

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAUREANO BICOG, PROCULO SERASPE, FELIX MADRID, PEDRO ANTALAN AND PETRONILO BERNADEZ, ACCUSED. FELIX MADRID AND PETRONILO BERNA...

G.R. No. 76529. July 19, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Laureano Bicog, Proculo Seraspe, Felix Madrid, Pedro Antallan and Petronilo Bernadez were charged before the then Court of First Instance of Surigao del Norte with the crime of robbery with homicide committed against Calixtra Calubag, a 72-year old woman.

The information filed against them reads:

"That on the 24th day of May 1978 at or about 11 o'clock in the evening in Barangay Magtangale of the municipality of San Francisco, province of Surigao del Norte and within the jurisdiction of this Honorable Court, accused with all freedom, intelligence and criminal intent and with intent to gain and determination to kill in pursuit of the intent to gain, conspiring, confederating and helping one another, did then and there voluntarily, unlawfully and feloniously break into the house of CALIXTRA CALUBAG, a very old woman and once inside, accused taking advantage of their superiority and in utter disregard and disrespect to victim, a 72-year old woman who was mercilessly choked with a clothing packed and stuffed in the mouth of this 72-year old woman by the accused and after killing this old woman by suffocation, accused carted away a trunk containing cash and valuables having a total of One Thousand Five Hundred (P1,500.00) Pesos, Philippine Currency, belonging in ownership to victim, consequently inflicting actual, moral and exemplary damages upon heirs of victim in the total sum of One Hundred Thousand (P100,000.00) Pesos, Philippine currency.

Contrary to par. 1, Art. 294 of the Revised Penal Code with a penalty of Reclusion Perpetua to death." (Rollo, p. 48)

Laureano Bicog and Pedro Antallan being still at large, trial proceeded only against Madrid, Bernadez, and Seraspe.

Judgment was rendered against Felix Madrid and Petronilo Bernadez who were sentenced to life imprisonment and to jointly and severally indemnify the heirs of the victim the sum of P30,000.00 and the further sum of P20,000.00 as moral damages. Proculo Seraspe was acquitted for lack of evidence of his criminal participation. The dispositive portion of the decision reads:

"WHEREFORE, in view of all the foregoing, the Court finds the accused, FELIX MADRID and PETRONILO BERNADEZ, GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as defined under Article 294, and penalized under paragraph 1 of the Revised Penal Code, in relation to Article 293 of the same Code. Considering the presence of one aggravating circumstance of dwelling which, however, was offset by

one alternative mitigating circumstance of intoxication on the part of the accused there being no showing that the accused were habitual drunkards, the Court hereby sentences the accused, FELIX MADRID and PETRONILO BERNADEZ to LIFE IMPRISONMENT. The said accused are further hereby ordered jointly and severally to indemnify the heirs of the victim the sum of P30,000.00 as death indemnity and the sum of P20,000.00 as moral damage.

There being no evidence against accused PROCULO SERASPE showing his criminal participation beyond reasonable doubt, the said accused is hereby ABSOLVED of the crime above charged." (Rollo, pp. 150-151)

From the above decision, Felix Madrid and Petronilo Bernadez interposed this joint appeal by raising the following as errors committed by the trial court:

I

"THE COURT A QUO ERRED IN FINDING THAT ACCUSED-APPELLANTS FELIX MADRID AND PETRONILO BERNADEZ WERE POSITIVELY IDENTIFIED AS THE PERPETRATORS OF THE CRIME CHARGED BY PROSECUTION WITNESSES PROCULO SERASPE AND ESMERALDO DIAZ EVEN IF SAID WITNESSES DID NOT ACTUALLY WITNESS THE COMMISSION OF THE CRIME.

