned from his testimony, Arnel Lat was able to initially identify them through their eyes and voices. After grappling with Justino Lat and Arnel Lat, the mask slipped down and the appellant could even more easily be identified. There can be no doubt that Arnel Lat was able to identify the appellant considering that the latter was not only a childhood neighbor and classmate in the elementary school but also a worker hired by his late father. Both the accused and the witness come from a very rural area. It can be safely assumed that familiarity with the appellant enabled Arnel Lat to recognize Javier even when he still had the mask and only through his eyes and voice when he focused the flashlight on both the assailants. The victim was the witness’ father and it is inconceivable from what appears in the records that that he would implicate an innocent man in the killing and let the real culprit go-scot free. In fact, minor Nilo Ilagan was similarly implicated.

The fact that Arnel Lat did not immediately report to his grandmother the identity of the assailants when he first reported the incident does not weaken his credibility. He satisfactorily explained this matter on the witness stand when he said that “at that time my mind was aburidong-aburido, sir.” (TSN., March 2, 1983, p. 52). This is not an unexpected reaction considering that he was still in shock over the incident especially so because he left his father lying in his own blood after he was shot by the assailants. Neither does the fact that the police blotter (Exhs. 2, 2-A and 2-B) shows that the assailants were unknown adversely affect the credibility of Arnel Lat. The entry in the log book was made upon information given by the victim’s wife at 6:30 in the morning of April 26, 1982 before she could talk to her son Arnel about the incident.

The appellant’s contention that Arnel Lat is not a credible witness in view of his relationship to the victim deserves no credit. We have ruled that the relationship of the key prosecution witness to the victim does not necessarily disqualify him as biased and interested. (*People v. Legaspi*, 151 SCRA 670 [1987]; *People v. Atencio*, 156 SCRA 242 [1987]). A son is not incompetent to act as a witness simply because of his relationship to the victim. (*People v. Atencio*, *supra*).

The appellant further assails the prosecution’s evidence due to supposed contradictions and inconsistencies. He contends that while Arnel Lat testified that his father and Daniel grappled for the gun and in the process the gun was fired killing his father, Dr. Esmeraldo Plastina who performed the necropsy examination on the body of the elder Lat stated that there is no sign that a struggle took place prior to the death of Justino Lat and that the gun which was fired was more than 24 inches away from the deceased and it could even be beyond two (2) meters away from the deceased. This argument is not supported by the evidence on record. The complete testimony of Dr. Plastina is as follows:

"ATTY. PAJUTAN:

Q —

Is it not possible that the deceased and the would be assailant grappled with the gun?

A —

If we consider the grappling of the gun between two people that is very closed specially if we come much more maybe if the muzzle of the gun is pointed on the part that shot the victim, sir.

Q —

Is it possible that there was no previous struggle between the deceased and the would be assailant?

A —

I don't think, sir.

Q —

Did you see any indications on the body of the victim which would indicate struggle?

A —

I was not able to see any abrasion or any contusion on the part of the victim which would indicate struggle, sir.

Q —

That is all with the witness, your Honor.

“COURT:

Q —

Would you be able to sustain with you that the deceased did not struggle?

A —

No, sir.

Q —

If you could not sustained the other side as you see there was no sign of struggle, can you sustain the fact that the deceased actually and in fact did not struggle? Will you be able to say that based on your examination of the body of the deceased?

A —

In that absence I cannot form an opinion, sir.” (TSN., Sept. 14, 1983, pp. 36-39)

Another contradiction and inconsistency in the prosecution’s evidence pointed out by the appellant is Arnel Lat’s statement that he went to the scene of the accident the following morning. This was allegedly contradicted by investigator Patrolman Jose Batacan who testified that during the investigation at the scene of the crime, Arnel Lat was not around. Whether or not Batacan saw Arnel or could not recall having seen Arnel Lat refers to a minor or trivial matter and does not affect the prosecution’s evidence, much less the credibility of Arnel Lat. (People v. Marquez, 153 SCRA 700 [1987]; People v. Bautista, 147 SCRA 500 [1987]).

Still another point raised by the appellant to impugn Arnel Lat’s credibility is the variance between his statements in an affidavit he executed (Exhibit D) and in his testimony regarding the same matter. He argues that Arnel Lat stated in his affidavit:

"Tanong - (7) Isalaysay mo ang buong pangyayari.