II

THE COURT A QUO ERRED IN CONVICTING AFORENAMED ACCUSED-APPELLANTS ON THE BASIS OF THE PROSECUTION EVIDENCE WHICH FAILED TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT; AND DESPITE THE FACT THAT THEY WERE NOT GIVEN DUE PROCESS OF LAW DURING THEIR CUSTODIAL INVESTIGATION IN ACCORDANCE WITH THE CONSTITUTION." (Brief for Appellants, Rollo, p. 85)

The evidence upon which the finding of guilt was based consisted mainly of the testimony of one of the accused, Proculo Seraspe who voluntarily testified though not discharged as state witness. His testimony was corroborated by Esmeraldo Diaz, one of those present during the drinking spree but who was excluded as one of the accused in the criminal complaint. The vital facts of the case are summarized in the People's Brief as follows:

"xxx [I]n the early evening of May 24, 1978 starting at around 6:00 o'clock, (Proculo Seraspe), Felix Madrid, Petronilo Bernadez, Pedro Antallan, Esmeraldo Diaz and Laureano Bicog were in the house of their co-accused, Petronilo Bernadez located in barangay Magtangale, Anao-aon, Surigao del Norte, drinking wine called Kulafu; that in the course of their drinking spree, his co-accused, Felix Madrid, then proposed to them a plan to rob Calixtra Calubag, a 72 year old widow whose house was located around 35 or 50 meters distance from that of Petronilo Bernadez; that because of fear that Felix Madrid might harm him, Proculo Seraspe complimenting Felix Madrid's proposal, then went with the group at around 12:00 midnight to the nearby house of the victim, Calixtra Calubag; that upon reaching the yard of Calixtra Calubag's house, Proculo Seraspe together with his other co-accused, Laureano Bicog and Esmeraldo Diaz - the latter, however, was not indicted in this case - stayed in the yard with Proculo Seraspe staying at the back portion of Calubag's house near the kitchen; that thereafter, Felix Madrid went up the house through the kitchen door and succeeded in entering inside (sic) it, then followed by Petronilo Bernadez and Pedro Antallan. At this juncture, and once the three afore-named accused were already inside the house of Calixtra Calubag, Proculo Seraspe being afraid of what the three accused did, run (sic) away towards his house around 100 meters away followed by Esmeraldo Diaz and Laureano Bicog, who like Proculo Seraspe, also run (sic) towards their respective houses located nearby also around 100 meters from the scene. (pp. 19, 22, 23, 24, 26, 31, 32, 34, 37, 38, 39, 44, tsn., Oct. 28, 1980).

In the following morning of May 25, 1978 when Proculo Seraspe woke up at 6:00 o'clock, he learned from his neighbors that Calixtra Calubag had already died. He then stayed in his house. At around 7:00 o'clock in the

same day of May 25, 1978 Felix Madrid, Petronilo Bernadez and Pedro Antallan went to his house and told him that if he will report the incident to the authorities they will kill him; that because of fear, he then kept secret the incident. (pp. 46, 47, 48, 49, 50, 51, 53, 54, tsn., Oct. 28, 1980).

In the month of June, 1978, however, witness Proculo Seraspe, was picked up by the police authorities of Anao-aon with Felix Madrid and placed inside the prison cell of Anao-aon; that while inside the cell, Felix Madrid repeated the same warning to him. (pp. 63, 64, 65, tsn., Oct. 28, 1980)

The foregoing testimony of accused, Proculo Seraspe, was corroborated by the testimony of Esmeraldo Diaz, another prosecution witness, a brother-in-law of accused, Pedro Antallan which testimony in substance states that in the evening of May 24, 1978 at 7:30 o'clock Laureano Bicog, Pedro Antallan, Petronilo Bernadez, Felix Madrid, Proculo Seraspe and he were in the house of Petronilo Bernadez drinking wine, called Kulafu; that while they were in drinking spree after having consumed ten bottles of kulafu and at around 11:00 o'clock, when all were already tipsy, Felix Madrid told the group saying, we will do some robbery, of which Esmeraldo Diaz reacted by saying, 'I will not go with you because that is a dangerous job' of which Felix Madrid answered, saying, 'if you will not go with me, I will kill you'. Afraid that something might happen to him, Esmeraldo Diaz then went with the group which proceeded to the house of Calixtra Calubag. While they were already in the yard of Calubag, the three accused, namely, Felix Madrid, Petronilo Bernadez and Pedro Antallan went inside the house through the kitchen door and once the three gained entrance, the other three who were in the yard, namely, Proculo Seraspe, Esmeraldo Diaz and Laureano Bicog scampered away and run (sic) toward their respective houses located just around 100 meters away. (pp. 5, 6, 7, 8, 9, 10, 11, tsn., June 15, 1982)

In the following morning, May 25, 1978, Esmeraldo Diaz learned that Calixtra Calubag was already dead and thereafter visited the deceased in her house. (pp. 13, 14, tsn., June 15, 1982)

On May 26, Esmeraldo Diaz met Felix Madrid near the gate of the school compound of Magtangale and there Felix, told him not to reveal the incident to anybody of which he assured him not to so reveal the same. Investigation then followed in the month of June, but the investigation resulted to his exclusion as one of the accused in a criminal complaint filed in the then Municipal Court of Anao-aon or San Francisco, Surigao del Norte; that he revealed the incident only when he was investigated on June 9, 1978 in the municipal building. (pp. 15, 16, tsn., June 15, 1982; p. 34, tsn., Aug. 30, 1982)

Evidence for the prosecution further shows that the trunk of the deceased victim, Calixtra Calubag containing items, like clothings, papers, etc., valued at more than P1,000.00 was recovered a week after the incident or death of the said victim near the protestant church of the barangay around twenty (20) armslength away from the house of the victim but which contents inside were never touched nor lost. (pp. 41-42, tsn., Jan. 8, 1983)

The evidence further shows that the victim's hands and feet were hogtied and the head, face and neck were covered and tied; that the mouth was packed with almost 1/2 of a dress of a fully grown female; that the mouth was deformed due to the packed clothes as shown and described in Exhibits "D" and "D-1"; that the cause of death of the victim was suffocation or asphyxia, Exhibit "D-2". (Exhibit D, Folder of Exhibits) (pp. 148-156, rec.)

The main issue raised by the defense questions the credibility of the evidence adduced by the prosecution.

In their first assignment of error, the accused-appellants assail the finding of the trial court that the accused were positively identified by the prosecution witnesses contending that these prosecution witnesses did not actually see the commission of the crime because Seraspe, Bicog, and Diaz acted as look-outs and subsequently fled due to fear of what will happen. They claim that there is no direct evidence on the basis of which conviction can be had. They claim that the only basis of the prosecution is the presence of the accused at the scene prior to the crime.

It is admitted that the prosecution witnesses did not actually see the killing. However, there are circumstances

which establish the guilt of the accused, cited by the Solicitor-General as follows:

“1. Appellant Felix Madrid, while having a drinking spree with his co-accused in the house of co-appellant Petronilo Bernadez in the evening of May 24, 1978, proposed to his fellow drinkers that they go and rob Calixtra Calubag, a 72-year-old widow, who lived alone nearby. (pp. 19, 22, 23, 24, tsn., Oct. 28, 1980).

2) At about twelve midnight, Felix Madrid and company, pursuant to their agreement, proceeded to the victim's house. Madrid who succeeded in opening the kitchen door entered the house followed by Petronilo Bernadez and Pedro Antallan, while Proculo Seraspe, Laureano Bicog, and Esmeraldo Diaz remained in the yard. Upon entry of the first three into the house, Seraspe, Bicog and Diaz scampered away for fear of getting involved in the robbery. (pp. 31, 32, 34, 37, 38, 39, 41, 44, tsn., Oct. 28, 1980).

3) In the early morning of the next day, - May 25 - the victim was found dead inside her house with both hands and feet tied, her head, face and neck were covered and tied and half a woman's dress was stuffed into her mouth. (p. 46, 47, 48, 49, 50, 51, tsn., Oct. 28, 1980)

4) That same morning Felix Madrid, Petronilo Bernadez and Pedro Antallan went to the house of Seraspe and warned the latter not to report to the authorities otherwise they would kill him. (pp. 53-54, tsn., Oct. 28, 1980)" (Rollo, pp. 104-105)

The above circumstances lead us to the conclusion that the appellants were the ones who tied and stuffed the mouth of the victim to do away with her resistance and then robbed her. *People v. Modesto*, 25 SCRA 36 [1968] and *People v. Ramos*, G.R. Nos. 85401-02, June 4, 1990, state that circumstantial evidence is sufficient for conviction if:

- 1) There is more than one circumstance;
- 2) The facts from which the inference are derived are proven, and
- 3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The circumstances surrounding the commission of the crime clearly satisfy the above requirements.

The other points raised by the accused-appellants reinforce the finding of guilt. For instance, they contend that the said robbery was not the first robbery committed against the victim, the first one having been committed on May 20, 1978. The implication here is that there may be other persons who may have perpetrated the crime. The possibility they are trying to raise is that it could be the first robbers who robbed and killed the deceased.