"Sagot '. . . at sa paglalaban namin ni Daniel Javier ay nasakal niya ako sa leeg at nawalan ako nang malay tao at nang pagbalikan ako nang ulirat ay tumakbo na lamang akong palayo sa pinangyarihan ng insidente.'" (Appellant’s brief, p. 6)

While in the court, Arnel Let testified that when he regained consciousness, Javier was still standing in front of him and watching him.

Again we rule that such minor contradictions do not affect the credibility of Arnel Lat’s statement. Thus, in the case of People v. Andaya (152 SCRA 570 [1987]) we stated:

“In previous cases this Court has ruled on the issues of contradictions made by witnesses for the prosecution in statements in their affidavits and on the witness stand. (People v. Tan, 89 Phil. 337 [1951], People v. Pacala, L-26647. August 15, 1974, 58 SCRA 370).

“In People v. Tan (at p. 341), the Court dealt with the issue, thus:

“ ‘As aptly pointed out by the Solicitor General, the contradictions, if any, may be explained by the fact that an ‘affidavit *** will not always disclose the whole facts, and will oftentimes and without design incorrectly describe, without the deponent detecting it, some of the occurrences, narrated ***’ (2) Moore on Facts, 1908) and ‘being taken ex parte, is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected, collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject.'”

There are other factual circumstances related by Arnel Lat which are questioned by the appellant. These deserve scant consideration. Suffice it to state, once again, the well-entrenched principle that findings of facts of trial courts are accorded great weight and respect considering that they had the opportunity to observe the deportment and behavior of witnesses. (People v. Panuelos, 136 SCRA 501 [1985]; People v. Magdaraog, 160 SCRA 153 [1988]; People v. Mitra, G.R. No. 80405, November 24, 1989) In the instant case, we find no uncommon behavior of Arnel Lat and his deceased father during the commission of the crime which would lead us to reject the trial court’s findings on the credibility of witnesses.

The trial court, therefore did not err in giving full credence to Arnel Lat’s testimony.

In the same manner, the trial court was correct in rejecting the appellant’s defense of alibi as they were positively identified by the prosecution witness. (People v. Mitra, supra) Moreover, the alibi is inherently weak. The

appellant presented one Andres Clavecillas who testified that he knew said appellant for “more or less two (2) years.” (TSN., January 9, 1984, p. 6); that he got acquainted with him at Barangay Sabang, Pinamalayan, Oriental Mindoro while he was “working in the fields” (TSN., January 9, 1984, p. 7); that on April 19, 1982, he together with the appellant were at Barangay Sabang “cleaning the coconut plantation” (TSN, January 9, 1984 p. 9); that it took them fifteen (15) days to clear the plantation; that after clearing the plantation they both transferred to the “calamansian” (TSN., January 9, 1984, p. 10); that both were together until May 7, 1982 when the appellant went to Laguna at Masaya to attend a fiesta (TSN., January 9, 1984, p. 11).

Under these circumstances, the possibility of the appellant being at the exact time and place when and where the crime was committed — requisites in order that the defense alibi can prosper — is not totally eliminated. (See *People v. Idnay*, 164 SCRA 358 [1988]; *People v. Berbal and Juanito*, G.R. No. 71527, August 10, 1989; *People v. Nolasco*, 163 SCRA 623 [1988]; *People v. Mitra*, supra) Clavecillas could not have fixed his eyes on the appellant every minute and every hour of the day during the entire period.

We are equally convinced that contrary to the allegation of the appellant, the crime of robbery is proved by the evidence on record.

The appellant and accused Nilo Ilagan who were armed initially ordered the victim and Arnel Lat to carry two (2) cavans of palay from the pile of palay to a place near the Masaya Elementary School where they were ordered to stop. This fact clearly demonstrates that the appellant’s and his co-accused’s intention at the time was to commit the crime of robbery as they did in fact commit it. The next morning, the investigator found the said two sacks near the body of the deceased Justino Lat. In view of these evidence the non-presentation in court of the two (2) sacks of palay and/or pictures of the said sacks is of no consequence. The elements of robbery are present in accordance with Article 293 of the Revised Penal Code, to wit:

"Who are guilty of robbery — Any person who, with intent to gain, shall take any personal property belonging to another by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery."

WHEREFORE, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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