The point raised is without merit. It does not negate their guilt. Contrary to this claim, the son of the deceased testified that he last saw his mother alive in the afternoon of May 24. If the appellants entered the house of the victim at midnight of the same day, the inference is that they were the same persons who committed the crime. It cannot be attributed to a crime which happened on May 20, 1978.

The appellants further claim that they do not have any motive to rob and kill the victim because the daughter-in-law of the deceased is close to the wife of Bernadez. Friendship or even relationship is not a deterrent to the commission of a crime. Neither will it stop one from testifying against a relative in order to bring justice as in the case of Diaz who is a brother-in-law of Antallan.

Absence of reason to rob the victim is further raised in their claim that the victim is without gainful occupation so that to rob her would be futile.

The records show that the deceased was engaged in business. She had a sari-sari store; she sold rice and other commodities and received income from her copra business as well.

The defense of both Madrid and Bernadez is denial and alibi. Madrid asserts that he was in Malimono at that time with Arturo Lumancas who instructed him to give the cow being taken cared of by him to Felix Carbon. This testimony was corroborated by Felix Carbon.

Bernadez, on the other hand, testified that he was then harvesting the coconut trees of Gesta in the latter's farm which was about 3 kilometers from Magtangale. His testimony was likewise corroborated by Gesta.

For alibi to prosper, the requirements of time and place must be strictly met. It must be established by clear and convincing evidence that the accused was at some other place and for such a period of time as to negate his presence at the time when and the place where the crime was committed. As found by the trial court, there is no evidence to show it was physically impossible for appellant to have been at the scene of the crime at the time of its commission (*People v. Perante, Jr.*, 143 SCRA 56 [1986]; *People v. Pacia*, G.R. No. 69543, June 14, 1990; *People v. Solis*, G.R. Nos. 78732-33, February 14, 1990).

In their struggle to destroy the credibility of the prosecution witness, the appellants point out variations in the testimony of Seraspe and Diaz as to the time when they were drinking and the time when they went to the house of Calubag.

The alleged inconsistencies and improbabilities in the testimony of the prosecution witnesses stressed by the appellants, refer to insignificant details which cannot destroy the credibility of said witnesses (*People v. Bautista*, 147 SCRA 500 [1987]; *People v. Dava*, 149 SCRA 582 [1987] and *People v. Eswan, et al.*, G.R. No. 84713, June 4, 1990).

We agree with the trial court that community of purpose is indicative of conspiracy among the assailants. It is clear from the evidence on record that there was conspiracy among the perpetrators of the crime. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. This need not be established by direct evidence but may be proven through the series of acts done by each of the accused in pursuance of the common unlawful purpose. (*People v. Ferrer*, 48 SCRA 382 [1972]; *People v. Laguardia*, 148 SCRA 133 [1987]; *People v. Quiñones*, G.R. No. 80042, March 28, 1990; *People v. Asuncion and Aguinaldo*, G.R. No. 83870, November 14, 1989).

The next assignment of error adduced by the accused-appellants is the illegality of their arrest and detention as they claim that no warrant of arrest was shown nor were they given a copy of the results of the investigation by the police. According to them also, when they were picked up, they were not informed of their offense. On the basis of these allegations, they claim that the rights of persons under custodial investigation were denied to them.

There is nothing in the case which shows that statements were extracted after the appellants were arrested. The fact is that there was no statement executed by them during their detention which could be prejudicial to them. The matter of non-presentation of the warrants of arrest was not developed during the trial. It is an afterthought brought up during appeal and is not enough to warrant reversal of the decision.

The trial court found no evidence that the prosecution witnesses fabricated their story. There is no ulterior motive which impelled them to testify as they did. Furthermore, no evidence was introduced by the defense to impeach the credibility of prosecution witnesses nor evidence to discredit their persons. The court held in *People v. Victor, et al.*, G.R. Nos. 75154- 55, February 6, 1990, that the credibility of the testimony having remained unimpeached, such testimony carries great weight in the determination of the appellants' guilt.

WHEREFORE, premises considered the judgment is hereby **AFFIRMED** with a **MODIFICATION** that the sum of P20,000.00 as moral damages is hereby deleted since no sufficient proof of this type of damage was adduced.

SO ORDERED.

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

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